State of Iowa

Iowa Administrative Code Supplement

Biweekly
October 25, 1995

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PUBLISHED BY THE
STATE OF IOWA
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

Since the Iowa Administrative Procedure Act [Iowa Code chapter 17A] took effect July 1, 1975, over 100 agencies have complied with statutory requirements relating to rule making. The Code of Iowa is implemented by administrative rules contained in the "Iowa Administrative Code" which constitutes 18 loose-leaf volumes and one volume of Index.

Pursuant to Iowa Code section 17A.6, the Iowa Administrative Code [IAC] Supplement is published biweekly, beginning July 14, 1975.

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 which have been adopted by the agency and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17, 17A.4 to 17A.6. [It is 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," "Style and Form," "Chapter 17A" and other governing statutes, "Uniform Rules," "Table of Rules Implementing Statutes," and "Index."

When formal Objections to rules are filed by the Administrative Rules Review Committee, Governor or Attorney General, the text 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 1/18/95 Revenue and Finance[701] Ch 39, p.21

This indicates a page in the IAC published on January 18, 1995. It relates to the Revenue and Finance Department, Agency No. 701, and is page 21 of Chapter 39.

If a rule appearing on this page is subsequently amended, it will be reprinted in amended form and the new page to be inserted will be included in a biweekly Supplement. The new page to be inserted will carry a later date, perhaps in this form:

IAC 2/1/95 Revenue and Finance[701] Ch 39, p.21

*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 text of formal Objections to rules filed by the Administrative Rules Review Committee, Governor, or 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 of 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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UPDATING INSTRUCTIONS
October 25, 1995, Biweekly Supplement

[Previous Supplement dated 10/11/95]

IOWA ADMINISTRATIVE CODE

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

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

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ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

[Prior to 6/1/88, see Engineering and Land Surveying Examiners, Board of [390]]
[Engineering and Land Surveying Examining Board[193C] created by 1986 Iowa Acts, ch 1245, §716, within the Professional Licensing and Regulation Division[193] of the Commerce Department[181] "umbrella"]

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)

CHAPTER 6
SALES OF GOODS AND SERVICES

CHAPTER 2
MINIMUM STANDARDS FOR PROPERTY SURVEYS

[Prior to 6/1/88, see Engineering and Land Surveying Examiners, Board of [390] Ch 2]

193C—2.1(542B) Scope. Except where prescribed by statute or administrative rule, the minimum standards of this rule shall apply to all property surveys performed in this state.

193C—2.2(542B) Definition. *"Property survey"* shall mean any land survey performed for the purpose of describing, monumenting, establishing boundary lines, subdividing, or platting one or more parcels of land.

193C—2.3(542B) Boundary location. Every property survey should be made in accordance with the legal description (record title) boundaries as nearly as is practicable. The surveyor shall acquire data necessary to retrace record title boundaries, center lines, and other boundary line locations. The surveyor shall analyze the data and make a careful determination of the position of the boundaries of the parcel being surveyed. The surveyor shall make a field survey, locating and connecting monuments necessary for location of the parcel and coordinate the facts of such survey with the analysis. The surveyor shall set monuments marking the corners of such parcel unless monuments already exist at such corners.

193C—2.4(542B) Descriptions. Descriptions defining land boundaries written for conveyance or other purposes shall be complete, providing definite and unequivocal identification of lines or boundaries. The description must contain dimensions sufficient to enable the description to be platted and retraced and shall describe the land surveyed either by government lot or by quarter-quarter section or by quarter section and shall identify the section, township, range and county; and by metes and bounds commencing with some corner marked and established in the U.S. Public Land Survey System; or if such land is located in a recorded subdivision or recorded addition thereto, then by the number or other description of the lot, block or subdivision thereof which has been previously tied to a corner marked and established by the U.S. Public Land Survey System. If the parcel is described by metes and bounds it may be referenced to known lot or block corners in recorded subdivision or additions.

193C—2.5(542B) Plats. A plat shall be drawn for every property survey performed for the purpose of correcting boundaries and descriptions of surveyed land, or for the purpose of subdividing the land; showing information developed by the survey and including the following elements:

2.5(1) The plat shall be drawn to a convenient scale;

2.5(2) The plat shall show the length and bearing of the boundaries of the parcels surveyed. Where the boundary lines show bearing, lengths or locations which vary from those recorded in deeds, abutting plats or other instruments there shall be the following note placed along such lines, "recorded as (show recorded bearing, length or location)";

2.5(3) The plat shall show and identify all monuments necessary for the location of the parcel and shall indicate whether such monuments were found or placed;

2.5(4) The plat shall be captioned to identify the person for whom the survey was made, the date of the survey, and shall describe the parcel as provided in rule 2.4(542B) above;

2.5(5) The plat shall bear the signature of the land surveyor, a statement certifying that the work was done by the surveyor or under the surveyor's direct personal supervision, and the surveyor's Iowa registration number or legible seal.

193C—2.6(542B) Measurements.

2.6(1) Measurements shall be made with instruments and methods capable of attaining the required accuracy for the particular problem involved;

2.6(2) Measurements as placed on the plat shall be in conformance with the capabilities of the instruments used;

2.6(3) The unadjusted closure for all surveys shall be not greater than 1 in 5,000.

2.6(4) In a closed traverse the sum of the measured angles shall agree with the theoretical sum by a difference not greater than thirty seconds times the square root of the number of angles;

2.6(5) Bearings or angles on any property survey plat shall be shown to the nearest one minute; distances shall be shown to the nearest one-tenth foot.

193C—2.7(542B) Monuments. Permanent monuments shall be constructed of reasonably permanent material solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment. The registered land surveyor shall affix a cap of reasonably inert material bearing an embossed or stencil cut marking of the Iowa registration number of the registered land surveyor to the top of the monument. See rule 2.3(542B).

These rules are intended to implement Iowa Code section 542B.2.

[Filed 4/1/77, Notice 12/29/76—published 4/20/77, effective 5/25/77]
[Filed 8/11/83, Notice 5/25/83—published 8/31/83, effective 10/5/83]
[Filed 11/12/87, Notice 8/26/87—published 12/2/87, effective 1/6/88]
[Filed 5/13/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]

CHAPTER 3
PROFESSIONAL DEVELOPMENT

[Prior to 6/1/88, see Engineering and Land Surveying Examiners, Board of [390] Ch 3]

193C—3.1(542B) General statement. Each registrant is required to meet the continuing education requirements of this chapter for professional development as a condition of registration renewal.

Continuing education is education obtained by a registrant in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge. Terms used in this chapter are defined as follows:

"College/unit semester/quarter hour" means advanced technical and graduate courses from universities with programs accredited by Engineering Accredited Commissions of the Accreditation Board for Engineering and Technology or other related college course qualified in accordance with this chapter.

"Continuing education unit (CEU)" means the unit of credit customarily used for continuing education courses. One continuing education unit equals ten hours of class in approved continuing education course.

"Course/activity" means any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

"Professional development hour (PDH)" means a contact hour of instruction or presentation and is the common denominator for other units of credit.

193C—3.2(542B) Units.

3.2(1) *PDH conversion.* The unit for the professional development requirements is the professional development hour (PDH). The conversion to this unit from other units is:

1. 1 College or unit semester hour..... 45 PDH
2. 1 College or unit quarter hour..... 30 PDH

3. 1 Continuing Education Unit..... 10 PDH
4. 1 Hour of professional development
   in course work, seminars, or professional or technical presentations
   made at meetings, conventions or conferences..... 1 PDH
5. For teaching apply multiple of 2*
6. Each published paper, article, or book..... 10 PDH
7. Active participation in professional and technical society
   (Each organization, per renewal)..... 2 PDH
8. Each patent..... 10 PDH

*Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time faculty.

3.2(2) *Determination of credit.* The board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.

1. Credit for qualifying college or community college courses will be based upon course credit established by the college.
2. Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional or technical society meetings will earn PDH units for the actual time of each program.
3. Credit for active participation in professional and technical societies (limited to 2 PDH per renewal per organization) requires that a licensee serve as an officer or actively participate in a committee of the organization. PDH credits are earned for a minimum of one year's service.
4. Credit for published material is earned in the biennium of publication; credit for patents is earned in the biennium the patent is issued.

193C—3.3(114) Biennial requirement. The continuing education requirement for biennial registration renewal is 30 professional development hours for an active registrant in engineering or land surveying. The requirement must be satisfied during the biennium prior to registration renewal except for the carryover permitted. The number of professional development hours which may be carried forward into the next biennium shall not exceed 15.

193C—3.4(542B) Professional development guidelines. Continuing education activities which satisfy the professional development criteria are those which relate to engineering or land surveying practice or management. It is recognized that an engineer's specialized skills must have as their foundation a fundamental knowledge of chemistry, physics, mathematics, graphics, computations, communication, and humanities and social sciences. However, continuing education in the fundamentals alone will not be sufficient to maintain, improve, or expand engineering skills and knowledge. For that reason, licensees will be limited in their use of fundamental courses in proportion to ABET criteria for accreditation of engineering curricula. Continuing education activities are classified as:

3.4(1) *Group 1 activities.* Group 1 activities are intended to maintain, improve, or expand skills and knowledge obtained prior to initial licensure. Quantities listed are maximum per renewal:

1. Mathematics and basic sciences—10 PDH maximum
   Math beyond Trigonometry
   Basic sciences:
   Chemistry
   Physics
   Life sciences
   Earth sciences
2. Engineering sciences—10 PDH maximum
   Mechanics
   Thermodynamics

Electrical and electrical circuits
Materials science
*Computer science

*Courses in computer science will generally be considered a part of the Engineering Sciences category in the ABET criterion and therefore limited to a maximum of 10 PDH per renewal period.

3. Humanities and social sciences—5 PDH maximum
Philosophy
Religion
History
Literature
Fine arts
Sociology
Psychology
Political science
Anthropology
Economics
Foreign languages
Professional ethics
Social responsibility

4. Engineering curriculum courses—10 PDH maximum
Accounting
Industrial management
Finance
Personnel administration
Engineering economy
English
Speech
*Computer applications

*Courses in CAD and fundamental computer applications will generally not be applicable in either Group 1 or Group 2 activities. The computer is viewed as a tool available to the engineer or land surveyor, much as a pencil or handheld calculator is a tool. Only computer courses which have the solution of engineering or land surveying problems as a purpose will be considered acceptable. An example of this might be a course which trains an engineer in the utilization of a specific software package to perform structural analysis. The concept of the computer as a tool does not apply to a computer engineer.

3.4(2) *Group 2 activities.* Group 2 activities are intended to develop new and relevant skills and knowledge. Credit for participation in activities in the group is unlimited, subject to maximum carryover. Typical areas include:

Postgraduate level engineering science or design
New technology
Environmental regulation
Courses in management of engineering or land surveying activity (regular work duties do not qualify)

3.4(3) *Exclusions.* Types of continuing education activities which will be routinely excluded from allowable continuing education are those in which it is not self-evident that the activity relates directly to the registrant's practice of professional engineering or land surveying or the management of the business concerns of the registrant's practice, or which do not comply with the board's administrative rules. Typical activities which do not qualify as continuing education are as follows:

Regular employment
Toastmasters club meetings

Service club meetings or activities
Personal estate planning
Banquet speeches unrelated to engineering
Professional society business meeting portions of technical seminars
Financial planning/investment seminars
Foreign travel not related to engineering study abroad
Personal self-improvement courses
Real estate licensing courses
Stress management
Trade shows
Peer review
Accreditation review
Self-study

193C—3.5(542B) Inactive registrants. Registrants who are not engaged in engineering or land surveying practice which requires registration in Iowa may be granted inactive status. No inactive registrant may practice in Iowa unless otherwise exempted in Iowa Code chapter 542B. Inactive registrants are exempt from the continuing education requirements.

193C—3.6(542B) Multiple branch registrants. Continuing education requirements for registration in more than one engineering branch are the same as for registration in a single branch of engineering.

193C—3.7(542B) Engineer-land surveyor registrants. The continuing education requirement for biennial registration renewal for active registration in both engineering and land surveying is 20 professional development hours in engineering and 20 professional development hours in land surveying. The requirement must be satisfied within the biennium prior to registration renewal except for the carryover permitted. The number of professional development hours which may be carried forward into the next biennium shall not exceed ten hours for each profession.

A registrant may have active status in one profession and inactive status in the other. In that case, the registrant shall meet the continuing education requirements for registration in the profession in which active registration is maintained.

193C—3.8(542B) Reinstatement to active registration. A person who wishes to reinstate a lapsed or inactive registration of one year or more must satisfy one of the following requirements:

1. Satisfaction of one-half the biennial requirement multiplied by the number of years of lapsed or inactive status. The minimum continuing education requirement shall be one-half the biennial requirement. The maximum continuing education requirement shall be one and one-half times the biennial requirement. The requirement shall be satisfied within the biennium prior to reinstatement.
2. Successful completion of the Principles and Practice Examination within one year immediately prior to application for reinstatement.

Lapsed registrants of one year or more may not reinstate to inactive status.

193C—3.9(542B) Exemptions. The continuing education requirements may be reduced in proportion to the following:

1. Periods of time exceeding 120 consecutive days that the registrant serves honorably on active duty in the military services.
2. Periods of time that the registrant is registered in another state or district having continuing education requirements for professional engineering or land surveying, equal to or more

stringent than the requirements of these rules and meets all requirements of that state or district for practice therein.

3. Periods of time exceeding 120 consecutive days that the registrant is an employee working as a professional engineer or land surveyor, and assigned to duty outside of the United States of America.

193C—3.10(542B) Hardships or extenuating circumstances. The board may in individual cases involving hardship or extenuating circumstances grant waivers of the continuing education requirements for a period of time not to exceed one year. No waiver or extension of time shall be granted unless the registrant makes a written request to the board for such action.

193C—3.11(542B) Noncompliance. A registrant who does not satisfy the continuing education requirements for registration renewal will be placed on probationary status and notified of the fact before April 1 following the renewal date. The registrant must show that the deficiencies have been satisfied before July 1 following the renewal date. If the deficiencies are not made up within the specified period of time, the individual's registration shall be classified as lapsed without further hearing.

An individual who applies for registration renewal after registration has lapsed and has not satisfied the continuing education requirements will be notified of the fact within 30 days of receipt of the renewal. The registrant must show that the deficiencies have been satisfied before July 1 following the renewal date unless granted additional time by the board due to extenuating circumstances.

193C—3.12(542B) New registrants. A new registrant shall satisfy one-half the biennial continuing education requirement at the first renewal following initial registration.

193C—3.13(542B) Reports, records, and audits. At the time of application for registration renewal, each registrant shall report on a form provided by the board the professional development activities undertaken during the preceding period to satisfy the requirements of this chapter.

3.13(1) *Record keeping.* Maintaining records to be used to support credits claimed is the responsibility of the registrant. Records required include, but are not limited to:

a. A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned;

b. Attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance; or

c. Records as maintained by the Professional Development Registry for Engineers and Surveyors (PDRES) or similar repositories. These records must be maintained for a period of three years and the board may request copies for audit verification purposes.

3.13(2) *Audit of registrants.* The board may audit registrants by random selection or in cases requiring additional information. For each activity listed on the renewal form, persons chosen for audit shall furnish:

a. Proof of attendance;

b. Verification of the hours claimed; and

c. Information about the course content.

3.13(3) *Out-of-state residents.* Residents of other states with mandatory continuing education may satisfy Iowa requirements by signing an affidavit and attaching a copy of their most recent resident state continuing education reporting form. However, if selected for audit they must provide the documentation specified in the previous paragraph.

These rules are intended to implement Iowa Code section 542B.6, 542B.18, 272C.2 and 272C.3.

[Filed 12/8/78, Notice 10/4/78—published 12/27/78, effective 1/31/79]
[Filed 9/25/81, Notice 7/22/81—published 10/14/81, effective 11/18/81]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 5/13/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/5/95, Notice 8/16/95—published 10/25/95, effective 11/29/95]

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CHAPTER 18
IOWA WORK-STUDY PROGRAM
[Prior to 8/10/88, College Aid Commission, 245—Ch 18]

283—18.1(261) Iowa work-study agreement. Institutions are required to enter into an agreement with the commission which defines the manner in which the Iowa work-study program is to be administered. Agreements will be provided each September to eligible nonparticipating institutions, and institutions will have 60 days to sign and return the document to the commission in order to receive funds for the following school year.

283—18.2(261) Annual application. Institutions are required to submit annual applications which are distributed each fall for the following school year. Institutions must submit the applications to the commission by December 15. The applications will collect pertinent information from the institutions' federal work-study documents as well as other information the commission deems necessary to administer the program.

283—18.3(261) Award notices. The commission will annually provide tentative award information by March 20. Tentative allocations will be based on the institutions' applications, the institutions' relative need for funding, and the program's standing limited appropriation. Updates will be provided in the event of adjustments to the standing limited appropriation.

283—18.4(261) Final notices. The commission will annually provide final award notices within 30 days of receipt of all final reports from the schools to the commission.

283—18.5(261) Initial report. Institutions must submit initial reports by May 1 of each year. The report format will be developed by the commission to include estimates of the students served, funds used during the preceding fiscal year, and other basic information needed to prepare the commission's budget request for the subsequent school year.

283—18.6(261) Final report. Institutions must submit final reports by October 31 of each year in a format prescribed by the commission. The information reported may be based on the institutions' aggregate work-study data as long as institutions can document that state funds are provided only to Iowa residents. In addition, the commission will collect information necessary to determine the extent to which state-funded work-study jobs complement the students' education programs and career goals.

283—18.7(261) Administrative procedures. In order to facilitate efficient administration, the commission hereby adopts the federal work-study legislation and regulations. Institutions must administer state-funded work-study funds for Iowa residents in the same manner as the institution administers its federal work-study program except that state funds may not be transferred to another student aid program. These provisions include, but are not limited to, the following:

1. Need analysis,
2. Student budgets,
3. Wage and salary administration,
4. Civil rights requirements,
5. Employee benefits,
6. State workers' compensation laws, and
7. Social security requirements.

Federal work-study regulations are currently found at CFR 675 as of December 31, 1992.

283—18.8(261) Disbursement schedule. Funds will be disbursed in equal installments each September and January except that all institutional awards of less than $50,000 will be disbursed in one September payment.

283—18.9(261) Matching funds. Institutions are required to provide at least 20 percent in institutional matching funds.

283—18.10(261) Due process. Students and institutional officials may appeal institutional or commission action in accordance with the commission's administrative rules, 283—Chapter 13.

283—18.11(261) Unused funds. The commission will reallocate unused funds and, if necessary, deduct any excess funds from an institution's subsequent award.

283—18.12(261) Summer employment. Funds may be used to provide part-time or full-time opportunities to students who are registered for classes at the institution for the succeeding school year.

283—18.13(261) Employment restrictions. The creation of work-study opportunities shall not result in the displacement of employed workers or impair or affect existing contracts for services. Moneys used by an institution for the work-study program shall supplement and not supplant jobs and existing financial aid programs provided students through the institution.

This rule is intended to implement Iowa Code sections 261.1(5), 261.3 and 261.81 as amended by 1995 Iowa Acts, Senate File 206.

283—18.14(261) Iowa heritage corps.

18.14(1) *Iowa heritage corps agreement.* Institutions are required to enter into an agreement with the commission which defines the manner in which the Iowa heritage corps program is to be administered. Agreements will be provided each March to eligible nonparticipating institutions, and institutions will have 60 days to sign and return the document to the commission in order to receive funds for the following school year.

18.14(2) *Annual application.* Institutions are required to submit annual applications which are distributed each spring for the following school year. Institutions must submit the applications to the commission by April 30. The application will collect pertinent information the commission deems necessary to administer the program.

18.14(3) *Award notices.* The commission will annually provide award information by May 30. Allocations will be based on the institutions' application, the institutions' relative need for funding, and the program's appropriation.

18.14(4) *Eligibility.* An eligible student participating in this program will be entitled to receive wages, academic credit, and costs for all materials, supplies, travel, and other work-related expenses of the project.

18.14(5) *Institutional obligation.* The institution will pay, out of the funds allocated, 80 percent of the student's wage and cost of tuition for credits earned.

18.14(6) *Agency obligation.* The eligible agency that the student is placed with will match the remaining 20 percent of the student's wage, cost of tuition for credits earned, and the cost

of materials, supplies, travel, and other work-related expenses of the project.

18.14(7) *Final report.* Institutions must submit final reports by October 31 of each year in a format prescribed by the commission. This information will be included in the institutions' annual work-study reports.

This rule is intended to implement Iowa Code section 261.81A.

283—18.15(261) Restrictions. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa work-study program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedure set forth in 283—Chapter 5.

This rule is intended to implement Iowa Code section 261.15.

[Filed emergency 8/13/87—published 9/9/87, effective 8/21/87]
[Filed 1/15/88, Notice 9/9/87—published 2/10/88, effective 3/16/88]
[Filed 7/22/88, Notice 3/9/88—published 8/10/88, effective 9/14/88]
[Filed 11/29/89, Notice 10/4/89—published 12/27/89, effective 1/31/90]
[Filed 1/29/91, Notice 12/12/90—published 2/20/91, effective 3/27/91]
[Filed 9/13/91, Notice 7/24/91—published 10/2/91, effective 11/6/91]
[Filed 9/25/92, Notice 8/5/92—published 10/14/92, effective 11/18/92]
[Filed 1/20/95, Notice 10/12/94—published 2/15/95, effective 3/22/95]
[Filed 1/20/95, Notice 12/7/94—published 2/15/95, effective 3/22/95]
[Filed 10/3/95, Notice 8/16/95—published 10/25/95, effective 11/29/95]

CHAPTER 19
OCCUPATIONAL THERAPIST LOAN PAYMENTS PROGRAM
Rescinded IAB 10/25/95, effective 11/29/95

CHAPTER 20
IOWA NATIONAL GUARD LOAN PAYMENTS PROGRAM
Rescinded IAB 10/25/95, effective 11/29/95

CHAPTER 21
IOWA NURSING LOAN PAYMENTS PROGRAM
Rescinded IAB 10/25/95, effective 11/29/95

CHAPTER 23
PHYSICIAN LOAN PAYMENTS PROGRAM

283—23.1(261) Purpose. This chapter establishes guidelines for a state-supported loan reimbursement program for physicians who live and work in Iowa.

283—23.2(261) Definition. As used in this chapter:

"Eligible community" means a community which agrees to provide an eligible physician with a first-year income guarantee, malpractice insurance coverage for four years, family health insurance, reimbursement for moving expenses, two weeks of vacation for each of the first four years, and one week of continuing medical education per year for four years.

283—23.3(261) Recipient eligibility.

23.3(1) An eligible applicant shall be a physician licensed to practice medicine under Iowa Code chapter 148 or 150A.

23.3(2) An eligible physician shall have an outstanding student loan debt with an eligible lender under the Stafford/guaranteed student loan program, supplemental loans for students program, or have parent(s) with an outstanding debt with an eligible lender under the PLUS program from which the physician benefited.

23.3(3) The maximum annual reimbursement from state funds to an eligible physician is $5,000 or the remainder of the physician's and parents' loans, whichever is less.

23.3(4) Total payments from state funds for an eligible physician are limited to a four-year period and shall not exceed a total of $20,000.

23.3(5) Eligible applicants must agree to practice in an eligible community with fewer than 5,000 residents, or a federally designated health manpower shortage area for a minimum period of four consecutive years. If the physician fails to practice in an eligible community for a time period of less than 12 months, the individual shall not be reimbursed for payments made during that year.

23.3(6) A physician who is in default on a Stafford/guaranteed student loan, supplemental loan to students, PLUS loan, Perkins loan, Health Profession Student Loan (HPSL), Health Assistance Loan (HEAL), or who owes a repayment on any Title IV grant assistance shall be ineligible for loan payments. If a physician's parents are in default on a loan, those loans are not eligible for reimbursement and will not be considered in the calculation of total debt for the applicant.

23.3(7) Any payment made more than 60 days after the due date is not eligible for reimbursement.

283—23.4(261) Criteria for selection of recipients.

23.4(1) Priority shall be given to eligible physicians practicing in an eligible community of fewer than 5,000 residents that is in a federally designated health manpower shortage area.

23.4(2) If funds are insufficient to repay all qualified applicants, further priority shall be provided based on the date applications are submitted to the commission. Applications shall be ranked according to the date applications are received in the offices of the commission.

283—23.5(261) Application for loan payment reimbursement.

23.5(1) Application forms shall be provided by the commission through approved medical schools. Community participation agreements and information summarizing the program will be provided by the commission to public officials of all rural communities and communities located in a health manpower shortage area.

23.5(2) Eligible students may enter into a contract with an eligible community, which has negotiated a participation agreement with the commission, at or after the time of loan origination to ensure loan repayment.

23.5(3) Eligible physicians who have entered into an agreement will receive a request for loan repayment form one year after completion of their medical training.

23.5(4) In the appropriate section of the request for loan repayment form, the state department of health must certify the employment status of the physician.

23.5(5) The eligible physician shall file the completed request for repayment by a deadline designated by the commission.

283—23.6(261) Certification required for reimbursement of loan payments.

23.6(1) After 12 months of eligible physician employment in Iowa, the state department of public health will certify that the eligible physician has been employed full-time for the entire 12-month period.

23.6(2) On the request for repayment form, the lending institution which holds the eligible physician's student loan notes or parent notes shall certify to the commission the total amount paid on principal and interest during the preceding 12-month period. The form provided by the commission for this purpose shall also include a section to report any delinquencies in loan payment. If two or more lenders are holders of the eligible loan notes, all lenders must provide certification.

283—23.7(261) Reimbursement of loan payments. Upon receipt of the necessary certifications, the commission shall reimburse the physician for eligible loan payments made during the year of employment within the limitations of the maximum amount specified by law and the funds available for the program.

These rules are intended to implement Iowa Code section 261.50.

[Filed 1/29/91, Notice 12/12/90—published 2/20/91, effective 3/27/91]

CHAPTER 24
Reserved

CHAPTER 25
IOWA MEDICAL TUITION LOAN PLAN
[Prior to 8/10/88, College Aid Commission, 245—Ch 3]
Rescinded IAB 10/25/95, effective 11/29/95

CHAPTER 26
IOWA SCIENCE AND MATHEMATICS GRANT PROGRAM

[Prior to 8/10/88, College Aid Commission, 245—Ch 16]

283—26.1(261) State funded grants for Iowa high school graduates who have earned a specified number of credits in science and mathematics courses and who are enrolling at eligible Iowa postsecondary institutions.

26.1(1) *Definitions.*

a. Science and mathematics courses which may be included among the seven units required for grant eligibility will be defined by the department of education in its rule-making capacity.

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

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

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

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

26.1(2) *Application procedure.*

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

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

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

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

26.1(3) *Announcement of awards.*

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

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

26.1(4) *Acceptance of awards.* It is the responsibility of the recipient to notify the commission of acceptance or rejection of the grant within 30 days following the date of award approval. The student also is responsible for informing the commission promptly of any change in college plans. Failure to fulfill these responsibilities on a timely basis may result in withdrawal of the award.

26.1(5) *Certification of enrollment.* At the beginning of the third week of each school term the postsecondary institution will be asked to certify to the Iowa college aid commission that the grant recipient is enrolled and in attendance.

26.1(6) *Payment of awards.*

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

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

26.1(7) *Extension of grant.* Grants may not be reserved for future use but must be used during the year following the recipient's graduation from high school.

26.1(8) *Award transfers.* Upon the written request of the recipient by no later than 21 days after classes begin at the college to which the student has transferred, a grant may be transferred from one eligible institution to another.

26.1(9) *Funding.* If funding is not sufficient to provide maximum grants to all eligible applicants, the commission shall ratably reduce each award.

This rule is intended to implement Iowa Code section 261.2(9).

[Filed 12/16/83, Notice 10/12/83—published 1/4/84, effective 2/8/84]
[Filed 7/22/88, Notice 3/9/88—published 8/10/88, effective 9/14/88]

CHAPTER 27
IOWA GRANT PROGRAM

283—27.1(261) State-supported grants. The Iowa grant program is a state-supported and administered grant based on financial need to Iowa residents enrolled at approved institutions of postsecondary education in Iowa.

27.1(1) *Definitions.* As used in this chapter:

"Accredited higher education institution" means any public or private institution of higher learning located in Iowa which is accredited by the North Central Association of Colleges and Secondary Schools.

"Financial need" means the difference between the student's financial resources, including resources available from the student's parents and the student, as determined by a completed parent's or student's financial statement, and the student's anticipated expenses while attending the accredited higher education institution. Any federal, state, institutional, and private aid, other than work-study, shall also be considered an available resource. Financial need shall be determined at least annually. The application form must be received by the needs analysis processor by the deadline date specified by the commission.

"Full-time resident student" means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least 12 semester hours or the trimester or quarter equivalent. "Course of study" does not include correspondence courses.

"Part-time resident student" means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least three semester hours or the trimester or quarter equivalent. "Course of study" does not include correspondence courses.

"Qualified student" means a resident student who has established financial need and who is making satisfactory progress toward graduation.

"Tuition and mandatory fees" means those college costs paid annually by all students enrolled on a full-time basis, such costs to be reported annually to the commission by each participating institution.

27.1(2) *Student eligibility.* A recipient must be an Iowa resident who is enrolled for at least three semester hours or the trimester or quarter equivalent in a program leading to a degree from an eligible Iowa institution. The criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262), are adopted for this program.

27.1(3) *Self-supporting applicants.* For purposes of determining financial independence, the commission has adopted the definition in use by the U.S. Department of Education for the federally funded student assistance programs. Self-supporting applicants must certify their status on the financial aid form and supply any required documentation to the educational institution.

27.1(4) *Award limits and eligibility requirements.*

a. A grant may be awarded to any qualified person who is accepted for admission or is enrolled for at least three semester hours, or the trimester or quarter equivalent in a program leading to a degree from an approved, accredited higher education institution and who demonstrates financial need.

b. The annual amount of the grant to a full-time student shall not exceed a student's financial need or $1,000, whichever is less.

c. The maximum amount of a grant to a part-time student shall be prorated by dividing the maximum yearly grant amount by 24 semester hours or the trimester or quarter equivalent, and multiplying that amount by the number of hours the student is enrolled.

d. Grants shall be awarded on an annual basis and shall be credited by the institution against the student's tuition, fees, and room and board charges at the beginning of each term in equal installments upon certification that the eligible student is enrolled.

e. If, after crediting the amount of the grant to the student's tuition, fees, and, if applicable, room and board charges, a credit balance remains, the institution may distribute the grant balance to the student who may use the proceeds for other bona fide education expenses such as books, equipment, and transportation.

f. If a student receiving a grant under the program discontinues attendance before the end of any academic period, but after receiving payment of grant funds for the academic period, the entire amount of any refund due the student, up to the amount of any payments made by the state, shall be distributed as follows:

(1) If an initial institutional allocation was made and funds are available due to the refund, the institution may offer additional awards, but in no case may an institution exceed its annual allocation.

(2) If institutional allocations are not made, then any refunds must be returned to the commission.

27.1(5) *Extent of grant.* A qualified full-time student may receive grants for not more than eight semesters of undergraduate study or the trimester or quarter equivalent. A qualified part-time resident student may receive grants for not more than 16 semesters of undergraduate study or the trimester or quarter equivalent.

27.1(6) *Application process.*

a. Eligible students shall apply for this grant through the use of an approved financial aid form, which uses the federally accepted method of needs analysis.

b. Institutions shall coordinate aid packages to ensure that this grant program supplements rather than supplants federal and institutional gift aid awards and shall report need figures to the commission.

c. The institution shall clearly identify the Iowa grant on the student's aid award notice.

d. A student shall accept all available federal and state grants before being considered for grants under this program.

27.1(7) *Full year of study.* For purposes of this program, the commission has defined full year of study as either three quarters or two semesters. Grant payments are prorated according to this definition.

27.1(8) *Priority for grants.*

a. Applicants are ranked in order of the estimated amount which the family reasonably can be expected to contribute toward college expenses; and awards are granted to those who demonstrate need in order of family contribution, from lowest to highest, insofar as funds permit.

b. Funds will be allocated to the sectors according to the appropriations language.

c. If funds are insufficient to pay all approved grants, applicants who have the greatest demonstrated financial need, based on a total family contribution, will receive priority assistance.

d. If funds are insufficient to help all students with no means of contribution to their educational expenses, institutional allocations will be made based on that institution's applicant profiles as a percentage of the total sector profiles, and institutional aid administrators will be called on to select students to receive grants.

27.1(9) *Award notification.* A grant recipient is notified of the award by the educational institution to which application is made. The institution is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The institution reports changes of student eligibility to the commission.

27.1(10) *Award transfers and adjustments.*

a. Awards may be transferred among eligible institution(s) unless funding limitations require institutional allocations.

b. Recipients are responsible for promptly notifying the appropriate institution of any change in enrollment or financial situation. The educational institution will make necessary changes and notify the commission.

27.1(11) *Restrictions.* A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapter 5, Iowa Administrative Code.

27.1(12) *Institutional reporting.* The commission will monitor the program according to this chapter and will require participating postsecondary institutions that receive funds for enrolled students to furnish any information necessary for the implementation or administration of the program.

This rule is intended to implement Iowa Code sections 261.93 and 261.97.

[Filed 9/13/90, Notice 7/11/90—published 10/3/90, effective 11/7/90]
[Filed 9/13/91, Notice 7/24/91—published 10/2/91, effective 11/6/91]
[Filed 1/20/95, Notice 12/7/94—published 2/15/95, effective 3/22/95]

CHAPTER 28
ACCESS TO EDUCATION GRANT PROGRAM

283—28.1(261) State-supported grants. The access to education grant program is a state-supported and administered grant based on financial need to Iowa residents who attend community colleges in Iowa.

28.1(1) *Definitions.* As used in this chapter:

"Community college" means any public, two-year institution of higher education as defined in Iowa Code section 260C.2, subsection 3.

"Full-time resident student" means an individual resident of Iowa who is enrolled at an Iowa community college in a course of study including at least 12 semester hours or the trimester or quarter equivalent of 12 semester hours. "Course of study" does not include correspondence courses.

"Pell grant" means the federally funded and operated need-based entitlement grant program available to undergraduate students.

"Qualified student" means a resident student who has a federal Pell grant index up to 20 percent over the index cutoff for a Pell grant, who is making satisfactory progress toward graduation, and who is not receiving a Pell grant.

28.1(2) *Student eligibility.* A recipient must be an Iowa resident who is enrolled for at least 12 semester hours or the trimester or quarter equivalent in a program leading to a degree, diploma, or certificate from an Iowa community college. The criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262), are adopted for this program.

28.1(3) *Self-supporting applicants.* For purposes of determining financial independence, the commission has adopted the definition in use by the U.S. Department of Education for the federally funded student assistance programs. Self-supporting applicants must certify their status on the financial aid form and supply any required documentation to the educational institution.

28.1(4) *Award limits and eligibility requirements.*

a. A grant may be awarded to any qualified person who is accepted for admission or is enrolled for at least 12 semester hours or the trimester or quarter equivalent.

b. The annual amount of the grant to a full-time student shall not exceed a student's financial need or $250, whichever is less.

c. Grants shall be awarded on an annual basis and shall be credited by the institution against the student's tuition, fees, and room and board charges, at the beginning of each term in equal installments upon certification that the eligible student is enrolled.

d. If, after crediting the amount of the grant to the student's tuition, fees, and, if applicable, room and board charges, a credit balance remains, the institution may distribute the grant balance to the student who may use the proceeds for other bona fide education expenses such as books, equipment, and transportation.

e. If a student receiving a grant under the program discontinues attendance before the end of any academic period, but after receiving payment of grant funds for the academic period, the pro rata share of any refund due the student applicable to the state grant shall be paid by the institution to the state.

28.1(5) *Extent of grant.* A qualified full-time student may receive grants for not more than four semesters of undergraduate study or the trimester or quarter equivalent.

28.1(6) *Application process.* Eligible students shall apply for this grant through the use of an approved financial aid form, which uses the federally accepted method of needs analysis. The application form must be received by the need analysis processor by the deadline date specified by the commission.

28.1(7) *Full year of study.* For purposes of this program, the commission has defined full year of study as either three quarters or two semesters. Grant payments are prorated according to this definition.

28.1(8) *Priority for grants.* If funds are insufficient to pay all approved grants, grants will be offered first to those eligible applicants meeting the commission's priority deadline.

28.1(9) *Award notification.* A grant recipient is notified of the award by the educational institution to which application is made. The institution shall clearly identify the access to education grant on the student's aid award notice. The institution is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The institution reports changes of student eligibility to the commission.

28.1(10) *Award transfers and adjustments.*

a. Awards may be transferred among eligible institution(s).

b. Recipients are responsible for promptly notifying the appropriate institution of any change in enrollment or financial situation. The educational institution will make necessary changes and notify the commission.

28.1(11) *Restrictions.* A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapter 5, Iowa Administrative Code.

28.1(12) *Institutional reporting.* The commission will monitor the program according to this chapter and will require participating postsecondary institutions that receive funds for enrolled students to furnish any information necessary for the implementation or administration of the program.

This rule is intended to implement Iowa Code section 261.98.

[Filed 11/14/90, Notice 10/3/90—published 12/12/90, effective 1/16/91]
[Filed 9/13/91, Notice 7/24/91—published 10/2/91, effective 11/6/91]
[Filed 1/20/95, Notice 12/7/94—published 2/15/95, effective 3/22/95]

CHAPTER 29
DISPLACED WORKERS FINANCIAL AID PROGRAM
Rescinded IAB 10/25/95, effective 11/29/95

351—4.13(56) Out-of-state contributions. Iowa candidates' committees and other political committees may receive contributions from committees outside Iowa, and committees outside Iowa may contribute to Iowa candidates' committees and other political committees provided one of the specified procedures is followed:

4.13(1) Out-of-state committees may choose to comply with regular Iowa disclosure filing requirements in Iowa Code sections 56.5 and 56.6 by filing a statement of organization and periodic disclosure reports.

4.13(2) In lieu of filing a statement of organization and regular disclosure reports as required by Iowa Code sections 56.5 and 56.6, the out-of-state committee may send a verified (sworn) statement registration form (a "VSR") with the contribution, and shall also send a copy to the board or county commissioner of elections. The VSR forms may be obtained from the board or county commissioners of elections. The requested information shall include:

a. The complete name, address and telephone number of the out-of-state committee;

b. The name, address and telephone number of the out-of-state committee treasurer and other officers;

c. The state or federal disclosure agency or jurisdiction under which the out-of-state committee is registered or operates;

d. All parent entities or other affiliates or sponsors of the out-of-state committee;

e. The purpose of the out-of-state committee;

f. The name, address and telephone number of an Iowa resident authorized to receive service on behalf of the out-of-state committee;

g. The name of the Iowa recipient committee;

h. The date and amount of the contribution, including description if the contribution is in kind; and

i. An attested statement that the jurisdiction under which the out-of-state committee is registered or operates has reporting requirements which are substantially similar to those of Iowa Code chapter 56 and that the contribution is made from an account which does not accept contributions which would be in violation of Iowa Code section 56.15, signed by the treasurer or chairperson.

A properly completed VSR shall relieve an out-of-state committee from other disclosure filing requirements of Iowa Code chapter 56.

4.13(3) Out-of-state committees which determine that the jurisdiction under which the committee is registered or operates does not have reporting requirements which are substantially similar to those of Iowa Code chapter 56 may choose to comply by enhancing their filing in the other jurisdiction. The enhanced filing shall meet the reporting requirements of chapter 56 for the reporting period in which contributions to an Iowa candidate are made. The report shall cover a period of at least one month. An out-of-state committee choosing this option shall comply with the VSR procedures in subrule 4.13(2) and attach a signed statement that the report has been or will be enhanced to satisfy the Iowa reporting requirements.

This rule is intended to implement Iowa Code section 56.5(5).

351—4.14(56) Verification of disclosure reports. The board will review and audit each disclosure report filed. The board may check with other parties to verify the accuracy and completeness of the reports filed. The board may contact a representative of the committee and may check with other parties to determine the authenticity of information provided about filed reports.

This rule is intended to implement Iowa Code section 56.10.

351—4.15(56) Loans or obligations forgiven or transferred; interest and imputed interest.

4.15(1) Loans or financial obligations, other than from prohibited contributors, may be transferred or forgiven if the lender or obligor desires to contribute the loan or outstanding balance on an obligation to the committee. When a loan or outstanding balance on an obligation is forgiven or transferred, the information must be listed on Schedule E—in-kind contributions and deducted from Schedule F—loan schedule.

4.15(2) Loans and unpaid obligations shall be subject to actual interest accrual and payment or, if the obligor is not a prohibited contributor, subject to reporting of imputed interest. If the obligor is not a prohibited contributor, interest shall be imputed at the rate commonly charged by the obligor to other obligees, and shall be reported on Schedule E—in-kind contributions. A committee may not accept a loan from a prohibited contributor unless interest is chargeable on the loan at a rate equivalent to rates offered other borrowers and the committee has been making monthly payments on the account of no less than 5 percent of the outstanding balance. A committee may not carry outstanding obligations arising from purchases of goods or services by the committee from a vendor who is a prohibited contributor unless the committee is charged interest at the rate charged to other clients of the vendor and the committee has been making monthly payments on the account of no less than 5 percent of the outstanding balance. For vendors or lenders who have no other clients upon which to base the assessment of interest, interest shall be charged or imputed, as appropriate, at a rate not less than the rate of interest which may be charged under Iowa Code section 535.2(1), as in effect as of the date the loan was made or the obligation was incurred.

This rule is intended to implement Iowa Code sections 56.3, 56.6 and 56.15.

351—4.16(56) Purpose of expenditure. The term "purpose of expenditure" shall mean a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: expenses, reimbursement, candidate expense, services, supplies, and miscellaneous expense.

This rule is intended to implement Iowa Code sections 56.3 and 56.6.

[Filed 6/4/76—published 6/28/76, effective 8/2/76]
[Filed emergency 7/14/76—published 8/9/76, effective 7/14/76]
[Filed 1/7/77, Notice 12/1/76—published 1/26/77, effective 3/2/77]
[Filed 4/30/79, Notice 3/21/79—published 5/30/79, effective 7/4/79*]
[Filed 8/29/80, Notice 5/28/80—published 9/17/80, effective 10/22/80]
[Filed 11/6/81, Notice 9/3/81—published 11/25/81, effective 1/1/82]
[Filed 11/4/83, Notice 8/3/83—published 11/23/83, effective 1/1/84]
[Filed 5/16/86, Notice 3/12/86—published 6/4/86, effective 9/3/86]
[Filed 8/21/87, Notice 6/17/87—published 9/9/87, effective 10/14/87]
[Filed 4/26/89, Notice 2/22/89—published 5/17/89, effective 6/21/89]
[Filed 4/23/92, Notice 2/19/92—published 5/13/92, effective 6/17/92]
[Filed 11/17/92, Notice 9/16/92—published 12/9/92, effective 1/13/93]
[Filed emergency 1/15/93—published 2/3/93, effective 1/15/93]
[Filed 9/23/93, Notice 4/28/93—published 10/13/93, effective 11/17/93]
[Filed 3/11/94, Notice 1/5/94—published 3/30/94, effective 5/4/94]
[Filed emergency 6/16/94—published 7/6/94, effective 6/16/94]
[Filed 7/29/94, Notice 5/25/94—published 8/17/94, effective 9/21/94]
[Filed 12/16/94, Notice 8/17/94—published 1/4/95, effective 2/8/95]◊
[Filed 7/28/95, Notice 5/24/95—published 8/16/95, effective 9/20/95]
[Filed 7/28/95, Notice 6/21/95—published 8/16/95, effective 9/20/95]◊
[Filed 10/6/95, Notice 7/19/95—published 10/25/95, effective 11/29/95]

*Effective date of rule 4.16 delayed by the Administrative Rules Review Committee 45 days after convening of the next General Assembly pursuant to §17A.8(9).
◊Two or more ARCs

"Rubbish" means all waste materials of nonputrescible nature.

"Salvage operations" means any business, industry or trade engaged wholly or in part in salvaging or reclaiming any product or material, including, but not limited to, chemicals, drums, metals, motor vehicles or shipping containers.

"Shutdown" means the cessation of operation of any control equipment or process equipment or process for any purpose.

"Six-minute period" means any one of the ten equal parts of a one-hour period.

"Smoke" means gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, and other combustible material, or ash, that form a visible plume in the air.

"Smoke monitor" means a device using a light source and a light detector which can automatically measure and record the light-obscuring power of smoke at a specific location in the flue or stack of a source.

"Source operation" means the last operation preceding the emission of an air contaminant, and which results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, but is not an air pollution control operation.

"Standard conditions" means a gas temperature of 70° F and a gas pressure of 29.92 inches of mercury absolute.

"Standard cubic foot (SCF)" means the volume of one cubic foot of gas at standard conditions.

"Standard metropolitan statistical area (SMSA)" means an area which has at least one city with a population of at least 50,000 and such surrounding areas as geographically defined by the U.S. Bureau of the Budget (Department of Commerce).

"Startup" means the setting into operation of any control equipment or process equipment or process for any purpose.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant.

"Theoretical air" means the exact amount of air required to supply the required oxygen for complete combustion of a given quantity of a specific fuel or waste.

"Total suspended particulate" means particulate matter as measured by an EPA-approved reference method.

"Trade waste" means any refuse resulting from the prosecution of any trade, business, industry, commercial venture (including farming and ranching), or utility or service activity, and any governmental or institutional activity, whether or not for profit.

"12-month rolling period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

"Urban area" means any Iowa city of 100,000 or more population in the current census and all Iowa cities contiguous to such city.

"Variance" means a temporary waiver from rules or standards governing the quality, nature, duration or extent of emissions granted by the commission for a specified period of time.

"Volatile organic compound" means any compound included in the definition of volatile organic compound found at 40 CFR Section 51.100(s) as amended through October 5, 1994.

567—20.3(455B) Air quality forms generally. The following forms are used by the public to apply for various departmental approvals and to report on activities related to the air programs of the department. All forms may be obtained from the central office:

Administrative Support Station—Environmental Protection Division
Iowa Department of Natural Resources
Henry A. Wallace Building
900 East Grand
Des Moines, Iowa 50319

*Effective date of 10/18/95 delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995.

Properly completed forms should be submitted in accordance with the instructions to the form. Where not specified in the instructions, forms should be submitted to the program operations division.

20.3(1) *Application for a permit to install or alter equipment or control equipment.* All applications for a permit to install or alter equipment or control equipment pursuant to 567—22.1(455B) shall be made in accordance with the instructions for completion of application Form 6, "Application and Permit to Install or Alter Equipment or Control Equipment" (542-3190). Applications submitted which are not fully or properly completed will not be reviewed until such time as a complete submission is made. A permit to install or alter equipment or control equipment will be denied when the application does not meet all requirements for issuance of such permit.

20.3(2) *Application for variance from open burning rules.* All applications for variance from open burning rules pursuant to 567—22.2(455B) shall be made in accordance with the instructions for completion of application Form 7, "Application for Variance from Open Burning Rules" (542-3204).

20.3(3) *Air pollution preplanned abatement strategy forms.* The submission of standby plans for the reduction of emissions of air contaminants during the periods of an air pollution episode, as requested by the director pursuant to 567—22.3(455B), shall be made in accordance with the instructions for completion of application forms provided by the department.

20.3(4) *Air contaminant emissions survey forms.* The submission of emissions information pursuant to 567—subrule 22.2(3) shall be made in accordance with instructions for completion of survey forms provided by the department.

20.3(5) *Notification of corrective action in response to notice of vehicle emission violation.* "Vehicle Emission Violation," Form 10, is a postcard informing the department, in response to a notice of vehicle emission violation by a gasoline-powered or diesel-powered vehicle, pursuant to 567—subparagraphs 23.3(2)*"d"*(2) and (3), that corrective action has been taken. It requests that the recipient specify what repairs were made to eliminate further violation of vehicle emission rules.

20.3(6) *Temporary air toxics fee form.* Form 542-1413 shall be completed in accordance with the instructions for completion of the form provided by the department.

These rules are intended to implement Iowa Code section 17A.3 and chapter 455B, division II.

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed 8/24/84, Notice 5/9/84—published 9/12/84, effective 10/18/84]
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
[Filed emergency 9/22/87—published 10/21/87, effective 9/22/87]
[Filed 10/28/88, Notice 7/27/88—published 11/16/88, effective 12/21/88]
[Filed emergency 10/25/91, after Notice 9/18/91—published 11/13/91, effective 11/13/91]
[Filed 12/30/92, Notice 9/16/92—published 1/20/93, effective 2/24/93]
[Filed 9/23/94, Notice 6/22/94—published 10/12/94, effective 11/16/94]
[Filed 12/30/94, Notice 10/12/94—published 1/18/95, effective 2/22/95]
[Filed 5/19/95, Notice 3/15/95—published 6/7/95, effective 7/12/95]
[Filed 8/25/95, Notice 6/7/95—published 9/13/95, effective 10/18/95*]

*Effective date of 20.2(455B), definition of "12-month rolling period," delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995.

12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu's per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu's per hour heat input;
27. All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants which have been regulated for that category.

"Title V permit" means an operating permit under Title V of the Act.

**"12-month rolling period"* means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

567—22.101(455B) Applicability of Title V operating permit requirements.

22.101(1) Except as provided in subrule 22.102(1), any person who owns or operates any of the following sources shall obtain a Title V operating permit:

a. Any affected source subject to the provisions of Title IV of the Act;

b. Any major source;

c. Any source subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or section 111 of the Act; or 567—subrule 23.1(3) (emissions standards for hazardous air pollutants) or section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to the provisions of section 112(r) of the Act;

d. Any solid waste incinerator unit required to obtain a Title V permit under section 129(e) of the Act;

e. Any source category designated by the administrator pursuant to 40 CFR 70.3 as amended through June 25, 1993.

22.101(2) Title V deferred stationary sources. The requirement to obtain a Title V permit is deferred for all sources listed in 22.101(1) that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act, until five years from the effective date of these rules.

22.101(3) Election to apply for permit. Any source exempt under rule 22.102(455B) may elect to apply for a Title V permit.

567—22.102(455B) Source categories exempt from obtaining Title V operating permit. The following source categories are exempt from the obligation to obtain a Title V operating permit:

22.102(1) Residential wood heaters required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, as amended to August 31, 1993.

22.102(2) Asbestos demolition and renovation projects required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, as amended to July 15, 1994.

*Effective date of 10/18/95 delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995.

567—22.103(455B) Insignificant activities.

22.103(1) *Insignificant activities excluded from Title V operating permit application.* The following are insignificant activities for purposes of Title V permitting if not needed to determine the applicability of or to impose any applicable requirement. In accordance with 40 CFR 70.5 (as amended through June 25, 1993), these activities need not be included in the Title V permit application or in the calculation of fees pursuant to 22.106(455B). However, if the inclusion of emissions from these activities makes the source subject to the Title V permit requirement or if these activities are needed to impose any applicable requirement, these activities must be included in the permit application.

a. Mobile internal combustion and jet engines, marine vessels, and locomotives.

b. Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:

(1) Owned by that person or another person, and

(2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and

(3) Located in this state.

c. Equipment or control equipment which eliminates all emissions to the atmosphere.

d. Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.

e. Alterations to equipment which have been determined by the department to effect no change in the emissions from that equipment.

f. Residential wood heaters, cookstoves, or fireplaces.

g. Laboratory equipment used exclusively for chemical and physical analyses.

h. Recreational fireplaces.

i. Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.

j. Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems which include any industrial waste are not exempt.

k. Retail gasoline and diesel fuel handling facilities.

22.103(2) *Insignificant activities which must be included in Title V operating permit applications.*

a. The following are insignificant if not needed to determine the applicability of or to impose any applicable requirement and if the total plantwide potential emissions from these insignificant activities do not exceed the level specified in paragraph 22.103(2)*"b."*

(1) An emission unit which has the potential to emit less than:

4000 lbs per year of carbon monoxide,
1600 lbs per year of nitrogen oxides,
1600 lbs per year of sulfur dioxides,
1000 lbs per year of particulate matter,
600 lbs per year of PM-10,
1600 lbs per year of volatile organic compounds,

from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

22.147(3) *Commencement of operation.* Not later than 60 days after the unit repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the administrator and the department comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with rule 567—25.2(455B).

22.147(4) *Decision to terminate.* If at any time before the end of the repowering extension and before completion of construction and start-up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the administrator and the department by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.

567—22.148 to **22.199** Reserved.

***567—22.200(455B) Definitions for voluntary operating permits.** For the purposes of rules 22.200(455B) to 22.208(455B), the definitions shall be the same as the definitions found at rule 22.100(455B).

567—22.201(455B) Eligibility for voluntary operating permits.

22.201(1) Except as provided in 567—subrules 22.201(2) and 22.205(2), any person who owns or operates a major source otherwise required to obtain a Title V operating permit may instead obtain a voluntary operating permit following successful demonstration of the following:

**a.* That the potential to emit, as limited by the conditions of air quality permits obtained from the department, of each regulated air pollutant shall be limited to less than 100 tons per 12-month rolling period. The fugitive emissions of each regulated air pollutant from a stationary source shall not be considered in determining the potential to emit unless the source belongs to one of the stationary source categories listed in this chapter;

**b.* That the actual emissions of each regulated air pollutant have been and are predicted to be less than 100 tons per 12-month rolling period. The fugitive emissions of each regulated air pollutant from a stationary source shall not be considered in determining the actual emissions unless the source belongs to one of the stationary source categories listed in this chapter; and

c. That the potential to emit of each regulated hazardous air pollutant, including fugitive emissions, shall be less than 10 tons per 12-month rolling period and the potential to emit of all regulated hazardous air pollutants, including fugitive emissions, shall be less than 25 tons per 12-month rolling period; and

d. That the actual emissions of each regulated hazardous air pollutant, including fugitive emissions, have been and are predicted to be less than 10 tons per 12-month rolling period and the actual emissions of all regulated hazardous air pollutants, including fugitive emissions, have been and are predicted to be less than 25 tons per 12-month rolling period.

22.201(2) Exceptions.

**a.* Any affected source subject to the provisions of Title IV of the Act or sources required to obtain a Title V operating permit under paragraph 22.101(1)*"e"* or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for a voluntary operating permit.

b. Sources which are not major sources but subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or section 111 of the Act; or 567—subrule 23.1(3) (emissions standards for hazardous air pollutants) or section 112 of the Act are eligible for a voluntary operating permit only until five years from

*Effective date of 10/18/95 delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995.

April 20, 1994. These sources shall be required to obtain a Title V operating permit when the deferment period specified in 567—subrule 22.101(2) has expired.

567—22.202(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application for an operating permit, except in compliance with a properly issued Title V operating permit or a properly issued voluntary operating permit.

567—22.203(455B) Voluntary operating permit applications.

22.203(1) *Duty to apply.* Any source which would qualify for a voluntary operating permit must apply for either a voluntary operating permit or a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operation without a Title V operating permit. For each source applying for a voluntary operating permit, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, at least two copies of a timely and complete permit application in accordance with this rule.

a. Timely application. Each source applying for a voluntary operating permit shall submit an application:

(1) Within 90 days after approval of the department's Title V program by USEPA, if the source is applying for an operating permit for the first time;

(2) At least 6 months but not more than 12 months prior to the date of expiration if the application is for renewal;

(3) Within 12 months of becoming subject to this rule for a new source or a source which would otherwise become subject to the Title V permit requirement after the effective date of this rule.

b. Complete application. To be deemed complete, an application must provide all information required pursuant to subrule 22.203(2).

c. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the issuance of a permit. Applicants who have filed a complete application shall have 30 days following notification by the department to file any amendments to the application.

d. Certification of truth, accuracy, and completeness. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

22.203(2) *Standard application form and required information.* To apply for a voluntary operating permit, applicants shall complete the Voluntary Operating Permit Application Form and supply all information required by the Filing Instructions. The information submitted must be sufficient to evaluate the source, its application, predicted actual emissions from the source, and the potential to emit of the source; and to determine all applicable requirements. The applicant shall submit the information called for by the application form for all emissions units, including those having insignificant activities according to the provisions of rules 22.102(455B) and 22.103(455B). The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name

22.206(2) The following shall apply to voluntary operating permits:

a. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

b. Federally enforceable requirements.

(1) All terms and conditions in a voluntary operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the Act.

(2) Notwithstanding paragraph *"a"* of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.

**c.* All emission limitations, all controls, and all other requirements included in a voluntary permit shall be at least as stringent as any other applicable limitation or requirement in the state implementation plan or enforceable as a practical matter under the state implementation plan. For the purposes of this paragraph, "enforceable as a practical matter under the state implementation plan" shall mean that the provisions of the permit shall specify technically accurate limitations and the portions of the source subject to each limitation; the time period for the limitation (hourly, daily, monthly, annually); and the method to determine compliance including appropriate monitoring, record keeping and reporting.

d. The director shall not issue a voluntary operating permit that waives any limitation or requirement contained in or issued pursuant to the state implementation plan or that is otherwise federally enforceable.

e. The limitations, controls, and requirements in a voluntary operating permit shall be permanent, quantifiable, and otherwise enforceable.

f. Emergency provisions. For the purposes of a voluntary operating permit, an "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

567—22.207(455B) Relation to construction permits.

22.207(1) *Construction permits issued after the voluntary operating permit is issued.* If the issuance of a construction permit acts to make the source no longer eligible for a voluntary operating permit, then the source shall, in accordance with subparagraph 22.105(1)*"a"*(6), not operate without a Title V operating permit, and the source shall be subject to enforcement action for operating without a Title V operating permit.

22.207(2) *Relation of construction permits to voluntary operating permit renewal.* At the time of renewal of a voluntary operating permit, the conditions of construction permits issued during the term of the voluntary operating permit shall be incorporated into the voluntary operating permit. Each application for renewal of a voluntary operating permit shall include a list of construction permits issued during the term of the voluntary operating permit and shall state the effect of each of these construction permits on the conditions of the voluntary operating permit. Applications for renewal shall be accompanied by copies of all construction permits issued during the term of the voluntary operating permit.

567—22.208(455B) Suspension, termination, and revocation of voluntary operating permits.

22.208(1) Permits may be terminated, modified, revoked or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a voluntary permit:

*Effective date of 10/18/95 delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995.

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay an administrative, civil or criminal penalty for violations of the permit.

22.208(2) If the director suspends, terminates or revokes a voluntary permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

[Filed 8/24/70; amended 5/2/72, 12/11/73, 12/17/74]
[Filed 3/1/76, Notice 11/3/75—published 3/22/76, effective 4/26/76]
[Filed 5/27/77, Notice 3/9/77—published 6/15/77, effective 1/1/78]
[Filed without Notice 10/28/77—published 11/16/77, effective 12/21/77]
[Filed 4/27/78, Notice 11/16/77—published 5/17/78, effective 6/21/78*]
[Filed emergency 10/12/78—published 11/1/78, effective 10/12/78]
[Filed 6/29/79, Notice 2/7/79—published 7/25/79, effective 8/29/79]
[Filed 4/10/80, Notice 12/26/79—published 4/30/80, effective 6/4/80]
[Filed 9/26/80, Notice 5/28/80—published 10/15/80, effective 11/19/80]
[Filed 12/12/80, Notice 10/15/80—published 1/7/81, effective 2/11/81]
[Filed 4/23/81, Notice 2/18/81—published 5/13/81, effective 6/17/81]
[Filed 9/24/82, Notice 3/17/82—published 10/13/82, effective 11/17/82]
[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed 7/25/84, Notice 5/9/84—published 8/15/84, effective 9/19/84]
[Filed 12/20/85, Notice 7/17/85—published 1/15/86, effective 2/19/86]
[Filed 5/2/86, Notice 1/15/86—published 5/21/86, effective 6/25/86]
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
[Filed 2/20/87, Notice 12/3/86—published 3/11/87, effective 4/15/87]
[Filed 7/22/88, Notice 5/18/88—published 8/10/88, effective 9/14/88]
[Filed 10/28/88, Notice 7/27/88—published 11/16/88, effective 12/21/88]
[Filed 1/19/90, Notice 11/15/89—published 2/7/90, effective 3/14/90]
[Filed 9/28/90, Notice 6/13/90—published 10/17/90, effective 11/21/90]
[Filed 12/30/92, Notice 9/16/92—published 1/20/93, effective 2/24/93]
[Filed 2/25/94, Notice 10/13/93—published 3/16/94, effective 4/20/94]
[Filed 9/23/94, Notice 6/22/94—published 10/12/94, effective 11/16/94]
[Filed 10/21/94, Notice 4/13/94—published 11/9/94, effective 12/14/94]
[Filed without Notice 11/18/94—published 12/7/94, effective 1/11/95]
[Filed emergency 2/24/95—published 3/15/95, effective 2/24/95]
[Filed 5/19/95, Notices 12/21/94, 3/15/95—published 6/7/95, effective 7/12/95] ◊
[Filed 8/25/95, Notice 6/7/95—published 9/13/95, effective 10/18/95**] ◊

*Effective date of 22.1(455B) [DEQ, 3.1] delayed by the Administrative Rules Review Committee 70 days from June 21. The Administrative Rules Review Committee at the August 15, 1978 meeting delayed 22.1 [DEQ, 3.1] under provisions of 67GA, SF244, §19. (See HJR 6, 1/22/79).

**Effective date of 22.100(455B), definition of "12-month rolling period"; 22.200(455B); 22.201(1)"*a*," "*b*"; 22.201(2)"*a*"; 22.206(2)"*c*."

◊Two ARCs

CHAPTERS 1 to 9
Reserved

CHAPTER 10
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The professional licensure division of the public health department hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

645—10.1(17A,22) Definitions. As used in this chapter:
"Board" means a particular professional licensing board.

645—10.3(17A,22) Requests for access to records.
10.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "board administrator" or the particular agency office where the record is kept. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the Professional Licensure Division, Lucas State Office Building, Des Moines, Iowa 50319-0075.
10.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. excluding Saturdays, Sundays and legal holidays.
10.3(7) *Fees.*
c. Search and supervisory fee. An hourly fee may be charged for actual agency expenses in searching for and supervising the examination and copying of requested records when the time required is in excess of one hour. The custodian shall prominently post in agency offices the hourly fees to be charged for search and supervision of records. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

645—10.5(17A,22) Request for treatment of a record as a confidential record and its withholding from examination.
10.5(7) This rule does not allow a person to request confidential record status for records of licensee disciplinary proceedings which are required by law to be public records.

645—10.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)" insert "the board administrator".

645—10.9(17A,22) Disclosures without the consent of the subject.
10.9(1) Open records are routinely disclosed without the consent of the subject.
10.9(2) To the extent allowed by law, disclosure of confidential records occurs without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject:
a. For a routine use as defined in rule 10.10(17A,22) or in the notice for a particular record system.
b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
c. Investigative information in the possession of a licensing board or its employees or agents which relates to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the District of Columbia, or territory or country in which the licensee is licensed or has applied for a license. If the inves-

tigative information in the possession of a licensing board or its employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency.

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

e. Disclosures in the course of employee disciplinary proceedings.

f. In response to a court order or subpoena.

645—10.10(17A,22) Routine use.

10.10(1) Defined. *"Routine use"* means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

10.10(2) To the extent allowed by law, the following uses are considered routine uses of all board records:

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

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

c. Disclosure to the department of inspections and appeals and the attorney general's office for the matters in which it is performing services or functions on behalf of the board.

d. Transfers of information within the board office and among board members, to other state boards and departments, or to local units of government as appropriate to carry out the board's statutory authority.

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

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

g. Disclosure to the public and news media of pleadings, motions, orders, final decisions and informal settlements filed in licensee disciplinary proceedings.

h. Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

645—10.11(17A,22) Consensual disclosure of confidential records.

10.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 10.7(17A,22).

10.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

645—10.12(17A,22) Release to subject.

10.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 10.6(17A,22). However, the board need not release the following records to the subject:

a. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline is required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding.

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

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 reevaluate an accredited sponsor. If after such reevaluation, 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 272C.2.

645—40.65(272C) 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,272C). 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(272C) 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(272C) Attendance record. The board shall monitor licensee attendance at approved programs by random inquiries of accredited sponsors.

645—40.68(272C) 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. The report shall be sent to the Iowa Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075.

This rule is intended to implement Iowa Code section 272C.2.

645—40.69(272C) 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(272C) 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(272C) 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(272C) 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

101.101(2) The continuing education compliance period shall extend from January 1 of every odd-numbered year to December 31 of every even-numbered year. Approved continuing education programs attended during this time period shall be used as evidence of fulfilling continuing education requirements.

The biennial renewal period shall be from July 1 of the odd-numbered year to June 30 of the subsequent odd-numbered year.

101.101(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously accredited by the board or which otherwise meets the requirement herein and is approved by the board pursuant to rule 101.103(272C).

101.101(4) Carryover credit of continuing education hours will not be permitted.

101.101(5) It is the responsibility of each licensee to finance the costs of continuing education.

101.101(6) After the initial license is issued, the new license holder is exempt from meeting the continuing education requirement for the calendar year in which the licensee is licensed. If a new license holder is licensed during the first year of the biennial continuing education period, the licensee is only required to complete 12 hours of continuing education for renewal. If a new license holder is licensed during the second year of the biennial continuing education period, the licensee will be exempt from meeting continuing requirements for the first license renewal. The new license holder will be required to obtain 24 hours of continuing education for the second license renewal.

This rule is intended to implement Iowa Code section 272C.2.

645—101.102(272C) Standards for approval. A continuing education activity shall be qualified for approval if the board determines that:

101.102(1) It constitutes an organized program of learning (including a workshop or symposium) which contributed directly to the professional competency of the licensee; and

101.102(2) It pertains to common subjects or other subject matters which integrally relate to the practice of mortuary science; and

101.102(3) It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and is accompanied by a paper, manual or written outline which substantially pertains to the subject matter of the program.

101.102(4) Except as may be allowed pursuant to rule 645—101.107(272C) no licensee shall receive credit exceeding 10 percent of the total biennium required continuing education hours in the form of self-study, including television viewing, video- or sound-recorded programs, or correspondence work, or by other similar means as authorized by the board.

This rule is intended to implement Iowa Code section 272C.2.

645—101.103(272C) Approval of sponsors, programs, and activities.

101.103(1) *Accreditation of sponsors.* An organization or person not previously accredited by the board, which desires accreditation as a sponsor of courses, programs, or other continuing education activities, shall comply for accreditation to the board stating its education history for the proceeding two years, including approximate dates, subjects offered, total hours of instruction presented, and the names and qualifications of instructors. By January 31 of each year, commencing January 31, 1980, all accredited sponsors shall report to the board in writing the education programs conducted during the preceding calendar year. The board may at any time reevaluate an accredited sponsor. If, after the reevaluation, 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 provider shall state on all continuing education literature: "(Provider's name) is an Iowa Board of Mortuary Science Examiners approved provider #_____. This program is approved for _____ hours of funeral director continuing education."

101.103(2) *Prior approval of activities.* An organization or person other than an accredited sponsor, which desires prior approval of a course, program or other continuing education activity, or who desires to establish accreditation of an activity prior to attendance thereat, shall apply for approval to the board at least 60 days in advance of the commencement of the activity on a form provided by the board. The board shall approve or deny the application in writing within 60 days of receipt of the application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers and other pertinent information.

101.103(3) *Post approval of activities.* A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an accredited sponsor nor otherwise approved shall submit to the board, within 30 days after completion of such activity, a request for credit, including a brief resume of the activity, its dates, subjects, instructors, and their qualifications and the number of credit hours requested therefor. Within 90 days after receipt of an application the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed therefor. A licensee not complying with the requirements of this subparagraph may be denied credit for such activity.

101.103(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 the program.

645—101.104(272C) Hearings. In the event of denial, in whole or in part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right, within 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 board adopts the rules of the department of public health found in 641—Chapter 173 for hearings. The hearing shall be conducted by the board or a qualified hearing officer designated by the board. If the hearing is conducted by an administrative law judge, the administrative law judge shall submit a tape recording or a transcript of the hearing including exhibits to the board after the hearing with the proposed decision of the administrative law judge.

645—101.105(272C) Report of licensee. Each licensee shall file a signed report with the application for renewal no later than April 1 of the year following the calendar year in which claimed continuing education hours were completed. The report shall be sent to the Department of Public Health, Licensing and Certification Section, Board of Mortuary Science Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075.

645—101.106(272C) Attendance record report. The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance and keep a roster of attendees for four years.

645—101.107(272C) Disability or illness. The board may, in individual cases involving 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 is made on forms provided by the board and signed by the licensee and an appropriately licensed health care professional, and the waiver is accept-

645—101.213(272C) Peer review committees.

101.213(1) Each peer review committee for the profession, if established, may register with the board of examiners within 30 days after the effective date of these rules or within 30 days after formation.

101.213(2) Each peer review committee shall report in writing within 30 days of the action, any disciplinary action taken against a licensee by the peer review committee.

101.213(3) The board may appoint peer review committees as needed consisting of not more than five persons who are licensed to practice funeral directing to advise the board on standards of practice and other matters relating to specific complaints as requested by the board. The peer review committee shall observe the requirements of confidentiality provided in Iowa Code section 272C.6.

These rules are intended to implement Iowa Code sections 272C.3, 272C.4, 272C.5, 272C.6 and 272C.10.

645—101.214 to **101.299** Reserved.

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

645—101.300(21) Conduct of persons attending meetings.

101.300(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

101.300(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board member presiding at the meeting.

These rules are intended to implement Iowa Code section 21.7.

[Filed prior to 7/1/52]
[Filed 11/9/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 4/7/77, Notice 2/9/77—published 5/4/77, effective 6/8/77]
[Filed 6/9/78, Notice 11/2/77—published 6/28/78, effective 8/2/78]
[Filed 9/29/78, Notice 8/9/78—published 10/18/78, effective 11/22/78]
[Filed 4/11/79, Notice 9/20/78—published 5/2/79, effective 7/1/79]
[Filed emergency 5/23/79—published 6/13/79, effective 7/1/79]
[Filed 4/24/80, Notice 1/9/80—published 5/14/80, effective 7/1/80]
[Filed 4/23/81, Notice 2/4/81—published 5/13/81, effective 6/17/81]
[Filed 12/3/81, Notice 6/10/81—published 12/23/81, effective 2/1/82]
[Filed 8/23/82, Notice 5/26/82—published 9/15/82, effective 10/21/82]
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/17/82]
[Filed 2/11/83, Notice 11/10/82—published 3/2/83, effective 4/7/83]
[Filed emergency after Notice 1/19/84, Notice 10/26/83—published 2/15/84, effective 1/19/84]
[Filed 7/13/84, Notice 5/23/84—published 8/1/84, effective 9/5/84]
[Filed 4/15/85, Notice 2/27/85—published 5/8/85, effective 6/12/85]
[Filed 1/10/86, Notice 7/17/85—published 1/29/86, effective 3/6/86]◊
[Filed 8/30/88, Notice 6/29/88—published 9/21/88, effective 10/26/88]
[Filed 12/8/89, Notice 10/4/89—published 12/27/89, effective 1/31/90]
[Filed 2/12/90, Notice 11/1/89—published 3/7/90, effective 4/11/90]
[Filed 7/6/90, Notice 3/21/90—published 7/25/90, effective 9/25/90]

◊Two ARCs

NOTE: History for Ch 101 continued on next page.

[Filed 4/26/91, Notice 3/6/91—published 5/15/91, effective 6/19/91]
[Filed 6/21/91, Notice 5/15/91—published 7/10/91, effective 8/14/91]
[Filed 1/17/92, Notice 9/4/91—published 2/5/92, effective 3/11/92]
[Filed 4/24/92, Notice 3/4/92—published 5/13/92, effective 6/17/92]
[Filed 8/27/93, Notice 5/26/93—published 9/15/93, effective 10/20/93]
[Filed 6/17/94, Notice 3/2/94—published 7/6/94, effective 8/10/94]
[Filed 1/27/95, Notice 10/26/94—published 2/15/95, effective 3/22/95*]
[Filed 5/18/95, Notice 2/15/95—published 6/7/95, effective 7/12/95]
[Filed 10/6/95, Notice 7/19/95—published 10/25/95, effective 11/29/95]

*Effective date of 645—101.3(147,156), 101.98(3), 101.212(16) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 13, 1995; delay lifted by this Committee May 9, 1995.

CHAPTER 141
LICENSURE OF NURSING HOME ADMINISTRATORS
[Prior to 8/24/88, see Nursing Home Administrators Board of Examiners[600] Ch 2]

645—141.1(155) Requirement for licensure. All persons acting or serving in the capacity of a nursing home administrator shall hold a nursing home administrator's license issued by the board except as provided in Iowa Code section 155.9(3).

645—141.2(155) Minimum qualifications for licensure as a nursing home administrator prior to January 1, 1999.

141.2(1) *Personal qualifications of applicants.*

a. Each applicant must establish to the satisfaction of the board that the applicant is able to carry out the duties of a nursing home administrator.

b. Each applicant must have reached the age of majority.

141.2(2) *Education qualifications of applicants.*

a. High school or equivalent education. Each applicant must establish to the satisfaction of the board the fact of graduation from a high school accredited at the time of graduation by the state department of education or its equivalent of the state in which the high school is located, or achievement of a passing score on the general education and development examination as may be recognized as the equivalent of high school graduation by the state department of education of the state in which the examination was completed. This provision shall not be applicable if the applicant submits evidence of an associate of arts or higher college degree.

b. Health care education. Each applicant must establish to the satisfaction of the board successful completion of an academic and training program in nursing home administration prescribed, adopted and required by the board.

(1) Each applicant must complete a postsecondary academic program accredited by the North Central Accrediting Association of not less than 64 hours.

1. A curriculum of the program in long-term health care administration offered by an accredited college or university with an associate of arts degree complies with the educational requirements.

2. An applicant who does not meet criteria in 141.2(2)"*b*"(1)"1" must demonstrate satisfactory completion of requirements including:

6 semester hours of social sciences; and

6 semester hours of English or communications or both; and

5 semester hours of mathematics or science or both; and

10 semester hours of business management, accounting or business law or any combination thereof; and

4 semester hours of gerontology; and

13 semester hours of health care administration; and

12 semester hours of long-term health care practicum (720 clock hours). There are nine areas of practicum requiring 80 clock hours each; social services; dietary; legal aspects and government organizations; nursing; environmental services; activities/community resources; business administration; administrative organization; human resource management. Substitution of one year of long-term health care administration experience supervised by a licensed administrator may be allowed at the discretion of the board; and

8 semester hours of electives, for a total of 64 semester hours.

(2) This shall not preclude the board from granting a license to an applicant showing satisfactory evidence of sufficient education, training or experience in the foregoing fields to administer, supervise and manage a nursing home.

(3) The required practicum shall be under a preceptor in an Iowa-licensed nursing home with no fewer than 25 beds, in accordance with the following:

1. The facility chosen for the practicum cannot be owned by a parent, spouse or sibling of the student;

2. The student cannot be a provisional administrator of the facility during the time of the practicum.

(4) A preceptor must meet the following criteria:

1. Hold a current Iowa license in good standing as a nursing home administrator;

2. Have at least two years' experience as a licensed nursing home administrator;

3. Be present in the facility at least 75 percent of the student's practicum;

4. Not be related to the student as a parent, spouse or sibling.

c. Examination. Each applicant shall be required to pass an examination in nursing home administration subjects listed in 141.6(1) and 141.6(2).

645—141.3(155) Minimum qualifications for licensure as a nursing home administrator beginning January 1, 1999. Applicants who have not met the requirements of 141.2(155) resulting in a license prior to January 1, 1999, will need to file a new application with the board meeting the criteria in 141.3(155) to 141.6(155).

141.3(1) *Personal qualifications of applicants.*

a. Each applicant must establish to the satisfaction of the board that the applicant is able to carry out the duties of a nursing home administrator.

b. Each applicant must have reached the age of majority.

***141.3(2)** *Educational qualifications of applicants.*

a. Each applicant must establish to the satisfaction of the board successful completion of a baccalaureate or postbaccalaureate degree in health care administration and approved by the board, from a college or university currently accredited by a regional accrediting agency or organization affiliated with the National Commission on Accrediting (Council of Post-secondary Accreditation), and

b. If not obtained as part of 141.3(2)*"a,"* a minimum of:

(1) A baccalaureate degree from a college or university currently accredited by a regional accrediting agency or organization affiliated with the National Commission on Accrediting (Council of Post-secondary Accreditation); and

(2) 10 semester hours of business management, accounting or business law or any combination thereof; and

(3) 6 semester hours of gerontology;

(4) 12 semester hours in health care administration including but not limited to the areas of organizational management, regulatory management, personnel management, resident care management, environmental services, management, and financial management;

(5) 12 semester hours of long-term health care practicum (720 clock hours). There are nine areas of practicum requiring 80 clock hours each: social services; dietary; legal aspects and government organizations; nursing; environmental services; activities/community resources; business administration; administrative organization; human resource management. Substitution of one year of long-term health care administration experience supervised by a licensed administrator may be allowed at the discretion of the board.

141.3(3) *Exceptions to minimum education requirements.* Any individual holding a valid Iowa license as a nursing home administrator as of January 1, 1999, is deemed to meet the requirements of this rule.

This rule is intended to implement Iowa Code sections 155.3 and 155.9.

645—141.4(155) Practicum/internship.

141.4(1) Practicum experience shall be under a preceptor in an Iowa-licensed nursing home in accordance with the following:

a. The facility must have a licensed capacity of no fewer than 25 beds.

*Effective date of subrule 141.3(2) delayed until adjournment of the 1996 General Assembly by the Administrative Rules Review Committee at its meeting held October 10, 1995.

a. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of voluntary surrender.

b. All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the license. The application shall be docketed in the original case in which the license was revoked, suspended, or relinquished.

c. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license of the nursing home administrator to be reinstated. The burden of proof to establish facts shall be on the respondent.

d. An order of reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law and must be based upon the affirmative vote of not fewer than five members of the board. This order will be published as provided for in subrule 141.13(23).

141.13(25) *License denial.* Any request to have a hearing before the board concerning the denial for a license shall be submitted by the applicant in writing to the board at the address in subrule 141.13(3) by mail or personal service on the board office, within 30 days of mailing of a notice of denial of license.

These rules are intended to implement Iowa Code chapter 155.

[Filed 2/23/71]
[Filed 3/19/76, Notice 2/9/76—published 4/5/76, effective 5/10/76]
[Filed 11/18/76, Notice 9/22/76—published 12/15/76, effective 1/19/77]
[Filed 8/28/78, Notice 3/8/78—published 9/20/78, effective 10/25/78]
[Filed 12/8/78, Notice 9/20/78—published 12/27/78, effective 1/31/79]
[Filed 10/19/79, Notice 8/22/79—published 11/14/79, effective 12/21/79*]
[Filed emergency 12/18/79—published 1/9/80, effective 12/18/79]
[Filed 5/7/80, Notice 4/2/80—published 5/28/80, effective 7/7/80]
[Filed emergency 6/9/80—published 7/9/80, effective 7/7/80]
[Filed 3/13/81, Notice 12/24/80—published 4/1/81, effective 5/7/81]
[Filed 8/14/81, Notice 6/10/81—published 9/2/81, effective 10/7/81]
[Filed 3/18/82, Notice 2/3/82—published 4/14/82, effective 5/19/82]
[Filed 10/6/83, Notice 7/20/83—published 10/26/83, effective 12/1/83]
[Filed emergency 11/30/83 after Notice 10/26/83—published 12/21/83, effective 11/30/83]
[Filed 5/11/84, Notice 3/14/84—published 6/6/84, effective 7/12/84]
[Filed 7/13/84, Notice 6/6/84—published 8/1/84, effective 9/5/84]◊
[Filed 11/8/84, Notice 9/12/84—published 12/5/84, effective 1/9/85]
[Filed 1/11/85, Notice 11/7/84—published 1/30/85, effective 3/6/85]
[Filed 4/4/85, Notice 12/5/84—published 4/24/85, effective 5/29/85]
[Filed 7/10/85, Notice 6/5/85—published 7/31/85, effective 9/4/85]
[Filed 1/17/86, Notice 8/14/85—published 2/12/86, effective 3/21/86]
[Filed 8/5/88, Notice 3/23/88—published 8/24/88, effective 9/28/88]
[Filed 2/17/89, Notice 12/14/88—published 3/8/89, effective 4/12/89]
[Filed 11/22/89, Notice 9/20/89—published 12/13/89, effective 1/17/90]
[Filed 4/13/90, Notice 2/21/90—published 5/2/90, effective 6/6/90]
[Filed 7/20/90, Notice 4/4/90—published 8/8/90, effective 9/12/90]◊
[Filed 3/15/91, Notice 12/26/90—published 4/3/91, effective 5/8/91]
[Filed emergency 8/16/91—published 9/4/91, effective 8/16/91]
[Filed 2/13/92, Notice 12/25/91—published 3/4/92, effective 4/8/92]
[Filed 8/25/95, Notice 3/15/95—published 9/13/95, effective 10/18/95**]

*Effective date of rule 600—2.7 delayed by the Administrative Rules Review Committee 70 days.
**Effective date of 645—subrule 141.3(2), delayed until adjournment of the 1996 General Assembly by the Administrative Rules Review Committee at its meeting held October 10, 1995.
◊Two ARCs

a. Graduation from an accredited high school or its equivalent prior to the examination. High school equivalency shall be in conformity with the requirements of the department of education, state of Iowa.

b. Graduation from an approved nursing program as defined in Iowa Code section 152.5(1) or completion of a course of study as defined in Iowa Code section 152.7(3), prior to the examination. Theory and clinical experience shall be completed before the examination and shall include medical nursing, surgical nursing, obstetric nursing, and nursing of children. In addition, registered nurse applicants shall have had theory and clinical experience in psychiatric nursing prior to the examination.

c. Passing the examination by the standards determined by the board.

d. Approval by the board of those with a past felony record. The board determines the eligibility for licensure of a felony applicant on the felony's relationship to nursing.

3.3(2) Exceptions to the qualifications for licensure. Applicants for licensure in Iowa must meet the qualifications in effect in Iowa at the time of their graduation from their nursing school. The relevant requirements listed in subrule 3.3(1) are subject to the following exceptions:

a. Graduation from high school or its equivalent was not required of registered nurse applicants until 1930 or of licensed practical nurse applicants until 1963.

b. If graduation from a nursing program was prior to 1952, a license will be granted according to board approved guidelines.

c. Registered nurse graduates prior to 1951 are not required to have psychiatric nursing or be tested in psychiatric nursing.

d. A person licensed as a registered nurse in another state by waiver shall be accepted for Iowa licensure only if the waiver period corresponds to that in Iowa.

e. Exceptions related to examinations:

(1) Before 1946, the registered nurse applicant shall have passed a written test prepared by a licensing board of another state.

(2) A practical nurse applicant must have written the same examination as that administered in Iowa and achieved a score established as passing for that test by the board unless the applicant was graduated and licensed prior to July 1951.

(3) After June 1976, an applicant who took the State Board Test Pool Examination (SBTPE) shall have passed that examination within four writings in order to be eligible for an Iowa license. Prior to that date, there was no limit on the number of writings. An applicant who failed the SBTPE but wrote it less than four times is eligible to take the NCLEX an unlimited number of times.

(4) An applicant whose national examination scores do not meet the Iowa requirements in effect at the time of the examination and who wishes to become licensed in Iowa shall appeal to the board. The board may require the applicant to produce evidence of working experience or successful completion of a refresher course. The board may require the applicant to rewrite the current examination.

This rule is intended to implement Iowa Code sections 147.2 and 152.7(3).

655—3.4(17A,147,152,272C) Licensure by examination.

3.4(1) *Qualifications for licensure by examination.* Applicants shall meet qualifications for licensure as set forth in subrule 3.3(1).

3.4(2) *Examination.* The board contracts with the National Council of State Boards of Nursing, Inc., to utilize the examination.

a. The passing standard for the examination is determined by the board.

(1) NCLEX-PN results will be reported to the candidates as pass or fail.

(2) NCLEX-RN results will be reported to the candidates as pass or fail.

b. The examination shall be administered in Iowa.

c. The examination shall be administered in accordance with the manual prepared by the National Council of State Boards of Nursing, Inc., for the administration of the NCLEX.

d. The candidate shall present identification for admission to the testing center in accordance with the policies of the National Council of State Boards of Nursing, Inc.

e. Licensure examination statistics are available to the public.

3.4(3) *Application—Iowa graduates.* Application for licensure by examination to practice as a registered nurse in Iowa shall be made according to the following process.

a. The board is responsible for the following:

(1) At least twice a year, the board staff shall request the head of each nursing program in Iowa to submit information about the students who are anticipated to complete the program.

(2) Upon return of the information about the students who are anticipated to complete the program, an adequate supply of application forms and instructions for filing shall be sent to the head of the nursing program.

(3) The board shall confirm or deny the eligibility of each applicant upon receipt of the following materials:

Completed application form (submitted by the applicant).

Original license fee (submitted by the applicant).

Notification of completion of the NCLEX registration process (confirmed by NCLEX).

Official nursing transcript denoting the date of entry and date of graduation from an approved nursing education program.

b. The head of the nursing program is responsible for the following:

(1) Submission to the board of a list of the students/number of students who are anticipated to complete the program, at least twice a year.

(2) Distribution of the board application form and NCLEX registration materials.

(3) Submission to the board of a list of persons who have failed to complete the program.

c. The applicant is responsible for the following:

(1) Submission of a completed board application form. The applicant may obtain the board application form and the NCLEX registration materials from the head of the nursing program or the board office.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Having the nursing program forward an official nursing transcript denoting the date of entry and date of graduation.

(5) Informing the board of the applicant's current mailing address.

(6) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(7) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(4) *Application—out-of-state graduates.* Application for the examination to practice as a registered nurse/licensed practical nurse in Iowa shall be made according to the following process:

a. The board is responsible for the following:

(1) Upon request, application forms and instructions for filing shall be sent to the out-of-state applicant.

(2) The board shall confirm or deny the eligibility of each applicant upon receipt of the following materials:

Completed application form (submitted by the applicant).

Original license fee (submitted by the applicant).

Notification of completion of the NCLEX registration process (confirmed by NCLEX).

Official nursing transcript denoting the date of entry and date of graduation from an approved nursing education program.

b. The out-of-state applicant is responsible for the following:

(1) Submission of a completed board application form.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Having the nursing program forward an official nursing transcript denoting the date of entry and date of graduation.

(5) Informing the board of the applicant's current mailing address.

(6) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(7) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(5) *Application—individuals enrolled in an academic course of study for registered nurses on June 30, 1995.* Individuals who are eligible for the practical nurse examination in Iowa under the provisions of Iowa Code section 152.7 may be required to complete additional continuing education requirements as prescribed by the board. Application for the examination to practice as a licensed practical nurse in Iowa shall be made according to the following process:

a. The board is responsible for the following:

(1) Upon receipt of a written request, instructions for filing shall be sent to the applicant.

(2) Determination of the eligibility of the applicant by evaluation of the nursing transcript. The applicant is or has enrolled in a registered nurse program(s) for at least one year and has received a minimum grade of "C" in theory and clinical training in each of the following: medical nursing, surgical nursing, obstetric nursing, and nursing of children.

(3) Sending an application to the applicant if the above requirements have been met. If the application revealed grounds for which a license may be refused as set forth in Iowa Code section 147.4, the application shall be reviewed in closed session, and a decision in regard to the application shall be made. Issuance of the board's decision to the applicant shall be by certified mail.

(4) Notification of the applicant that other states may not grant licensure by endorsement to persons who have obtained licensure under this subrule.

(5) The board shall confirm or deny the eligibility of each applicant upon receipt of the following materials:

Completed application form (submitted by the applicant).

Original license fee (submitted by the applicant).

Notification of completion of the NCLEX registration process (confirmed by NCLEX).

Official nursing transcript denoting the date of entry and length of enrollment.

b. The applicant is responsible for the following:

(1) Submission of a completed board application form.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Having the nursing program forward an official nursing transcript denoting the date of entry and length of enrollment.

(5) Informing the board of the applicant's current mailing address.

(6) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(7) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(6) *Application—individuals educated in another country.* Application for examination as a registered nurse/licensed practical nurse in Iowa shall be made according to the following process:

a. The board is responsible for the following:

(1) Upon request, the board shall send to the applicant a "Request to Apply for Iowa Licensure by Examination for Individuals Educated in Another Country" and filing instructions.

(2) Evaluation of credentials to determine that the applicant has met all qualifications for licensure by examination.

(3) The board shall confirm or deny the eligibility of each applicant for licensure upon receipt of the following materials:

Completed application form (submitted by the applicant).

Original license fee (submitted by the applicant).

Notification of completion of the NCLEX registration process (confirmed by NCLEX).

Official nursing transcript denoting date of entry and date of graduation (submitted by the Commission on Graduates of Foreign Nursing Schools [CGFNS]). The board, if it determines a waiver is warranted because of circumstances beyond the applicant's control, shall issue a waiver and designate conditions which must be met.

Validation of licensure/registration in the native country (submitted by CGFNS).

Official verification of certificate status for individuals applying for registered nurse licensure (submitted by CGFNS).

A Nursing and Science Course by Course Report for individuals applying for practical nurse licensure who have not earned CGFNS certificate status (submitted by CGFNS).

Verification of the ability to read, write, speak, and understand the English language as determined by the results of the Test of English as a Foreign Language (TOEFL) for individuals applying for practical nurse licensure who have not earned CGFNS certificate status. The TOEFL passing standard shall be determined by the board.

(4) Board of nursing approval shall be required prior to confirmation or denial of eligibility by the board office for individuals applying for practical nurse licensure who have not earned CGFNS certificate status.

b. The applicant educated in another country is responsible for the following:

(1) Submission of a completed licensure application form.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Submission of an official nursing transcript as outlined in 3.4(6)*"a"*(3). The transcript shall be submitted by CGFNS for individuals applying for licensure after July 1, 1995.

(5) Validation of licensure/registration in the native country. Validation shall be submitted by CGFNS for individuals applying for licensure after July 1, 1995.

(6) Official verification of CGFNS certificate status for individuals applying for registered nurse licensure.

(7) Submission of a Nursing and Science Course by Course Report issued by the CGFNS Credentials Evaluation Service (CES) for individuals applying for practical nurse licensure after July 1, 1995, who have not earned CGFNS certificate status.

(8) Verification of the ability to read, write, speak, and understand the English language as determined by the TOEFL for individuals applying for practical nurse licensure after July 1, 1995, who have not earned CGFNS certificate status.

(9) Informing the board of the applicant's current mailing address.

(10) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(11) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(7) *Application—individuals with disabilities.* Individuals with disabilities as defined in the Americans With Disabilities Act (1990) shall be provided modifications in the examination or examination administration according to the following process:

a. The board is responsible for the following:

(1) Notification of NCLEX applicants of the availability of modifications in the examination or examination administration for individuals with documented disabilities.

(2) Upon request, notifying the applicant of the process for obtaining board approval for testing modifications as defined in subrule 3.4(7), paragraph *"b."*

(3) Determination of eligibility for testing modifications upon receipt of the following:

Written request for a specific modification(s) in the examination or examination administration (submitted by the applicant).

Written documentation of the applicant's disability and need for testing modifications, including results of diagnostic testing, when appropriate, submitted by a qualified professional with expertise in the area of the diagnosed disability or interpretation of results.

Written documentation of testing modifications provided to the applicant while enrolled in the nursing education program, when appropriate (submitted by the nursing program).

b. The applicant is responsible for the following:

(1) Submission to the board office of a written request for a specific modification(s) in the examination or examination administration.

(2) Having a qualified professional with expertise in the area of the diagnosed disability or interpretation of test results submit to the board office written documentation of the applicant's disability and need for testing modifications, including the results of diagnostic testing, when appropriate.

(3) Having the nursing program submit to the board office written documentation of testing modifications provided to the applicant while enrolled in the nursing education program, when appropriate.

(4) Completion of all NCLEX application requirements defined in subrules 3.4(3), 3.4(4), 3.4(5), or 3.4(6).

3.4(8) *Reexamination.* An applicant who fails the examination is eligible for reexamination as follows:

a. An applicant who has graduated from an approved practical nurse program and has failed NCLEX-PN is eligible to take the NCLEX-PN an indefinite number of times.

b. An applicant who has graduated from an approved registered nurse program and has failed NCLEX-RN is eligible to take the NCLEX-RN an indefinite number of times.

c. An applicant who has graduated from an approved practical nurse program and has failed the State Board Test Pool Examination less than four times is eligible to take the NCLEX-PN an indefinite number of times.

d. An applicant who has graduated from an approved registered nurse program and has failed the State Board Test Pool Examination less than four times is eligible to take the NCLEX-RN an indefinite number of times.

e. An applicant who fails the examination shall be required to refile the following before taking another examination:

(1) The board application form.

(2) The original license fee.

(3) The NCLEX registration.

(4) The NCLEX registration fee.

3.4(9) *Certificate of licensure by examination.* Upon completion of the relevant qualifications for licensure by examination defined in these rules, the board shall issue a certificate of licensure by examination and a current license to practice as a registered nurse/licensed practical nurse.

a. A licensee shall use the relevant title registered nurse/licensed practical nurse and relevant initials R.N./L.P.N.

b. A licensee is required to hold a certificate and license. If a certificate or license is stolen or lost, the licensee shall apply for a duplicate as specified in subrule 3.7(7).

This rule is intended to implement Iowa Code sections 147.36, 147.80, 152.7(3) and 152.9.

655—3.5(17A,147,152,272C) Licensure by endorsement.

3.5(1) *Qualifications for licensure by endorsement.* The endorsee must meet qualifications for licensure defined in subrule 3.3(1).

3.5(2) *Applicants currently licensed in another state.* Application for licensure to practice as a registered nurse or licensed practical nurse by endorsement shall be made according to the following process:

a. The board is responsible for the following:

(1) Upon request, application forms and instructions shall be sent to the applicant.

(2) Evaluation of credentials to determine that the applicant has met all qualifications for licensure.

(3) Issuance of an original certificate and current license to practice following determination of eligibility and upon receipt of the following materials:

Completed application form (submitted by the applicant).

Endorsement fee (submitted by the applicant).

Official nursing transcript denoting date of entry and date of graduation (submitted by the nursing program).

Verification of licensure form (submitted by state of original licensure).

b. The applicant is responsible for the following:

(1) Submission of a completed board application form.

(2) Submission of the endorsement fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C) is not refundable.

(3) Having the nursing program forward an official nursing transcript which denotes the date of entry and date of graduation.

(4) Submission of the verification of licensure form from the original state of licensure.

(5) Submission of the above documents within twelve months from the date of receipt of the written request. The board reserves the right to destroy the documents after twelve months.

c. A license shall not be issued to an applicant whose license is under sanction by another state without approval of the board.

d. An applicant for endorsement who has had disciplinary action in another state shall submit all the materials required for endorsement and appear before the board. The board shall review the reasons for the out-of-state sanction and determine whether to grant licensure in Iowa. The board may determine special conditions for licensure.

e. A license shall not be issued to an applicant who fails to complete the application process within the allotted time. A license shall be issued when the application process is complete.

3.5(3) *Temporary license.* A temporary license shall be issued to an applicant who is licensed in another state if the applicant meets the qualifications for licensure as outlined in subrule 3.3(1) and has applied for licensure as a registered nurse/licensed practical nurse in Iowa. The board application form and endorsement fee as outlined in rule 3.1(17A,147,152,272C) and verification of licensure form shall be on file in the office of the board prior to the issuance of the temporary license.

a. A temporary licensee may use the appropriate title of registered nurse or licensed practical nurse and the appropriate abbreviation R.N. or L.P.N.

b. The temporary license must be signed by the licensee to be valid. The temporary license shall be issued for a period of 30 days. A second temporary license may be issued for a period not to exceed 30 days or at the discretion of the executive director.

c. A temporary license shall not be issued to an applicant whose license is under sanction by another state without approval of the board. The board may determine special conditions for licensure.

d. A temporary license shall not be issued to an applicant who fails to complete the application process within the allotted time. A license shall be issued when the application process is complete.

[Filed 6/24/77, Notices 12/15/76, 4/20/77—published 7/13/77, effective 8/17/77]♢
[Filed 10/3/77, Notice 8/24/77—published 10/19/77, effective 11/23/77]
[Filed emergency 1/23/78—published 2/8/78, effective 1/23/78]
[Filed 4/21/78, Notice 2/22/78—published 5/17/78, effective 6/21/78]
[Filed 4/21/78, Notice 3/8/78—published 5/1/78, effective 6/21/78]♢
[Filed 7/17/80, Notice 5/14/80—published 8/6/80, effective 9/10/80]♢
[Filed emergency after Notice 6/21/82, Notice 5/12/82—published 7/7/82, effective 6/21/82]
[Filed emergency after Notice 2/10/83, Notice 1/5/83—published 3/2/83, effective 2/10/83]♢
[Filed 5/2/84, Notice 2/29/84—published 5/23/84, effective 6/27/84]
[Filed 10/17/84, Notice 8/29/84—published 11/7/84, effective 12/12/84]
[Filed without Notice 7/19/85—published 8/14/85, effective 9/18/85]
[Filed 7/19/85, Notice 5/22/85—published 8/14/85, effective 9/18/85]
[Filed 9/20/85, Notice 8/14/85—published 10/9/85, effective 11/13/85]
[Filed emergency after Notice 4/15/86, Notice 2/26/86—published 5/7/86, effective 4/18/86]
[Filed 9/22/86, Notice 8/13/86—published 10/8/86, effective 11/12/86]
[Filed 4/30/87, Notice 2/25/87—published 5/20/87, effective 6/24/87]
[Filed emergency 7/29/87—published 8/26/87, effective 7/29/87]
[Filed 10/2/87, Notice 7/15/87—published 10/21/87, effective 11/25/87]
[Filed 2/17/88, Notice 12/16/87—published 3/9/88, effective 4/13/88]
[Filed 3/10/88, Notice 9/9/87—published 4/6/88, effective 7/1/88]
[Filed emergency 4/15/88 after Notice of 2/24/88—published 5/4/88, effective 4/15/88]
[Filed 8/4/88, Notice 4/20/88—published 8/24/88, effective 9/28/88]
[Filed 8/4/88, Notice 6/15/88—published 8/24/88, effective 9/28/88]
[Filed 9/12/88, Notice 6/29/88—published 10/5/88, effective 11/9/88]*
[Filed 10/6/88, Notice 8/24/88—published 11/2/88, effective 12/7/88]
[Filed 5/26/89, Notice 2/22/89—published 6/14/89, effective 7/19/89]
[Filed 3/15/90, Notice 1/10/90—published 4/4/90, effective 5/9/90]
[Filed 12/20/91, Notice 10/16/91—published 1/8/92, effective 2/12/92]
[Filed emergency 2/10/93 after Notice 1/6/93—published 3/3/93, effective 2/10/93]
[Filed 12/8/93, Notice 10/13/93—published 1/5/94, effective 2/9/94]
[Filed 6/16/94, Notice 4/13/94—published 7/6/94, effective 8/10/94]
[Filed 9/30/94, Notice 7/6/94—published 10/26/94, effective 11/30/94]
[Filed 6/15/95, Notice 4/12/95—published 7/5/95, effective 8/9/95]
[Filed 10/5/95, Notice 7/5/95—published 10/25/95, effective 11/29/95]

♢ History relating also to "Licensure to Practice—Licensed Practical Nurse," ch 4 prior to IAC 5/23/84.
*Effective date of 11/9/88 delayed 70 days by the Administrative Rules Review Committee at its October meeting. Delay lifted by ARRC 11/16/88

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 3
LICENSE FEES, RENEWAL DATES, FEES FOR DUPLICATE LICENSES AND CERTIFICATION OF GRADES

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 4]

657—3.1(147,155A) Renewal date and fee—late application. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license. The license renewal form shall be issued upon payment of a $100 fee.

Failure to renew the license before July 1 following expiration shall require a renewal fee of $200. Failure to renew the license before August 1 following expiration shall require a renewal fee of $300. Failure to renew the license before September 1 following expiration shall require a renewal fee of $400. Failure to renew the license before October 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of the license exceed $500. The provisions of Iowa Code section 147.11 shall apply to a license which is not renewed within five months of the expiration date.

This rule is intended to implement Iowa Code sections 147.10, 147.80, 147.94, and 155A.11.

657—3.2(155A) Fees. Only original or duplicate certificates for licensed pharmacists issued by the board of pharmacy examiners are valid. Duplicate certificates for licensed pharmacists may be issued for a fee of $5 each.

This rule is intended to implement Iowa Code section 155A.10.

657—3.3(147) Fee—certification of grades. Certification of grades shall be made upon payment of a $10 fee.

657—3.4(155A) Pharmacy license—general provisions. General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed on January 1 of each year. All areas where prescription drugs are dispensed will require a general pharmacy license, a hospital pharmacy license, or a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy license. Applicants for general or hospital pharmacy license shall comply with board rules regarding general or hospital pharmacy license except where specific exemptions have been granted. Applicants who are granted exemptions shall be issued a "general pharmacy license with exemption," a "hospital pharmacy license with exemption," or a "limited use pharmacy license with exemption" and shall comply with the provisions set forth by that exemption. A written request for exemption from certain licensure requirements will be determined on a case-by-case basis. Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and other limited use practice settings shall be determined on a case-by-case basis.

3.4(1) *Application form.* The application form for a pharmacy license furnished by the board shall indicate whether a pharmacy is a sole proprietorship (100 percent ownership) and give the name and address of the owner; or if a partnership, the names and addresses of all partners; or if a limited partnership, the names and addresses of the partners; or if a corporation, the names and addresses of the officers and directors. In addition, the form shall require the name and license number of the pharmacist in charge and the names and license numbers of all pharmacists engaged in practice in the pharmacy.

3.4(2) *Fee.* The fee for a new or renewal license shall be $100. Failure to renew the license before January 1 following expiration shall require a renewal fee of $200. Failure to renew the license before February 1 following expiration shall require a renewal fee of $300. Failure to renew the license before March 1 following expiration shall require a renewal fee of $400. Failure to renew the license before April 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of a pharmacy license exceed $500.

3.4(3) *Change of owner—closed pharmacy.* When a pharmacy changes ownership, a new completed application shall be filed with the board, and the old license returned. A fee of

$100 will be charged for issuance of a new license. Closed pharmacies must remit their pharmacy licenses to the board office within ten days of closing.

3.4(4) *Change of name.* When a pharmacy changes names, a new completed application shall be filed with the board and the old license returned to the board office. A fee of $100 will be charged for issuance of a new license.

3.4(5) *Change of location.* When a pharmacy changes location, a new completed application shall be filed with the board and the old license returned to the board office. A fee of $100 will be charged for issuance of a new license. A change of location will require an on-site inspection of the new location.

3.4(6) *Change of pharmacist in charge.* When the pharmacist in charge position becomes vacant, a newly completed application shall be filed with the board within 90 days of the vacancy indicating the name of the new pharmacist in charge and the old license returned to the board office. A fee of $100 will be charged for issuance of a new license.

3.4(7) *Change of pharmacists.* When a change of pharmacist occurs, other than the pharmacist in charge or a relief pharmacist who works on an occasional, irregular, or infrequent basis, the names and license numbers shall be sent to the board office. The pharmacy shall maintain a log of all licensed pharmacists who have worked at that pharmacy and who are not regularly employed at that pharmacy. Such log shall be available for inspection and copying by the board or its representative.

657—3.5(155A) Wholesale drug license — renewal and fees. A wholesale drug license shall be renewed no later than January 1 of each year. The fee for a new or renewal license shall be $100.

Failure to renew the license before January 1 following expiration shall require a renewal fee of $200. Failure to renew the license before February 1 following expiration shall require a renewal fee of $300. Failure to renew the license before March 1 following expiration shall require a renewal fee of $400. Failure to renew the license before April 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of a wholesale drug license exceed $500.

This rule is intended to implement Iowa Code sections 155A.13, 155A.14, and 155A.17.

657—3.6(124,147,155A) Returned check fee. A fee of $20 may be charged for any check returned for any reason. If a license, registration, or permit had been issued by the board office based on a check for the payment of fees and the check is later returned by the bank, the board shall request payment by certified check, cashier's check, or money order. If the fees, including returned check fee, are not paid within 15 calendar days of notification of the returned check, the license, registration, or permit is no longer in effect and the status reverts to what it would have been had the license, registration, or permit not been issued. Late payment penalties will be assessed, as provided in board rules, for subsequent requests to renew or reissue the license, registration, or permit.

This rule is intended to implement Iowa Code sections 124.301, 147.100, 155A.6, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

[Filed 4/11/68; amended 9/29/71, 4/8/75]
[Filed 1/30/80, Notice 12/26/79—published 2/20/80, effective 6/1/80]
[Filed 1/30/80, Notice 12/26/79—published 2/20/80, effective 7/1/80]
[Filed 12/1/80, Notice 9/3/80—published 12/24/80, effective 1/28/81]
[Filed emergency 10/6/82—published 10/27/82, effective 10/27/82]
[Filed 1/28/87, Notice 11/19/86—published 2/25/87, effective 4/1/87]
[Filed emergency 1/21/88—published 2/10/88, effective 1/22/88]
[Filed 1/21/88, Notice 11/18/87—published 2/10/88, effective 3/16/88]
[Filed 4/26/88, Notice 3/9/88—published 5/18/88, effective 6/22/88]

NOTE: History for Ch 3 continued on next page.

[Filed emergency 5/16/89—published 6/14/89, effective 5/17/89]
[Filed 12/8/89, Notice 8/23/89—published 12/27/89, effective 1/31/90]
[Filed 1/29/91, Notice 9/19/90—published 2/20/91, effective 3/27/91]
[Filed 7/30/91, Notice 5/29/91—published 8/21/91, effective 9/25/91]
[Filed 1/21/92, Notice 10/16/91—published 2/19/92, effective 3/25/92]
[Filed 3/21/94, Notice 10/13/93—published 4/13/94, effective 5/18/94]
[Filed 10/6/95, Notice 6/7/95—published 10/25/95, effective 11/29/95]

CHAPTER 8
MINIMUM STANDARDS FOR THE PRACTICE OF PHARMACY

[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, the pharmacist maintains responsibility for any and all functions delegated to staff assistants. Judgmental functions which cannot be delegated to staff assistants, other than pharmacist interns, shall include, but not be limited to, the following:

8.1(1) Verification of the accuracy, validity, and appropriateness of the filled prescription or medication order.

8.1(2) Review and assessment of patient records for purposes identified in rule 657—8.19(155A).

8.1(3) Patient counseling.

This rule is intended to implement Iowa Code sections 147.107, 155A.6, 155A.12, 155A.13, 155A.15, and 155A.33.

657—8.2(155A,124) Prescription information and transfer.

8.2(1) All prescriptions shall be dated and numbered at the time of initial filling. Refill documentation shall include date of refill and initials of the pharmacist.

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 124, 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(126) 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 a sample 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(126) 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.

c. List of ingredients and quantities.

d. Description of container used.

e. Compounding instructions, procedures and specifications.

8.4(2) *Production record.* For each batch of drug product compounded, a production record shall be prepared and kept containing the following information:

a. A copy of the information on the master formula record.

b. Records of each step in the compounding process including:

(1) Dates.

(2) Identification of ingredients (including lot numbers).

(3) Quantities of ingredients used.

(4) Initials of person preparing each process.

(5) Initials of pharmacist supervising each process.

c. A batch number.

d. Total yield.

8.4(3) *Label information.* For each batch of drug product compounded, labels shall be prepared and affixed to each container containing the following information:

a. Identifying name or formula.

b. Dosage form.

c. Strength.

d. Quantity per container.

e. Internal control number or date.

f. Expiration date (if any).

g. Auxiliary labels, as needed.

657—8.5(147,155A) Unethical conduct or practice. The provisions of this rule apply to licensed pharmacies, licensed pharmacists and registered pharmacist-interns.

8.5(1) *Misrepresentative deeds.* A pharmacist shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

8.5(2) *Undue influence.* A pharmacist shall not accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from a prescriber of prescription drugs or any other person or corporation in which one or more such prescribers have a proprietary or beneficial interest sufficient to permit them to directly or indirectly exercise supervision or control over the pharmacist in the pharmacist's professional responsibilities and duties or over the pharmacy wherein the pharmacist practices. It shall not be unethical in and of itself or be evidence of unethical behavior for a pharmacist to accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from any persons or corporations in which one or more prescribers had the above described proprietary or beneficial interest as of April 23, 1981, and which were engaged in the operation of a pharmacy on April 23, 1981, for a period of 25 years from April 23, 1981. A prescriber may employ a pharmacist to provide nondispensing, drug information, or other cognitive services.

8.5(3) *Excessive rental fees.* A pharmacist shall not lease space for a pharmacy from a prescriber of prescription drugs or a group, corporation, association, or organization of such

prescribers or in which prescribers have majority control or have directly or indirectly a majority beneficial or proprietary interest on a percentage of income basis. A pharmacist shall not pay rent for space which rent is not reasonable according to commonly accepted standards of the community.

8.5(4) *Nonconformance with law.* A pharmacist shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

8.5(5) *Confidentialilty.* In the absence of express consent from the patient or order or direction of a court, except where the best interests of the patient require, a pharmacist shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist, or a person duly authorized by law to receive such information, the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber. This shall not prevent pharmacists from doing any of the following: transferring a prescription to another pharmacy, providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which is marked "For Information Purposes Only," providing drug therapy information to physicians for their patients, or providing information to the board or its representative.

8.5(6) *Freedom of choice/solicitation/kickbacks/fee-splitting and imprinted prescription blanks or forms.* A pharmacist or pharmacy shall not enter into any agreement which negates a patient's freedom of choice of pharmacy services. A pharmacist shall not participate in agreements or arrangements with any person, corporation, partnership, association, firm, or others involving premiums, "kickbacks," fee-splitting, or special charges in exchange for recommending, promoting, accepting, or promising to accept the professional pharmaceutical services of any pharmacist or pharmacy as compensation or inducement for placement of business or solicitation of patronage with any pharmacist or pharmacy. "Kickbacks" include, but are not limited to, medication carts, facsimile machines, or any other equipment for the exclusive use of the registrant. A pharmacist shall not provide, cause to be provided, or offer to provide to any person authorized to prescribe, prescription blanks or forms bearing the pharmacist's or pharmacy's name, address, or other means of identification.

8.5(7) *Discrimination.* It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, sex, age, national origin, or disease state when providing pharmaceutical services.

8.5(8) *Claims of professional superiority.* A pharmacist shall not make a claim, assertion, or inference of professional superiority in the practice of pharmacy which cannot be substantiated, nor claim an unusual, unsubstantiated capacity to supply a drug or professional service to the community.

8.5(9) *Unprofessional conduct or behavior.* A pharmacist shall not exhibit unprofessional behavior in connection with the practice of pharmacy or refuse to provide reasonable information or answer reasonable questions for the benefit of the patient. Unprofessional behavior shall include, but is not limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

8.5(10) *Coupons.* It is unethical to offer, distribute, promote, or advertise premiums, free or discounted merchandise, rebates, coupons, amounts off, or other price reduction promotions in connection with the sale of prescription drugs. This subrule does not apply to coupons, vouchers, or promotions offered by a manufacturer directly to the consumer.

This rule is intended to implement Iowa Code sections 147.3, 147.55, 147.74, 155A.4, 155A.6, 155A.12, 155A.20, and 155A.23.

657—8.6(155A,126) Advertising. Prescription drug price and nonprice information may be provided to the public by a pharmacy so long as it is not false or misleading and not in violation of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1. All charges for services to the consumer must be stated.
2. The effective dates for the prices listed shall be stated.
3. No reference shall be made to controlled substances listed in Schedules II through V of the latest revision of the Iowa uniform controlled substances Act and the rules of the Iowa board of pharmacy examiners.

This rule is intended to implement Iowa Code sections 126.16, 147.55, 155A.12, 155A.13 and 155A.15.

657—8.7(272C) Continuing education requirements as a condition for license renewal.

8.7(1) *Continuing education program attendance.* Continuing education programs that carry the seal of the American Council on Pharmaceutical Education (ACPE) approved provider will automatically qualify for continuing education credit. Program attendance is mandated in order to receive credit unless it is a correspondence course ACPE approved. Non-ACPE provider programs must be submitted to the board office for consideration no later than the date of the program. The request shall be made on forms provided by the board office. Pharmacists who are continuing their formal education in health-related graduate programs may be exempted from meeting the continuing education requirements during the period of such enrollment. Applicants for this exemption must petition the board on forms provided by the board office. This regulation does not preclude the future possibility of relicensure examination.

8.7(2) *Continuing education unit required.* The nationally accepted measurement of continuing education is referred to as CEU (Continuing Education Unit) and will be the measurement employed by the board of pharmacy examiners. Ten contact hours of approved continuing 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 indicate successful completion and participation in a continuing education program. The certificate will carry the following information:

1. Pharmacist's full name.
2. Pharmacist's license number.
3. Number of contact hours for program attended.
4. Date and place of continuing education program.
5. Name of the program provider.
6. An indicator of the type or category of continuing education program completed.

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 the packages are utilized for patients in an institutional setting. Room or bed number, the name of prescribing practitioner, and the name and address of the dispensing pharmacy is not required if this information appears on a medication administration record used by the institution.

(3) Unit of issue packages dispensed to patients on an out-patient basis or in a noninstitutional setting shall be considered prescription containers and shall be labeled in accordance with board subrule 8.14(1).

c. If a pharmacist selects a generically equivalent drug product for a brand name drug product prescribed by a practitioner, the label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the label: "(generic name) Generic for (brand name product)".

8.9(4) *General procedures.* The following will apply when a unit dose dispensing system is employed:

a. The pharmacist shall be responsible for determining the classification for containers set by USP Standard 671 used by the pharmacy to repackage nonsterile drugs into single unit, unit dose, or unit of issue packaging. This classification shall be used to determine maximal expiration dating for repackaging set forth in board subrule 8.9(5).

b. Established written policies and procedures shall be available in the pharmacy for inspection by the board or its agents which:

(1) Specify the categories of drugs or drug dosage forms which will or will not be dispensed under the particular unit dispensing system employed.

(2) Specify the pharmacy's recall policy for drugs returned upon a particular manufacturer's or FDA recall.

c. Those drugs not dispensed under a unit dose dispensing system shall be dispensed in accordance with the packaging requirements of the federal Food and Drug Administration (FDA) and and labeling requirements of board subrule 8.14(1).

8.9(5) *Expiration dating.* Expiration dating for nonsterile drugs repackaged by the pharmacy into single unit, unit dose, or unit of issue packages shall meet the following conditions:

a. Not exceed 90 days from the date of repackaging except as provided in board subrule 8.9(5)*"c."*

b. Not exceed the manufacturer's original expiration date.

c. May exceed 90 days from the date of repackaging provided that each of the following conditions are met:

(1) The container is classified according to USP Standard 671 as being Class A or Class B for oral solid dosage forms or is a tight container for liquid dosage forms.

(2) The container is light-resistant when the manufacturer has labeled the product "sensitive to light."

(3) The expiration date is not greater than 12 months.

d. Drugs or dosage forms having known stability problems are assigned an expiration date of less than 90 days or are not repackaged as determined by policies developed by the pharmacy.

8.9(6) *Return of drugs.* Drugs dispensed in single unit, unit dose, or unit of issue packaging in compliance with board subrules 8.9(1) to 8.9(5) may be returned to the pharmacy stock and reissued provided that:

a. The expiration dating information is retrievable and identifiable.

b. Drugs returned from unit of issue packaging are kept separate according to manufacturer's lot number and the pharmacy's repackaged expiration date unless the pharmacy's recall policy states that all lots of a drug will be returned upon recall. In this instance, drugs returned to stock shall be kept separate according to the pharmacy's repackaged expiration date as determined in board subrule 8.9(5).

c. The drugs were stored under proper storage conditions.

d. The drugs are returned to the pharmacy in the original packaging as when dispensed.

e. The pharmacy includes in their written policies and procedures the manner in which they will record or identify controlled substances returned.

This rule is intended to implement Iowa Code sections 126.10, 155A.2, 155A.4(2)*"f,"* and 155A.28.

657—8.10(155A) Legal status of prescriptions. Prescriptions issued in accordance with the provisions of Iowa Code section 155A.32 shall be valid as long as a prescriber/patient relationship exists. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or oversee the patient's use of a prescription drug, the prescription loses its validity and the pharmacist, on becoming aware of the situation, shall cancel the prescription and any remaining refills. Provided, however, that the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the prescribed drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

657—8.11(155A,124) Pharmacy and prescription records. All records shall comply with all applicable state and federal laws and regulations.

This rule is intended to implement Iowa Code sections 124.301, 124.306, 124.307, 124.308 and 155A.27.

657—8.12 Reserved.

657—8.13(155A,126) Patient med paks.

8.13(1) *Definitions.* Patient med pak. A patient med pak is a customized patient medication package prepared for a specific noninstitutionalized patient which comprises a series of immediate containers containing two or more prescribed solid oral dosage forms, each container being labeled with the time or the appropriate period for the patient to take its contents.

8.13(2) *Packaging requirements.* Packaging for all nonsterile solid oral dosage forms stored and dispensed in patient med paks shall:

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

b. When in containers used for packaging, be clean and free of extraneous matter when the drugs are placed into the package.

8.13(3) *Labeling requirements.*

a. The patient med pak shall be labeled with the following:

(1) Name of patient;

(2) A separate identifying serial number for each of the prescription orders for each of the drug products contained therein;

(3) The name, strength, physical description or identification, and the total quantity of each drug product;

(4) The directions for use and cautionary statements, if any, contained in the prescription order for each drug product;

(5) The name of the prescriber of each drug product;

(6) The date of preparation of the patient med pak and the expiration date (expressed as "do not use beyond" date) assigned to the patient med pak;

(7) The name and address of the dispensing pharmacy.

b. If a pharmacist selects a generically equivalent drug product for a brand name drug product prescribed by a practitioner, the label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the label: "(generic name) Generic for (brand name product)".

8.13(4) *Expiration dating (beyond-use dating).* Expiration dating for nonsterile drugs repackaged by the pharmacy into patient med paks shall meet the following conditions: not exceed 90 days from the date of repackaging except as provided in board subrule 8.9(5), paragraph *"c."*

8.13(5) *General procedures.* The following will apply when patient med paks are employed:

a. The pharmacist shall be responsible for determining the classification for containers set by USP Standard 671 used by the pharmacy to repackage nonsterile drugs into patient med paks.

b. Drugs dispensed to patients in patient med paks may not be returned to the pharmacy stock and reissued.

c. In addition to any individual prescription filing requirements, a record of each patient med pak shall be made and filed. Each record shall contain, as a minimum:

(1) Name and address of patient;

(2) The serial number for each prescription order which is part of the med pak;

(3) The date of preparation of the patient med pak and the expiration date that was assigned;

(4) The name or initials of the pharmacist who prepared the patient med pak.

d. There are no special exemptions for patient med paks from the requirements of the Poison Prevention Packaging Act.

e. Customized patient medication packages prepared for institutionalized patients shall be in accordance with board subrules 8.9(1) to 8.9(6).

This rule is intended to implement Iowa Code sections 126.10, 155A.2, 155A.4(2)*"f,"* and 155A.28.

657—8.14(155A) Prescription label requirements.

8.14(1) The label affixed to or on the dispensing container of any prescription dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

a. Serial number (a unique identification number of the prescription);

b. The name and address of the pharmacy;

c. The name of the patient, or if such drug is prescribed for an animal, the species of the animal and the name of its owner;

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. If a pharmacist selects a generically equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the drug container label: "(generic name) Generic for (brand name product)".

h. The initials of the dispensing pharmacist.

8.14(2) The requirements of subrule 8.14(1) do not apply to unit dose dispensing systems, rule 8.9(155A,126); sterile products, rule 8.30(126,155A); and patient med paks, rule 8.13(155A,126).

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.

Rules 8.14(155A) and 8.15(155A) are intended to implement Iowa Code sections 155A.28, 155A.32, and 155A.35.

657—8.22(155A) Blood pressure measurement. A licensed pharmacist may take a person's blood pressure and may inform the person of the results, render an opinion as to whether the reading is within a high, low, or normal range, and may advise the person to consult a physician of the person's choice.

657—8.23(155A) Compounding. Rescinded IAB 10/25/95, effective 1/1/96.

657—8.24(155A) Manufacturing. Rescinded IAB 10/25/95, effective 1/1/96.

Rules 8.18(155A) to 8.24(155A) are intended to implement Iowa Code sections 155A.11, 155A.13, 155A.17, 155A.35, 272C.2, and 272C.3.

657—8.25 to **8.28** Reserved.

657—8.29(155A,126) IV infusion products. Rescinded IAB 10/25/95, effective 1/1/96.

657—8.30 (126,155A) Sterile products.

8.30(1) *Definitions.* For the purpose of this rule, the following definitions shall apply:

"Aseptic preparation" is the technique involving procedures designed to preclude contamination by microorganisms during processing.

"Batch preparation" is the compounding or repackaging of multiple units, in a single process, by the same operator.

"Class 100 condition" means an environment whose air particle count does not exceed a total of 100 particles of 0.5 microns and larger per cubic foot.

"Compounding" is the constitution, reconstitution, combination, dilution, or another process causing a change in the form, composition, or strength of any ingredient or any other attribute of a product.

"Critical area" is an area where sterilized products or containers are exposed to the environment during aseptic preparation.

"Hazardous drug" is a pharmaceutical that is antineoplastic, carcinogenic, mutagenic, or teratogenic.

"Home care patient" is a patient in the home environment or an institutionalized patient receiving products from a pharmacy located outside the institution.

"Repackaging" is the subdivision or transfer from a container or device into a different container or device.

"Sterile product" is a drug or nutritional substance free from living microorganisms that is compounded or repackaged by pharmacy personnel, using aseptic technique and other quality assurance procedures.

8.30(2) *Personnel.*

a. Pharmacist.

(1) Each pharmacy shall have a pharmacist responsible for supervising the preparation of IV infusion products compounded within the pharmacy.

(2) The pharmacist shall have the responsibility for admixture of infusion products, including education and training of personnel concerning proper aseptic technique, incompatibility, and provision of proper incompatibility information.

(3) When any part of these processes is not under direct pharmacy supervision, the pharmacist shall have the responsibility for providing written guidelines and for approving the procedures to ensure that all pharmaceutical requirements are met.

b. Supportive pharmacy personnel.

(1) Supportive pharmacy personnel shall receive documented on-the-job training and related education commensurate with the tasks they are to perform prior to the regular performance of those tasks.

(2) Supportive pharmacy personnel shall receive regular and documented in-service education and training to supplement initial training.

(3) Supportive pharmacy personnel shall understand and follow written policies and procedures for handling and preparing IV infusion products.

(4) Only nonjudgmental functions can be performed by supportive pharmacy personnel and only under the supervision of a pharmacist.

(5) All products prepared by supportive pharmacy personnel intended for IV infusion shall be reviewed with the original IV order by a pharmacist to ensure accuracy prior to administration or dispensing to the patient.

8.30(3) *Reference requirements.* In addition to requirements set forth in rule 657—6.3(155A), 657—7.3(155A), 657—15.3(124,126,155A), or 657—16.5(155A), as appropriate, current copies of the following shall be maintained by all pharmacies involved in the preparation of IV infusion products:

a. American Hospital Formulary Service, Drug Information, with current supplements, or comparable type reference approved by the board.

b. Trissel's Handbook of Injectable Drugs or comparable type reference approved by the board.

8.30(4) *Policies and procedures.* A pharmacy providing sterile products shall prepare policies and procedures, evaluate them at least annually and revise them based on the evaluation, and maintain them in a manner that allows inspection by the board of pharmacy. Policies and procedures shall address, but not be limited to, the following:

a. Compounding, dispensing, and delivery of sterile products.

b. Quality assurance programs for the purpose of monitoring personnel qualifications, training, and performance.

c. Product integrity.

d. Equipment and facilities.

e. Guidelines regarding patient education.

8.30(5) *Labeling requirements.* At the time of delivery of the IV infusion product, the dispensing container shall bear a label with at least the following information:

a. The diluent.

b. Patient's name.

c. For home care patient prescriptions, prescription number or unique serial number.

d. Additive(s) name and quantity.

e. Date and time of preparation and pharmacist's initials. However, date and time may be omitted if this information can be documented elsewhere.

f. Stability (expiration) date and time (if pertinent) as set forth in the pharmacy's policy and procedure manual.

g. The prescribed flow rate in ml/hr, if applicable.

h. Ancillary labels as needed.

8.30(6) *Area to be set apart.* A pharmacy shall restrict entry into the area for preparing sterile products to designated personnel. The area shall be as follows:

a. Enclosed and structurally isolated from general work and storage areas.

b. Used only for the preparation of sterile products, hazardous drugs, or drugs requiring aseptic preparation.

c. Of sufficient size to allow pharmacists and other employees to work safely and accurately and to accommodate laminar airflow hoods as required.

8.30(7) *Additional equipment required.* The following additional equipment is required in a pharmacy preparing sterile products:

a. Laminar airflow hood or other devices capable of maintaining a critical area meeting Class 100 conditions during normal activity.

b. Disposal containers for hazardous drugs and wastes, including materials from patients' homes, if applicable.

c. Infusion devices, if needed.

d. Supplies and attire adequate to maintain an environment suitable for the aseptic preparation of sterile products.

e. Sufficient current reference materials related to sterile products to meet the needs of staff.

f. A sink with hot and cold running water for the purpose of hand scrubs, convenient to the area for preparing sterile products.

8.30(8) *Additional records required.* The pharmacy shall maintain records of lot numbers of the components used in compounding sterile products.

8.30(9) *Environmental controls for sterile products.* The pharmacy shall ensure the environmental control of all sterile products in a manner that maintains sanitation, required storage temperatures, and exposure to light at the following times:

a. While products are held in the pharmacy.

b. When products are delivered to a patient.

c. During storage of products in the patient's home.

8.30(10) *Additional requirements for preparation of hazardous drugs.* The following additional requirements shall be met by pharmacies that prepare hazardous drugs:

a. All hazardous drugs shall be compounded in a vertical flow biological safety cabinet. Other product preparation may not be done concurrently in this cabinet.

b. Protective apparel shall be worn by personnel compounding hazardous drugs, including disposable gloves and gowns with tight cuffs.

c. Safety containment techniques for compounding hazardous drugs shall be used in

conjunction with the aseptic techniques required for preparing sterile products.

d. Disposal of hazardous waste shall comply with applicable federal and state laws and regulations.

e. Written procedures for handling both major and minor spills of hazardous drugs shall be developed and maintained with the policies and procedures required in 8.30(4).

f. Prepared doses of hazardous drugs shall be dispensed and labeled with precautions inside and outside and shall be shipped in a manner to minimize the risk of accidental rupture of the primary container.

8.30(11) *Responsibilities for patient care.* If sterile products are provided to the patient in the home, the pharmacy and pharmacist have the following responsibilities:

a. The pharmacist shall be knowledgeable of the roles of the physician, patient, pharmacy, and home health care provider related to delivery of care and the monitoring of the patients.

b. The pharmacy shall have a pharmacist accessible at all times to respond to another health professional's and to a patient's questions and needs.

c. The pharmacist shall use the clinical and laboratory data of each patient to monitor initial and ongoing drug therapy. If the pharmacist does not have access to the data, the name of the health care provider assuming responsibility for monitoring drug therapy shall be documented in the patient's profile.

d. The pharmacist shall report to the prescribing physician any knowledge of unexpected or untoward response to drug therapy.

8.30(12) *Patient training.* If sterile products are provided to the patient in the home, the pharmacist shall verify the patient's or caregiver's training and competence in managing therapy. A pharmacist shall be involved, directly or indirectly, in training patients about drug compounding, labeling, storage, stability, or incompatibility. The pharmacist shall verify that the patient's or caregiver's competence is reassessed at intervals appropriate to the condition of the patient and type of drug therapy provided.

8.30(13) *Quality assurance.* A pharmacy shall have a documented, ongoing quality assurance control program to monitor personnel performance, equipment, and facilities which includes the following as a minimum:

a. Certification of all clean rooms and laminar airflow hoods by an independent contractor for operational efficiency at least annually with records of certification to be maintained for two years.

b. Written procedures requiring sampling if microbial contamination is suspected.

c. End-product testing, including tests for particulate matter and testing for pyrogens, which is documented prior to the release of the product from quarantine if batch preparation of sterile products is performed using nonsterile chemicals.

d. Written justification of the chosen expiration dates for compounded products.

e. Documentation of quality assurance audits at planned intervals based upon the needs of individual patients, including infection control and sterile technique audits.

f. Documentation that infusion devices being provided by the pharmacy for the administration of sterile products have received biomedical maintenance to provide for proper care, cleaning, and operation of the equipment.

This rule is intended to implement Iowa Code sections 126.10, 155A.2, 155A.4(2)*"f,"* 155A.13, 155A.13A, and 155A.28.

657—8.31(124,155A) Home health agency/hospice emergency drugs. Recognizing the emergency and unanticipated need for certain noncontrolled legend drugs to be available to qualified individuals authorized to administer drugs and employed by a home health agency or hospice, an Iowa-licensed pharmacy may provide certain medications pursuant to this rule. The emergency drug supply may be carried by such qualified individual.

8.31(1) *Contract.* A written contract shall exist between the home health agency or hospice and the pharmacist in charge of the Iowa-licensed pharmacy. This contract shall be avail-

able for review by the board or its authorized agent upon request.

8.31(2) *Ownership retained.* The legend drugs included in this emergency supply shall remain the property of and under the responsibility of the Iowa-licensed provider pharmacy.

a. The pharmacist shall ensure that each portable container of emergency drugs is sealed in such a manner that a tamperproof seal must be broken to gain access to the drugs.

b. Each portable container of emergency drugs shall be labeled on the outside of the container with a list of the contents and the earliest expiration date.

8.31(3) *Removal of medication.* All medications shall be administered only on prior prescribers' order or by protocol approved by the agency's medical director or appropriate committee. Medications administered from the emergency supply shall be replaced by submitting a prescription or medication order for the used item to the provider pharmacy within a reasonable time of administration.

8.31(4) *Records.* All records of medication administered from the emergency supply shall be maintained as required by law.

8.31(5) *Medications included.* The following emergency medications may be supplied by the pharmacy in sufficient but limited quantities. This list may be expanded only upon approval of the Iowa board of pharmacy examiners.

a. Heparin flush—pediatric (one strength);
b. Heparin flush—adult (one strength);
c. Sodium chloride for injection—small volume;
d. Epinephrine injection;
e. Diphenhydramine injection;
f. Corticosteroid injection;
g. Narcotic antagonist;
h. Urokinase for catheter care;
i. H_2 antagonist injection;
j. Nitroglycerin sublingual tablets;
k. Antinauseant agent.

If a container of an injectable product is opened and partially used, any unused portion shall immediately be discarded and appropriately documented.

8.31(6) *Policies and procedures.* The pharmacist in charge of the provider pharmacy and the home health agency or hospice shall develop policies and procedures to address storage conditions for medications and kit maintenance. Outdated, expired drugs shall be properly destroyed by the pharmacy.

8.31(7) *Responsibility for compliance.* The provider pharmacy is responsible to ensure compliance with this rule and any abuse or misuse of the intent of this rule shall be immediately reported to the board.

This rule is intended to implement Iowa Code sections 155A.13, 155A.15, and 155A.21.

[Filed 4/11/68; amended 11/14/73]
[Filed 11/24/76, Notice 10/20/76—published 12/15/76, effective 1/19/77]
[Filed 11/9/77, Notice 10/5/77—published 11/30/77, effective 1/4/78]
[Filed emergency 12/9/77—published 12/28/77, effective 12/9/77]
[Filed 10/20/78, Notice 8/9/78—published 11/15/78, effective 1/9/79]
[Filed 12/2/78, Notice 11/15/78—published 1/10/79, effective 2/14/79]
[Filed 12/21/78, Notice 11/15/78—published 1/10/79, effective 2/14/79]
[Filed 1/8/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 8/28/79, Notice 5/30/79—published 9/19/79, effective 10/24/79]
[Filed 12/7/79, Notice 10/3/79—published 12/26/79, effective 1/30/80]
[Filed 2/22/80, Notice 10/3/79—published 3/19/80, effective 4/23/80]
[Filed emergency 4/22/80—published 5/14/80, effective 4/22/80]
[Filed 12/1/80, Notice 10/15/80—published 12/24/80, effective 1/28/81]
[Filed 2/12/81, Notice 12/24/80—published 3/4/81, effective 4/8/81]

NOTE: History for Ch 8 continued on next page.

[Filed 5/27/81, Notice 4/1/81—published 6/24/81, effective 7/29/81]
[Filed emergency 7/28/81—published 8/19/81, effective 8/1/81]
[Filed emergency 9/14/81—published 9/30/81, effective 9/30/81]
[Filed 7/28/82, Notice 3/17/82—published 8/18/82, effective 9/22/82]
[Filed emergency 8/26/82—published 9/15/82, effective 9/22/82]
[Filed 9/10/82, Notice 6/9/82—published 9/29/82, effective 11/8/82]
[Filed emergency 10/6/82—published 10/27/82, effective 10/27/82]◊
[Filed emergency 12/2/82—published 12/22/82, effective 12/22/82]
[Filed 11/18/83, Notice 8/3/83—published 12/7/83, effective 1/11/84]
[Filed 1/13/84, Notice 11/9/83—published 2/1/84, effective 3/7/84]
[Filed 6/22/84, Notice 4/11/84—published 7/18/84, effective 8/22/84]
[Filed emergency 7/13/84—published 8/1/84, effective 7/13/84]
[Filed 9/21/84, Notice 7/18/84—published 10/10/84, effective 11/14/84]
[Filed 2/22/85, Notice 11/21/84—published 3/13/85, effective 4/18/85]
[Filed emergency 6/18/85—published 7/3/85, effective 7/1/85]
[Filed 8/30/85, Notice 7/3/85—published 9/25/85, effective 10/30/85] ◊
[Filed 11/27/85, Notice 8/28/85—published 12/18/85, effective 1/22/86]
[Filed 9/19/86, Notice 6/4/86—published 10/8/86, effective 11/12/86]
[Filed 1/28/87, Notice 11/19/86—published 2/25/87, effective 4/1/87]
[Filed emergency 1/21/88—published 2/10/88, effective 1/22/88]
[Filed 1/21/88, Notice 11/4/87—published 2/10/88, effective 3/16/88]
[Filed 3/29/88, Notice 1/27/88—published 4/20/88, effective 5/25/88]
[Filed 3/29/88, Notice 2/10/88—published 4/20/88, effective 5/25/88]
[Filed 11/17/88, Notice 8/24/88—published 12/14/88, effective 1/18/89]◊
[Filed emergency 5/16/89—published 6/14/89, effective 5/17/89]
[Filed 12/26/89, Notice 10/4/89—published 1/24/90, effective 2/28/90]
[Filed 3/19/90, Notice 1/10/90—published 4/18/90, effective 5/23/90]
[Filed 8/31/90, Notice 6/13/90—published 9/19/90, effective 10/24/90]
[Filed 1/29/91, Notice 6/13/90—published 2/20/91, effective 3/27/91]
[Filed 1/29/91, Notice 9/19/90—published 2/20/91, effective 3/27/91]
[Filed 4/26/91, Notice 2/20/91—published 5/15/91, effective 6/19/91]
[Filed emergency 5/10/91—published 5/29/91, effective 5/10/91]
[Filed 7/30/91, Notice 5/29/91—published 8/21/91, effective 9/25/91]
[Filed 1/21/92, Notice 10/16/91—published 2/19/92, effective 3/25/92]
[Filed 3/12/92, Notice 1/8/92—published 4/1/92, effective 5/6/92]
[Filed 5/21/92, Notice 4/1/92—published 6/10/92, effective 7/15/92]
[Filed 10/22/92, Notice 9/2/92—published 11/11/92, effective 1/1/93]
[Filed 2/5/93, Notice 11/11/92—published 3/3/93, effective 4/8/93]
[Filed 9/23/93, Notice 5/26/93—published 10/13/93, effective 11/17/93]
[Filed 3/21/94, Notices 10/13/93, 12/8/93—published 4/13/94, effective 5/18/94]
[Filed 6/24/94, Notice 4/13/94—published 7/20/94, effective 8/24/94]
[Filed 11/30/94, Notices 5/11/94, 7/20/94—published 12/21/94, effective 1/25/95]
[Filed 3/22/95, Notice 11/9/94—published 4/12/95, effective 5/31/95]
[Filed 10/6/95, Notices 6/7/95, 8/16/95—published 10/25/95, effective 1/1/96]

pharmacy, and that the toll-free number is printed on the label affixed to each container of prescription drugs delivered, dispensed, or distributed in this state. A copy of a prescription label including the toll-free number shall be included.

19.2(3) A nonresident pharmacy shall update lists required by subrule 19.2(2), paragraphs *"e"* and *"f,"* within 30 days of any addition, deletion, or other change to a list.

657—19.3(155A) Discipline. Pursuant to 657—Chapter 9, the board may deny, suspend, or revoke a nonresident pharmacy license for any violation of Iowa Code section 155A.13A; section 155A.15, subsection 2, paragraph *"a," "b," "d," "e," "f," "g," "h,"* or *"i"*; Iowa Code chapter 124, 124A, 124B, 126, or 205; or a rule of the board promulgated thereunder unless the Iowa Code or Iowa Administrative Code conflicts with law, administrative rule, or regulation of the home state. The more stringent of the two shall apply when there is a conflict of law regarding services to Iowa residents.

These rules are intended to implement Iowa Code section 155A.13A.

[Filed 3/12/92, Notice 1/8/92—published 4/1/92, effective 5/6/92]
[Filed 11/30/94, Notice 10/12/94—published 12/21/94, effective 1/25/95]

CHAPTER 20
PHARMACY COMPOUNDING PRACTICES

657—20.1(124,126,155A) Purpose and scope. The requirements of this chapter apply to compounding of drugs by Iowa-licensed pharmacists and pharmacies and are minimum good compounding practices for the preparation of drug products for dispensing or administration to humans or animals. Pharmacists and pharmacies engaged in the compounding of drugs shall comply with the USP General Chapter entitled <1161> Pharmacy Compounding Practices, which is intended to enhance the pharmacist's ability to compound extemporaneously safe, effective drug preparations in pharmacies, and shall comply with all other applicable provisions of Iowa law regulating the practice of pharmacy.

657—20.2(124,126,155A) Definitions.

"Component" means any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product.

"Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

1. As a result of a practitioner's prescription drug order or initiative based on the prescriber/patient/pharmacist relationship in the course of professional practice, or
2. For the purpose of, or as an incident to, research, teaching, chemical analysis, and not for sale or dispensing.

Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

"Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container. Manufacturing also includes the preparation, promotion, and marketing of commercially available products from bulk compounds for resale by pharmacists, practitioners, or other persons.

657—20.3(124,126,155A) General requirements.

20.3(1) *Compounding commercially available product.* Based on the existence of a pharmacist/patient/prescriber relationship and the presentation of a valid prescription, or in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns, pharmacists may compound, for an individual patient, drug products that are commercially available in the marketplace. When a compounded product is to be dispensed in place of a commercially available product, the prescriber and patient shall be informed that the product will be compounded.

20.3(2) *Substances and components.* In compounding prescriptions, pharmacists shall receive, store, and use drug substances and drug components that meet official compendia requirements. If these requirements cannot be met, and pharmacists document such, pharmacists shall use their professional judgment in the procurement of acceptable alternatives.

20.3(3) *Prescriber/patient/pharmacist relationship.* Pharmacists may compound drugs in very limited quantities prior to receiving a valid prescription based on a history of receiving valid prescriptions that have been generated solely within an established pharmacist/patient/prescriber relationship and provided that they maintain the prescriptions on file for all such products compounded at the pharmacy as required by Iowa law. The distribution of compounded products without a prescriber/patient/pharmacist relationship is considered manufacturing.

20.3(4) *Advertising and resale of compounded drug products.* Pharmacists shall not offer compounded drug products to other Iowa-licensed persons or commercial entities for subsequent resale except in the course of professional practice for a practitioner to administer to an individual patient. Compounding pharmacies or pharmacists may advertise or otherwise promote the fact that they provide prescription compounding services; however, they shall not make a claim, assertion, or inference of professional superiority in the compounding of drug products which cannot be substantiated. All advertisements shall meet the requirements contained in 657—8.6 (155A,126).

657—20.4(126,155A) Organization and personnel.

20.4(1) *Pharmacist responsible.* As in the dispensing of all prescriptions, the pharmacist has the responsibility and authority to inspect and approve or reject all components, drug product containers, closures, in-process materials, and labeling, and has the authority to prepare and review all compounding records to ensure that no errors have occurred in the compounding process. The pharmacist is also responsible for the proper maintenance, cleanliness, and use of all equipment used in prescription compounding practice.

20.4(2) *Pharmacist competence.* All pharmacists who engage in compounding of drugs shall be proficient in the art of compounding and shall maintain that proficiency through current awareness and training. Also, every pharmacist who engages in drug compounding shall be aware of and familiar with all details of these good compounding practices.

20.4(3) *Nonpharmacist personnel.* While nonpharmacist personnel may assist in the compounding of drug products, the supervising pharmacist remains responsible for all work performed by the nonpharmacist.

20.4(4) *Protective apparel.* Personnel engaged in the compounding of drug products shall wear clean clothing appropriate to the operation being performed. Protective apparel shall be worn as necessary to protect personnel from chemical exposure and drug products from contamination.

20.4(5) *Health of personnel.* Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of the drug compounding operation. Any person shown at any time, either by medical examination or pharmacist determination, to have an apparent illness or open lesions that may adversely affect the safety or quality of a drug product being compounded shall be excluded from direct contact with components, drug product containers, closures, in-process materials, and drug products until the condition is corrected or determined by competent medical personnel not to jeopardize the safety or quality of the products being compounded. All personnel who normally assist the pharmacist in compounding procedures shall be instructed to report to the pharmacist any health conditions that may have an adverse effect on drug products.

657—20.5(126,155A) Drug compounding facilities. Pharmacies engaging in compounding shall have a specifically designated and adequate area or space for the orderly placement of equipment and materials to be used to compound medications. The drug compounding area for sterile products shall be separate and distinct from the area used for the compounding or dispensing of nonsterile drug products. Any area used for the compounding of drugs shall be maintained in a good state of repair.

20.5(1) *Component storage.* Bulk drugs and other materials used in the compounding of drug products shall be stored in adequately labeled containers in a clean, dry area or, if required, under proper refrigeration.

20.5(2) *Facility requirements.* Adequate lighting and ventilation shall be provided in all drug compounding areas. Adequate washing facilities, easily accessible to compounding areas of the pharmacy, shall be provided. These facilities shall include, but not be limited to, hot and cold water, soap or detergent, and air dryers or single-source towels.

20.5(3) *Facility maintenance.* All areas used for the compounding of drug products shall be maintained in a clean and sanitary condition and shall be free of infestation by insects, rodents, and other vermin. Trash shall be held and disposed of in a timely and sanitary manner. Sewage, trash, and other refuse in and from the pharmacy and immediate drug compounding areas shall be disposed of in a safe and sanitary manner.

657—20.6(126,155A) Sterile products.

20.6(1) *Aseptic products.* If aseptic products are being compounded, the requirements contained in 657—8.30(126,155A) shall be met.

20.6(2) *Radiopharmaceuticals.* If radiopharmaceuticals are being compounded, the requirements of 657—Chapter 16 shall be met.

657—20.7(126,155A) Special precaution products. If drug products with special precautions for contamination, such as penicillin, are involved in a compounding operation, appropriate measures, including either the dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its return to inventory, shall be utilized in order to prevent cross-contamination.

657—20.8(126,155A) Equipment. Equipment used in the compounding of drug products shall be of appropriate design, adequate size, and suitably located to facilitate operations for its intended use and for its cleaning and maintenance. Equipment used in the compounding of drug products shall be of suitable composition so that surfaces that contact components, in-process materials, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond that desired.

20.8(1) *Equipment maintenance.* Equipment and utensils used for compounding shall be cleaned and sanitized immediately prior to use to prevent contamination that would alter the safety, identity, strength, quality, or purity of the drug product beyond that desired. In the case of equipment, utensils, and containers or closures used in the compounding of sterile drug products, cleaning, sterilization, and maintenance procedures as set forth in 657—8.30(126,155A) shall be followed.

20.8(2) *Equipment storage.* Equipment and utensils used for compounding drugs shall be stored in a manner to protect them from contamination. Immediately prior to the initiation of compounding operations, they shall be inspected by the pharmacist and determined to be suitable for use.

20.8(3) *Use of automated equipment.* Automatic, mechanical, or electronic equipment, or other types of equipment or related systems that will perform a function satisfactorily, may be used in the compounding of drug products. If such equipment is used, it shall be routinely inspected, checked, or calibrated if necessary to ensure proper performance.

657—20.9(126,155A) Control of components and drug product containers and closures. Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug beyond the desired result. Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product. Drug product containers and closures shall be clean and, where indicated by the intended use of the drug, sterilized and processed to remove pyrogenic properties to ensure that they are suitable for their intended use.

20.9(1) *Storage.* Components, drug product containers, closures, and bagged or boxed parts of drug product containers and closures used in the compounding of drug products shall be handled and stored in a manner to prevent contamination and to permit inspection and unhindered cleaning of the work area, including floors. Components, drug product containers, and closures for use in the compounding of drug products shall be rotated so that the oldest stock is used first.

20.9(2) *Sterile product containers and closures.* Drug product containers and closures intended for the compounding of sterile products shall be handled, sterilized, and stored in keeping with the requirements of 657—8.30(126,155A). Methods of cleaning, sterilizing, and processing to remove pyrogenic properties shall be written and followed for drug product containers and closures used in the preparation of sterile pharmaceuticals, if these processes are performed by the pharmacist or under the pharmacist's supervision, following the requirements of 657—8.30(126,155A).

657—20.10(124,126,155A) Drug compounding controls. Accountability for quality control is the responsibility of the compounding pharmacist.

20.10(1) *Procedures required.* There shall be written procedures for the compounding of drug products to ensure that the finished products have the identity, strength, quality, and purity they purport or are represented to possess. Such procedures shall include a listing of the components, their amounts in weight or volume, the order of component addition, and a description of the compounding process. All equipment and utensils and the container/closure system, relevant to the sterility and stability of the intended use of the drug product, shall be listed. These written procedures shall be followed in the execution of the drug compounding procedure.

20.10(2) *Accuracy.* Components for drug product compounding shall be accurately weighed, measured, or subdivided as appropriate. These operations should be checked and rechecked by the compounding pharmacist at each stage of the process to ensure that each weight or measure is correct as stated in the written compounding procedures. If a component is removed from the original container to another, such as a powder taken from the original container, weighed, placed in a container, and stored in another container, the new container shall be identified with the component name and weight or measure.

20.10(3) *Product testing and examination.* To ensure the reasonable uniformity and integrity of compounded drug products, written procedures shall be established and followed that describe the tests or examinations to be conducted on the product being compounded, as in the compounding of capsules. Such control procedures shall be established to monitor the output and to validate the performance of those compounding processes that may be responsible for causing variability in the final drug product. Such control procedures shall include, but are not limited to, the following as appropriate:

a. Capsule weight variation.

b. Adequacy of mixing to ensure uniformity and homogeneity.

c. Clarity, completeness, or pH of solutions.

20.10(4) *Sterilization.* Appropriate written procedures designed to prevent microbiological contamination of compounded drug products purporting to be sterile shall be established and followed. Such procedures shall include validation of any sterilization process.

657—20.11(124,126,155A) Labeling control of excess products. In the case where a quantity of a compounded drug product in excess of that to be initially dispensed in accordance with the general provisions described above is prepared, the excess product shall be labeled or documentation referenced with the complete list of components, the preparation date, and the assigned expiration date based upon professional judgment, appropriate testing, or published data. Excess product shall be stored and accounted for under conditions dictated by its composition and stability characteristics to ensure its strength, quality, and purity.

At the completion of the drug finishing operation, the product shall be examined for correct labeling in compliance with the label information requirements contained in 657—8.4(126).

657—20.12(124,126,155A) Records and reports. Records shall conform with the control and production record requirements contained in 657—8.4(126).

20.12(1) *Record retention.* Any procedures or other records required to be maintained in compliance with these good compounding practices shall be retained for at least two years from the date of such procedure or record.

20.12(2) *Record availability.* All records required to be retained under these good compounding practices, or copies of such records, shall be readily available for authorized inspection during the retention period at the establishment where the activities described in such records occurred. These records or copies thereof shall be subject to photocopying or other means of reproduction as part of such inspection.

20.12(3) *Records form.* Records required under these good compounding practices may be retained either as the original records or as true copies, such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records.

These rules are intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.28, 155A.33, and 155A.35.

[Filed 10/6/95, Notice 8/16/95—published 10/25/95, effective 11/29/95]

CHAPTERS 21 to 25
Reserved

CHAPTER 26
PETITIONS FOR RULE MAKING

Adopt, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to petitions for rule making which are printed in the first Volume of the Iowa Administrative Code.

657—26.1(17A) Petition for rule making. In lieu of the words "(designate office)" insert "1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319". In lieu of the words "(AGENCY NAME)" insert "IOWA BOARD OF PHARMACY EXAMINERS". In paragraph 6 in lieu of "rule X.4(17A)", insert "rule 657—26.4(17A)".

657—26.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)" insert "Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319".

These rules are intended to implement Iowa Code section 17A.7.

[Filed 1/21/92, Notice 10/16/91—published 2/19/92, effective 3/25/92]

CHAPTER 27
DECLARATORY RULINGS

Adopt, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to declaratory rulings which are printed in the first Volume of the Iowa Administrative Code.

657—27.1(17A) Petition for declaratory ruling. In lieu of the words "(designate office)" insert "1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319". In lieu of the words "(AGENCY NAME)" insert "IOWA BOARD OF PHARMACY EXAMINERS". In paragraph 8 in lieu of "rule X.4(17A)", insert "rule 657—27.4(17A)".

657—27.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)" insert "Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319".

These rules are intended to implement Iowa Code section 17A.9.

[Filed 1/21/92, Notice 10/16/91—published 2/19/92, effective 3/25/92]

CHAPTER 19
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

CHAPTERS 126 to 149
Reserved

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OFFSET OF DEBTS OWED STATE AGENCIES
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150.5(421) Duties of the department—performance of the offset
150.6(421) Multiple claims—priority of payment
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150.8(421) Reimbursement for offsetting liabilities
150.9(421) Confidentiality of information

CHAPTER 151
COLLECTION OF DEBTS OWED THE STATE OF IOWA OR A STATE AGENCY
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151.2(421) Scope and purpose
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Reserved

TITLE XVIII
ACCOUNTING

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CHAPTER 202
Reserved

CHAPTER 203
EMPLOYEE PAYROLL DEDUCTIONS "CHARITABLE ORGANIZATIONS"
203.1(70A) General provisions
203.2(70A) Qualifications
203.3(70A) Enrollment period
203.4(70A) Certification
203.5(70A) Payroll system
203.6(70A) Forms
203.7(70A) Payee
203.8(70A) Contribution limits
203.9(70A) Distribution of literature
203.10(70A) Number of contributions
203.11(70A) Cash contributions
203.12(70A) Terminations
203.13(70A) Authorization forms
203.14(70A) State held harmless
203.15(70A) Remittance

CHAPTERS 204 and 205
Reserved

CHAPTER 206
INSURANCE DEDUCTIONS
206.1(70A) General provisions
206.2(70A) Qualifications
206.3(70A) Payroll system
206.4(70A) Forms
206.5(70A) Noneligible types of insurance
206.6(70A) Deduction limits and frequency
206.7(70A) Distribution of literature
206.8(70A) Number of contributions
206.9(70A) Cash contributions
206.10(70A) Terminations
206.11(70A) Remittance
206.12(70A) Service charges
206.13(70A) Solicitation prohibited
206.14(70A) Annual review of participating employees
206.15(70A) State held harmless

701—17.7(422,423) Sales to certain federal corporations. The department holds that the following are some of the federal corporations immune from the imposition of sales and use tax in connection with their purchases:

1. Central Bank for Cooperatives and Banks for Cooperatives
2. Commodity Credit Corporation
3. Farm Credit Banks
4. Farmers Home Administration
5. Federal Credit Unions
6. Federal Crop Insurance Corporation
7. Federal Deposit Insurance Corporation
8. Federal Financing Bank
9. Federal Home Loan Banks
10. Federal Intermediate Credit Banks
11. Federal Land Banks and Federal Land Bank Associations
12. Federal National Mortgage Association
13. Federal Reserve Bank
14. Federal Savings & Loan Insurance Corporation
15. Production Credit Association
16. Student Loan Marketing Association
17. Tennessee Valley Authority

The federal statutes creating the above corporations contain provisions substantially identical with section 26 of the Federal Farm Loan Act which has been construed as barring the imposition of state and local sales taxes.

This rule is intended to implement Iowa Code sections 422.45(1), 422.45(5), and 423.4(4).

701—17.8(422) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property is sold within the state and the seller transports it to a point outside the state or transfers it to a common carrier, or to the mails or to parcel post for shipment to a point without the state, sales tax shall not apply, provided the property is not returned to a point within the state except solely in the course of interstate commerce or transportation.

EXAMPLE: Company A sells point-of-sale computer equipment. The company is located in Des Moines, Iowa. Company A enters into a contract with company B to sell the latter company a large number of point-of-sale computers. Company B is located in Little Rock, Arkansas. A transfers possession of the computers to a common carrier in Des Moines, Iowa, for shipment to B in Little Rock. Sale of the computers is exempt from Iowa sales tax.

17.8(1) *Proof of transportation.* The most acceptable proof of transportation outside the state shall be:

a. A waybill or bill of lading made out to the seller's order calling for transport; or

b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or

c. A trip sheet signed by the seller's transport agency which shows the signature and address of the person outside the state who received the transported goods.

17.8(2) *Certificate of out-of-state delivery.* Iowa retailers making delivery and therefore sales out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

17.8(3) *Exemption not applicable.* Sales tax shall apply when tangible personal property is delivered in the state to the buyer or the buyer's agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

This rule is intended to implement Iowa Code subsection 422.45(46).

701—17.9(422,423) Sales of breeding livestock, fowl and certain other property used in agricultural production. The gross receipts from the sales of the following tangible personal property relating to agricultural production is exempt from tax.

17.9(1) Sales of agricultural breeding livestock. *"Livestock"* means domestic animals which are raised on a farm as a source of food or clothing, *Van Clief v. Comptroller of State of Md.*, 126 A.2d 865 (Md. 1956) and In the Matter of Simonsen Mill Inc., Declaratory Ruling of the State Board, Docket No. 211, April 24, 1980. The term includes cattle, sheep, hogs, and goats. On and after July 1, 1995, ostriches, rheas, and emus are livestock and their sales are also exempt from tax. Excluded from the term are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term are mink, fish, bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded is any animal raised for racing.

The sale of agricultural livestock is exempt from tax under this subrule only if the purchaser intends to use the livestock primarily for breeding at the time of purchase. The sale of agricultural livestock which is capable of, but will not be used for breeding or primarily for breeding, is not exempt from tax under this subrule. However, sales of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax.

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale the intent is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax under this subrule. If the farmer purchases the dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk which the cows produce, the sale of the dairy cows to the farmer is exempt from tax under this subrule.

17.9(2) Sales of domesticated fowl. *"Domesticated fowl"* means any domesticated bird raised as a source of food, either eggs or meat. The word includes, but is not limited to, chickens, ducks, turkeys, and pigeons raised for meat rather than for racing or as pets. On and after July 1, 1995, the word includes ostriches, rheas, and emus. Excluded from the meaning of the word are nondomesticated birds, such as pheasants, raised for meat or any other purpose. The purchase of any domesticated fowl for the purpose of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not.

17.9(3) Sales of herbicides, pesticides, insecticides, food, medication, and agricultural drainage tile (including gross receipts from the installation of agricultural drainage tile) which are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are exempt from tax. As used in this subrule:

a. "Agricultural production" is limited to what would ordinarily be considered a farming operation undertaken for profit. The term refers to the raising of crops or livestock for market on an acreage. See *Bezdek's Inc. v. Iowa Department of Revenue* (Linn Cty. Dist. Ct., May 14, 1984). Included within the meaning of the phrase "agricultural production" is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot, and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation; operations growing and raising hybrid seed corn or other seed for sale to farmers; and nurseries, ranches, orchards, and dairies. On and after July 1, 1995, "agricultural production" includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouse or elsewhere for sale in the ordinary course of business. The following are excluded from the meaning of "agricultural production": commercial greenhouses (prior to July 1, 1995); logging; catfish raising; production of Christmas trees; beekeeping; and the raising of mink, other nondomesticated fur-bearing animals, and nondomesticated fowl. The above list of exclusions and inclusions within the term "agricultural production" is not exhaustive.

b. "Food" includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

c. "Herbicide" means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term shall include preemergence, postemergence, lay-by, pasture, defoliant, desiccant herbicides and fungicides.

d. "Insecticide" means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices which are used to kill insects are not insecticides.

e. "Livestock." See subrule 17.9(1) for the definition of this term. In addition, for the purposes of this subrule, the word "livestock" includes domesticated fowl.

f. "Medication" is not limited to antibiotics or other drugs administered to livestock.

g. "Plants" includes fungi such as mushrooms, crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term are flowers, small shrubs, and fruit trees. Excluded from the meaning of the term are fir trees raised for Christmas trees and any trees raised to be harvested for their wood.

h. "Pesticide" means any substance which is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this subrule, a disinfectant is a pesticide. Excluded from the term "pesticide" is any substance which merely repels pests or any device, such as a rat trap, which kills pests by mechanical action.

The following are examples of taxable and nontaxable sales related to agricultural production for market:

1. The sale of any substance which is not itself an insecticide, herbicide, or pesticide used to make more effective or enhance the function of any insecticide, herbicide, or pesticide is subject to tax.

2. The sale of herbicides, pesticides, insecticides, food, medication, or drainage tile to any person not engaged in agricultural production for market is exempt if the property sold will be used for an exempt purpose, e.g., disease control, on behalf of another person engaged in agricultural production for market.

17.9(4) The sale of fuel used to provide heat or cooling for livestock buildings is exempt from tax. For the purposes of this subrule, electricity is considered to be a "fuel," and the term "livestock" includes domesticated fowl. If a building is used partially for housing livestock and partially for a nonexempt purpose, for any portions of the building which are heated or cooled, a proportional exemption from sales tax may be claimed based upon a percentage calculated from a fraction, the numerator of which is the number of square feet of the building heated or cooled and used for housing livestock, and the denominator of which is the number of square feet heated or cooled in the entire building.

17.9(5) On and after July 1, 1995, sales of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business are exempt from tax. See subrule 17.9(7) below for the formula for calculating exempt use if a building is only partly used for plant raising.

17.9(6) Fuel, gas, electricity, water and heat consumed in implements of husbandry.

a. An implement of husbandry is defined to mean any tool, equipment, or machine necessary to the carrying on of the business of agricultural production and without which that work could not be done. *Reaves v. State,* 50 S.W.2d 286 (Tex. Crim. App. Ct. 1932). An airplane or helicopter designed for and used primarily in spraying or dusting of plants which are raised as part of agricultural production for market is an implement of husbandry.

b. Treatment of fuel used in implements of husbandry prior to July 1, 1985, and subsequent to June 30, 1987. Prior to July 1, 1985, and subsequent to June 30, 1987, the sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if consumed while the implement is engaged in agricultural production. Thus, fuel used not only in tractors or combines but also fuel used in implements which cannot move under their own power is exempt from tax. The sale of fuel used in milk coolers and milking machines, stationary irrigation equipment, implements used to handle feed, grain and hay and to provide water for livestock, is exempt from tax even though these implements of husbandry would not, at least ordinarily, be "self-propelled."

c. Sale of fuel used in implements of husbandry on and after July 1, 1985, to and including June 30, 1987. On and after July 1, 1985, to and including June 30, 1987, only the sale of fuel used in "self-propelled" implements was exempt from tax. A "self-propelled" implement of husbandry is one which is capable of movement from one place to another under its own power. An implement of husbandry is not self-propelled simply because it has moving parts. Tractors, combines, and motor trucks used exclusively for delivery and application of fertilizer would be nonexclusive examples of self-propelled implements of husbandry. An irrigation system, which rotates a shaft that dispenses water and a wheel or wheels which support the shaft in a circle about a wellhead which remains stationary, is not a "self-propelled" implement of husbandry.

d. For the purposes of this subrule, electricity used to power an implement of husbandry engaged in agricultural production or consumed in grain drying is considered to be a "fuel."

e. On and after July 1, 1987, the gross receipts from the sale of gas, electricity, water, or heat used in implements of husbandry engaged in agricultural production which is not otherwise exempt under the previous provisions of this subrule, is exempt from tax. See subrule 17.9(3) for the characterization of "Agricultural production" applicable to this subrule.

17.9(7) Water, when sold to farmers who are purchasing water for both livestock production as well as for household and sanitation use, shall be subject to the imposition of the tax the same as electricity or steam in rule 17.3(422,423).

Water sold to farmers and others and used directly as drinking water for livestock or poultry products for market, shall be exempt from the imposition of tax. Water used for other purposes such as household use, sanitation, or swimming pools shall be subject to

701—17.21(422) Exempt sales of prizes. For sales occurring on and after July 1, 1987, the gross receipts from sales of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B are exempt from tax. See Chapters 481—100 through 104 of Inspections and Appeals, Iowa Administrative Code, for a description of the games of skill, games of chance, raffles, and bingo games which are lawful. See rule 481—100.6(99B) for a description of the prizes which it is lawful to award. A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize at the time the person redeems the gift certificate for merchandise, on and after July 1, 1987, tax remains payable at the time the gift certificate is redeemed. See rule 701—15.16(422).

This rule is intended to implement Iowa Code section 422.45(32).

701—17.22(422,423) Modular homes. On and after July 1, 1988, 40 percent of the gross receipts from the sale of a modular home is exempt from tax. A "modular home" is any structure, built in a factory, made to be used as a place for human habitation which cannot be attached or towed behind a motor vehicle and which does not have permanently attached to its body or frame any wheels or axles.

This rule is intended to implement Iowa Code section 422.45.

701—17.23(422,423) Sales to other states and their political subdivisions. On and after July 1, 1990, gross receipts from the sale of tangible personal property or from the furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state are exempt from tax if that other state provides a similar reciprocal exemption for Iowa and its political subdivisions. As of August 1, 1990, the only states bordering Iowa to which this exemption is applicable are Illinois and South Dakota. See Illinois Rev. Stat., Ch 120, Retailers' Occupation Tax, Sec. 2, and South Dakota Rev. Stat., Sec. 10-45-10.

This rule is intended to implement Iowa Code section 422.45.

701—17.24(422) Nonprofit private museums. For sales occurring on or after July 1, 1990, the gross receipts of all sales of goods, wares, merchandise, or services used for educational, scientific, historic preservation, or aesthetic purpose to a nonprofit private museum are exempt from tax. A "museum" is an institution organized for educational, scientific, historical preservation, or aesthetic purposes which is predominately devoted to the care and exhibition of a collection of objects in a room, building, or locale. This collection must be open to the public on a regular basis, and its staff must be available to answer questions regarding the collection. See the example at the end of the rule for a characterization of the phrase "open to the public on a regular basis."

Words contained in exemption statutes are strictly construed; all doubt regarding their meaning is resolved in favor of taxation and against exemption. *Ballstadt v. Iowa Department of Revenue,* 368 N.W.2d 147 (Iowa 1985) and *Iowa Movers and Warehousemen's Association v. Briggs,* 237 N.W.2d 759 (Iowa 1976). Furthermore, an institution is not a "museum" unless it can be included in the "ordinary and usual public concept" of a museum, regardless of the abstract definition of the term within which the institution might fit. See *Sorg v. Department of Revenue,* 269 N.W.2d 129 (Iowa 1978). Using the above principles, the department excludes from its definition of "museum" the following: aquariums, arboretums, botanical gardens, nature centers, planetariums, and zoos. Included within the meaning of "museum" are: art galleries, historical museums, museums of natural history, and museums devoted to one particular subject or one person.

EXAMPLE: The Blank County History Museum is open every Tuesday afternoon from 1 p.m. to 4:30 p.m., other than on national holidays. The museum is open periodically or at fixed intervals, so it is open "on a regular basis," even though, each week, it is open only briefly.

This rule is intended to implement Iowa Code subsection 422.45(43).

701—17.25(422,423) Exempt sales by excursion boat licensees. The following sales by licensees authorized to operate excursion gambling boats are exempt from Iowa sales and use tax: (1) charges for admission to excursion gambling boats, and (2) gross receipts from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

Gross receipts from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and gross receipts from nongambling video games and other types of games which do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10(6).

701—17.26(422,423) Bedding for agricultural livestock or fowl. See subrules 17.9(1) and 17.9(2) and paragraph 17.9(3)*"a"* for definitions applicable to this rule. Between July 1, 1985, and June 30, 1992, inclusive, only the sale of woodchips or sawdust used in the production of agricultural livestock or fowl was exempt from tax. The sale of other materials used as bedding in the production of agricultural livestock or fowl was not exempt from tax. On and after July 1, 1992, the gross receipts from the sale of not only woodchips or sawdust but also of hay, straw, paper or any other materials used for bedding in the production of agricultural livestock or fowl is exempt from tax.

This rule is intended to implement Iowa Code section 422.45(30).

701—17.27(422,423) Statewide notification center service exemption. On and after January 1, 1995, taxable services rendered, furnished or performed by a statewide notification center established under Iowa Code section 480.3 which provides notice to operators of underground facilities who excavate in the area of these facilities are exempt from tax. This exemption is also applicable to taxable services rendered, furnished, or performed by any vendor selected by the board of directors of the statewide notification center to provide notification services.

This rule is intended to implement Iowa Code section 422.45 as amended by 1995 Iowa Acts, House File 550.

[Filed 12/12/74]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/15/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed emergency 4/28/78—published 5/17/78, effective 4/28/78]
[Filed 5/26/78, Notice 3/22/78—published 6/14/78, effective 7/19/78*]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 2/16/79, Notice 1/10/79—published 3/7/79, effective 4/11/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed emergency 6/11/79—published 6/27/79, effective 7/1/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 2/10/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]
[Filed 3/23/84, Notice 2/15/84—published 4/11/84, effective 5/16/84]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/7/85, Notice 8/14/85—published 10/23/85, effective 11/27/85]
[Filed 12/2/85, Notice 7/17/85—published 12/18/85, effective 1/22/86]
[Filed 3/21/86, Notice 9/11/85—published 4/9/86, effective 5/14/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

NOTE: History for Ch 17 continued on next page.

*Effective date of 17.3"c" delayed by the Administrative Rules Review Committee at its July 11, 1978 meeting under the provisions of the Sixty-seventh General Assembly, S.F. 244, section 19. See amendment published 3/7/79.

[Filed 12/29/86, Notice 11/19/86—published 1/14/87, effective 2/18/87]
[Filed 11/12/87, Notice 10/7/87—published 12/2/87, effective 1/6/88]
[Filed 2/5/88, Notice 10/21/87—published 2/24/88, effective 3/30/88]
[Filed 10/14/88, Notice 9/7/88—published 11/2/88, effective 12/7/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]◊
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]◊
[Filed 10/12/90, Notice 9/5/90—published 10/31/90, effective 12/5/90]
[Filed emergency 3/15/91—published 4/3/91, effective 3/15/91]
[Filed 3/15/91, Notice 2/6/91—published 4/3/91, effective 5/8/91]
[Filed 5/10/91, Notice 4/3/91—published 5/29/91, effective 7/3/91]
[Filed 8/16/91, Notice 7/10/91—published 9/4/91, effective 10/9/91]
[Filed 3/26/92, Notice 2/19/92—published 4/15/92, effective 5/20/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 7/1/93, Notice 5/26/93—published 7/21/93, effective 8/25/93]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/22/93, Notice 9/15/93—published 11/10/93, effective 12/15/93]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]◊

701—18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians shall not be liable for tax on services rendered such as examinations, consultations, diagnosis, surgery and other kindred services, nor on the applicable exemptions prescribed under 701—Chapter 20.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual's own use. For example, the purchase for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

Sales of tangible personal property to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

Sales of tangible personal property to physicians or surgeons, which are prescription drugs to be used or consumed by a patient, are exempt from tax.

Sales of tangible personal property to ophthalmologists, oculists, optometrists, and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit a patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames, and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of an item of equipment that is utilized directly in the care of an illness, injury or disease, which item would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(13-15), 423.2 and 423.4(4).

701—18.23(422) Veterinarians. Purchase of food, drugs, medicines, bandages, dressings, serums, tonics, and the like, but not to include tools and equipment, which are used in treating livestock raised as part of agricultural production is exempt from tax. Where these same items are used in treating animals maintained as pets for hobby purposes, sales tax is due. See rule 701—18.48(422,423) for an exemption for machinery used in livestock or dairy production which may be applicable to veterinarians but should be claimed only with caution by them.

A veterinarian engaged in retail sales, in addition to furnishing professional services, must account for sales tax on the gross receipts from such sales.

This rule is intended to implement Iowa Code sections 422.42(3) and 422.43.

701—18.24(422,423) Hospitals, infirmaries and sanitariums. Hospitals, infirmaries, sanitariums, and like institutions are engaged primarily in rendering services. These facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under 701—Chapter 20 when the items would be exempt if purchased by the individual and if the item is used substantially for the tax-exempt purpose.

Hospitals, infirmaries, and sanitariums may be the purchasers for use or consumption of tangible personal property used or consumed in furnishing services. *Modern Dairy Co. v. Department of Revenue,* 413 Ill. 55, 108 N.E.2d 8 (1952). However, tangible personal property can be purchased for resale by these facilities and, if purchased for resale, is exempt from tax on the purchases. *Burrows Co. v. Hollingsworth,* 415 Ill. 202, 112 N.E.2d 706 (1953); *Fefferman v. Marohn,* 408 Ill. 542, 97 N.E.2d 785 (1951). Property is purchased for resale if the condi-

tions in subrule 18.31(1) are applicable. See also 701—subrule 15.3(2) with respect to resale exemption certificates.

Depending upon the circumstances, a nonprofit facility may be a charitable institution or organization; a profit facility is not. *Northwest Community Hospital v. Board of Review of City of Des Moines,* 229 N.W.2d 738 (Iowa 1975); *Readlyn Hospital v. Hoth,* 223 Iowa 341, 272 N.W. 90 (1937). Sales by these nonprofit facilities would be exempt from tax if the requirements of Iowa Code section 422.45(3) are met. See rule 701—17.1(422,423).

This rule is intended to implement Iowa Code chapters 422 and 423.

701—18.25(422,423) Warranties and maintenance contracts.

18.25(1) In general—definitions. "Mandatory warranty." A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. "Optional warranty." A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller.

18.25(2) Mandatory warranties. When the sale of tangible personal property or services includes the furnishing or replacement of parts or materials which are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable. Labor performed under a mandatory warranty which is in connection with an enumerated taxable service is also exempt from tax.

18.25(3) Optional warranties. For periods after June 30, 1981. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 422.43 is considered a sale of tangible personal property the gross receipts from which are subject to tax at the time of sale except as described below.

On and after July 1, 1995, the sale of a residential service contract regulated under Iowa Code chapter 523C is not considered to be the sale of tangible personal property, and gross receipts from the sales of these service contracts are no longer subject to tax, and the gross receipts from taxable services performed for the providers of residential service contracts are now subject to tax. See the examples below for more detailed explanation. A "residential service contract" is defined in Iowa Code subsection 523C.1(8) to be: a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

EXAMPLE A. John Jones purchases a residential service contract for $3,000 on July 1, 1994. He pays $150 of Iowa state sales tax. On December 1, 1994, his furnace malfunctions. The service company which sold Mr. Jones the contract pays Smith Furnace Repair $700 to fix the furnace. No sales tax is due on the $700 charge.

EXAMPLE B. Bob Jones purchases a residential service contract for $3,000 on July 1, 1995. No sales tax is owing or paid. On December 1, 1995, his furnace becomes inoperable. The service company which sold Mr. Jones the contract pays Smith Furnace Repair $900 to fix Mr. Jones' furnace. Sales tax of $45 is due based on the $900.

18.25(4) A preventive maintenance contract is a contract which requires only the visual inspection of equipment and no repair is or shall be included. The gross receipts from the sale of a preventive maintenance contract is not subject to tax.

18.25(5) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract which are for enumerated taxable services shall be subject to tax. Only parts and not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code sections 422.42, 422.43 and 423.2.

701—18.26(422) Service charge and gratuity. When the purchase of any food, beverage or meals automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term "service charge" means either a fixed percentage of the total price of or a charge for food, beverage or meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, beverage or meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, beverage or meal it shall be considered a tip and not subject to tax.

Cohen v. Playboy Club International, Inc., 19 Ill. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury*, 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code section 422.43.

EXAMPLE C: Water is processed in a treatment plant. The last act at the plant necessary to render the water drinkable or a "finished product" is the addition of chlorine. After the addition of chlorine, the water is pumped first into wells and later into water towers where it is held for distribution. The pumping of this drinkable water from the point where the chlorine is added to the wells and the tower is not a part of processing because processing of the water ended with the addition of the chlorine; thus, electricity used in these pumps is not electricity used in processing. *Southern Sioux County Rural Water System, Inc.*, supra.

18.29(5) *Integral part of the production of the product test.* Certain activities may be exempt as part of processing if those activities are very closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Southern Sioux Rural Water System, Inc.*, supra. Merely because an activity is vital or essential to a processing operation does not make that activity exempt as part of processing unless the activity itself is closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Mississippi Valley Milk Producers Ass'n v. Iowa Dept. of Revenue,* 387 N.W.2d 611 (Iowa App. 1986). See the nonexclusive example below.

A manufactures nails. In A's factory is a machine which draws steel into long rods the width of whatever nail A may wish to manufacture. After this machine draws the steel into the desired-size rods, the rods are moved to a second machine by a conveyor belt. This second machine cuts the rods into the length of nail which A desires. A second conveyor belt then transports these cut rods to a third machine which sharpens one end of the rod to a point and puts a "nail head" on the other end of the rod. The activities of the three machines are clearly processing, in that they are activities which change the form, context or condition of raw material, and as a result of those activities, marketable tangible personal property or a finished product is created. The two conveyor belts move the partially finished nails from one piece of processing equipment to another while processing is occurring. Since the activities of the conveyors are very closely interconnected with and an integral part of the operation of the various pieces of processing equipment while processing is occurring, the conveyor belts are involved in processing as well.

18.29(6) *Other specific examples of processing.* The Iowa Supreme Court has also stated that the following activities are processing: manufacturing ice, refrigerating cheese to age it from "green" to edible, refrigerating eggs to change their flavor, pasteurizing and subsequent refrigeration of milk, "hard" freezing of meat and butter for aging, canning vegetables and cooking foodstuffs; *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission,* 248 Iowa 497, 81 N.W.2d 437 (1957); and, *Mississippi Valley Milk Producers v. Iowa Dept. of Revenue and Finance,* 387 N.W.2d 611 (Ia. App. 1986), also crushing of "flat rock" limestone and treating limestone in kilns. *Linwood Stone Products Co. v. State Dept. of Revenue,* 175 N.W.2d 393 (Iowa 1970). See 701—subrule 17.3(2) for an expanded definition of processing with regard to food manufacturing.

18.29(7) *Other department rules concerned with processing.* Various sections of the Iowa Code set out activities which are defined by statute to be "processing". The rules interpreting these statutes for the purposes of sales and use tax law are the following:

a. 15.3(422,423) Certificates of resale, processing, and fuel used in processing.

b. 17.2(422) Fuel used in processing—when exempt.

c. 17.3(422,423) Electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax.

d. 17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), and 17.9(6) for processing exemptions.

e. 17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.

f. 18.3(422,423) Chemical compounds used to treat water.

g. 18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid.

h. 26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.

i. 28.2(423) Processing of property defined.

j. 33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.

k. 33.7(423) Property used to manufacture certain vehicles to be leased.

701—18.30(422) Taxation of American Indians.

18.30(1) *Definitions.*

"American Indians" means all persons of Indian descent who are members of any recognized tribe.

Headlamps
Hoods
Hub caps
Radiators
Rocker panels
Shock absorbers
Side molding
Spark plugs
Tires
Trim
Trunk lids
Wheels
Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies which are generally not transferred to the body shop's customer during the course of the repair and therefore could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer and therefore the body shop must pay tax to the vendor at the time of purchase.

Air compressors and parts
Body frame straightening equipment
Brooms and mops
Buffers
Chisels
Drill bit
Drop cords
Equipment parts
Fire extinguisher fluids
Floor jacks
Hand soap
Hand tools
Office supplies
Paint brushes
Paint sprayers
Sanders
Spreaders for putty
Signs
Washing equipment and parts
Welding equipment and parts

Because of the nature of their business and the formulas devised by the insurance industry to reimburse body shops for cost of "materials," it is possible for body shops, in their invoices to their customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shops and some of such individual materials are not even transferred by body shops to their customers. Therefore, the body shops are generally the "consumers" of "materials" and do not purchase them for resale. *W.J. Sandberg Co. v. Iowa State Board of Assessments and Review,* 225 Iowa 103, 278 N.W. 643 (1938). Thus, body shops should pay tax to their suppliers on all materials purchased and consumed by them. If materials are purchased from non-Iowa suppliers who do not collect Iowa tax from body shops, such body shops should remit consumer use tax to the department of revenue and finance on such materials.

Body shops must collect sales tax on the taxable service of repairing motor vehicles. See rule

701—26.5(422). However, due to the nature of the insurance formulas, it is possible for body shops to itemize that portion of their billing which would be for repair services and that portion relating to consumed "materials." It is also possible for body shops to itemize that portion of their charges for parts which they purchase for resale to their customers. Body shops do not and cannot resell the tools and supplies previously listed in this rule and are taxable on their purchases of such items.

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials," body shops should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, solder and polishes. In its invoice to the customer, the labor is separately listed at $300, the part (fender) is separately listed at $300, and the category of "materials" is separately listed for a lump sum of $100, for a total billing of $700. The Iowa sales tax computed by the body shop should be on $600 which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for "gross taxable services" as defined in Iowa Code section 422.42(16), which is taxable in Iowa Code section 422.43.

In this example, if the "materials" were not separately listed on the invoice, but had been included in either or both of the labor or part charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at time of purchase.

This rule is intended to implement Iowa Code sections 422.42, 422.43 and 423.2.

701—18.32(422,423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations.

18.32(1) *In general.* The sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, included but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent. Transactions between affiliated corporations may not be subject to tax where it can be shown that the affiliated corporations are operating as a unit within the meaning of Iowa Code sections 422.42(1) and 423.1(8).

18.32(2) *Affiliated corporations acting as a unit.* If an affiliated corporation acts as an agent for the other affiliated corporation in a transaction listed in 18.32(1) such corporation shall be considered as acting as a unit as set forth herein and such transactions may not be subject to tax.

This rule should not be equated with the unitary business concept used in corporation income tax law.

This rule is intended to implement Iowa Code sections 422.42(1) and 423.1(8).

701—18.33(422,423) Printers' and publishers' supplies exemption with retroactive effective date.

18.33(1) For the purposes of this rule, a "printer" is any person, a portion of whose business involves the completion of a finished, printed product for sale at retail by that person or another person. A "printer" is also any person, a portion of whose business involves the completion of a finished printed packaging material used to package products for ultimate sale at retail. The term "printer" does not include any person printing or copyrighting printed material for its own use or consumption and not for resale. A "publisher" means and includes any person who owns the right to produce, market, and distribute printed literature and information for ultimate sale at retail.

18.33(2) Effective May 4, 1995, and retroactive to July 1, 1983, the gross receipts from the sale or rental of the following to a printer or publisher are exempt from tax: acetate; antihalation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models, modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; pH-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; Veloxes; wood mounts; and any other items used in a similar capacity to any of the above-enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies not enumerated in this subrule are subject to tax.

18.33(3) Claim for refunds of tax, interest, or penalty paid for the period of July 1, 1993, to June 30, 1995, must be limited to $25,000 in the aggregate and will not be allowed unless filed prior to October 1, 1995. If the amount of claimed refunds for this period totals more than $25,000, the department must prorate the $25,000 among all claims.

701—18.34(422,423) Automatic data processing.

18.34(1) *In general.*

a. Applicability of tax. For the purposes of this rule, the tax on automatic data processing is applicable to the gross receipts of:

(1) Sales and rentals of data processing equipment (hardware).

(2) Sales and rentals of tangible personal property produced or consumed by data processing equipment or prewritten (canned) computer software used in data processing operations.

(3) Certain enumerated services performed on or connected with data processing such as rental of tangible personal property, machine repair, services of machine operators, office and business machines repair, electrical installation, and any other taxable service enumerated in Iowa Code section 422.43.

b. Definitions.

(1) *"Computer"* means a programmed or programmable machine or device having information processing capabilities and includes word processing equipment, testing equipment, and programmed or programmable microprocessors and any other integrated circuit embedded in manufactured machinery or equipment.

(2) *"Hardware"* means the physical computer assembly and peripherals including, but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, tape readers, document sorters, optical readers and digitizers.

(3) *"Canned software"* is prewritten computer software which is offered for general or repeated sale or rental to customers with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Canned software is tangible personal property. The term also includes programs offered for general or repeated sale or rental which were initially developed as custom software. Evidence of canned software includes

the selling or renting of the software more than once. Software may qualify as custom software for the original purchaser or lessor but is canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.

(4) *"Custom software"* is specified, designed, and created by a vendor at the specific request of a customer to meet a particular need and is considered to be a sale of a service rather than a sale of tangible personal property. It includes those services represented by separately stated charges for the modification of existing prewritten software when the modifications are written or prepared exclusively for a customer. Modification to existing prewritten software to meet the customer's needs is custom computer programming only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program.

When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program before modification was previously marketed, the new program will qualify as a custom program if the price of the prewritten program was 50 percent or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program if the charge made to the customer for custom programming services, as evidenced by the records of the seller, was more than 50 percent of the contract price to the customer.

The department will consider the following records in determining the extent of modification to prewritten software when there is not a separate charge for the modification: logbooks, timesheets, dated documents, source codes, specifications of work to be done, design of the system, performance requirements, diagrams of programs, flow diagrams, coding sheets, error printouts, translation printouts, correction notes, and invoices or billing notices to the client.

(5) *"Storage media"* includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by a computer.

(6) *"Rental"* includes any lease or license agreement between a vendor and a customer for the customer's use of hardware or software.

(7) *"Program"* is interchangeable with the term "software" for purposes of this rule.

18.34(2) *Taxable sales, rentals and services.*

a. Sales of equipment. Tax applies to sales of automatic data processing equipment and related equipment.

b. Rental or leasing of equipment. Where a lease includes a contract by which a lessee secures for a consideration the use of equipment which may or may not be used on the lessee's premises, the rental or lease payments are subject to tax. See rule 701—26.18 on tangible personal property rental.

c. Canned software. The sale or rental for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software may be transferred to a customer in the form of diskettes, disks, magnetic tape, or other storage media or by listing the program instructions on coding sheets.

(1) Tax applies whether title to the storage media on which the software is recorded, coded, or punched passes to the customer or the software is recorded, coded, or punched on storage media furnished by the customer. A fee for the temporary transfer of possession of canned software for the purpose of direct use to be recorded, coded, or punched by the customer or by the lessor on the customer's premises, is a sale or rental of canned software and is taxable.

(2) Tax applies to the entire amount charged to the customer for canned software. Where the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees includable in the purchase price are subject to tax.

701—18.42(422,423) Newspapers, free newspapers and shoppers' guides.

18.42(1) *General observations.* The gross receipts from the sales of newpapers, free newspapers, and shoppers' guides are exempt from tax. The gross receipts from the sales of magazines, newsletters, and other periodicals which are not newspapers are taxable. Recent cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance,* 461 N.W.2d 295 (Iowa 1990).

18.42(2) *General characteristics of a newspaper.* "Newspaper" is a term with a common definition. A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material. Other frequent characteristics of newspapers are the following:

a. Newspapers usually contain photographs. The photographs are more often in black and white rather than color.

b. Information printed on newspapers is usually contained in columns on the newspaper pages.

c. The larger the cross section of the population which reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a "newspaper."

18.42(3) *Characteristics of newspaper publishing companies.* Companies in the business of publishing newspapers are differently structured from other companies. Often, companies publishing larger newspapers will subscribe to various syndicates or "wire services." A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

18.42(4) *Characteristics which distinguish a newsletter from a newspaper.* A "newsletter" is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than the paid individual who usually publishes a newspaper. A newsletter is often printed on sheets which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement Iowa Code section 422.45(9).

701—18.43(422,423) Written contract. On and after July 1, 1985, the gross receipts from certain additional services are subject to tax. However, these newly taxable services are exempt from tax if performed pursuant to a written services contract in effect on April 1, 1985. The exemption from taxation for these services expires June 30, 1986. The services to which this "written contract" exemption is applicable are the following: cable television; campgrounds; gun repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; lobbying service; pet grooming; reflexology; security and detective services; tanning beds or salons; water conditioning and softening; the rental of recreational vehicles, recreational boats or motor vehicles subject to registration which are registered for a gross weight of 13 tons or less; and fees paid to cities and counties for the privilege of participating in any athletic sports.

A "written contract" is one which is entirely in writing, so that all of its essential terms and provisions exist in writing, and oral statements are not necessary to set out any essential term or provision, such as who the parties to the contract are or what their rights and duties are under the contract. However, if it is necessary to resort to oral statements to explain

the meaning of a written provision in a contract, a "written contract" can still exist. A written contract need not consist of one document or instrument only. It can consist of two or more writings, if all the necessary provisions of the contract are contained in those writings. For the purposes of this rule, the following must be stated in writing if a written contract is to exist: The nature and specification of the service to be provided, the name of the party providing the service, the name of the party receiving the service, the "consideration" (amount and method of payment) for providing the service, the signature of one or both of the parties to the contract, depending upon circumstances, and the date upon which the contract became effective.

The written contract must be in effect on April 1, 1985, if the service to which the contract pertains is to be exempt from tax. If a contract is signed by only one of the parties to it, that contract is still a "written contract" if the party which has not signed the contract acquiesces in the promises which the party who has signed the document makes within it. *McDermott v. Mahoney,* 139 Iowa 292, 115 N.W. 32, (Iowa 1908).

EXAMPLE: A security agency sends a proposed agreement to a potential customer promising to provide the services of a uniformed security guard for the customer's business premises beginning March 15, 1985, and continuing until March 15, 1987. The agreement is signed by the security agency's president and dated February 15, 1985. The agreement is received by the potential customer's president, who does not sign it, but, on March 15, 1985, allows the security agency's uniformed guard on the premises, and makes payment for those services as stipulated in the agreement. This agreement is a "written contract"; the services of the uniformed guard are not subject to tax for the period beginning July 1, 1985, and ending June 30, 1986. The services performed between July 1, 1986, and March 15, 1987, would be subject to tax.

This rule is intended to implement Iowa Code section 422.43(11).

701—18.44(422,423) Sale or rental of farm machinery and equipment, exemption from and refund of tax paid. On and after July 1, 1987, the gross receipts from the sale or rental of farm machinery and equipment will be exempt from tax. For the period beginning July 1, 1985, and ending June 30, 1987, the tax paid on the gross receipts from the sale or rental of farm machinery or equipment is refundable.

18.44(1) *Characteristics of and limitations upon farm machinery and equipment.* To be eligible for exemption from or refund of tax under this rule the machinery or equipment must:

a. Be directly and primarily used in production of agricultural products; and

b. Be one of the following:

(1) A self-propelled implement; or

(2) An implement customarily drawn or attached to a self-propelled implement; or

(3) A grain dryer; or

(4) An auxiliary attachment which improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer if sale or first use in Iowa is on or after July 1, 1995; or

(5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).

c. No vehicle subject to registration, as defined in Iowa Code subsection 423.1(7), implement customarily drawn or attached to a vehicle, auxiliary attachment, or any replacement part for a vehicle, implement, or auxiliary attachment is eligible for the exemption or refund allowed under this rule.

18.44(2) *Definitions and characterizations.* For the purposes of this rule, the following definitions apply.

a. Production of agricultural products means the same as the term "agricultural production" which is defined in 701—subrule 17.9(3), paragraph *"a,"* to mean a farming operation undertaken for profit by raising crops or livestock. Production of agricultural products begins

with the cultivation of land previously cleared for planting of crops or with the purchase or breeding of livestock or domesticated fowl. Not included within the meaning of the phrase are the clearing or preparation of previously uncultivated land, the creation of farm ponds or the erection of machine sheds, confinement facilities, storage bins or other farm buildings. See *Trullinger v. Fremont County,* 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to but not a part of the production of agricultural products. The production of agricultural products ceases when an agricultural product has been transported to the point where it will be sold by the farmer or processed.

EXAMPLE. Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later the same tractor and wagon are used to deliver the corn from the farm to the local elevator where it is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products and the refund or exemption would apply. The elevator has not used its tractor and wagon in such production; refund or exemption would not be lawful.

b. Farm machinery and equipment means machinery and equipment specifically designed for use in the production of agricultural products or equipment and machinery not specifically designed for this use but which are directly and primarily used in the production of agricultural products.

EXAMPLE. Farmer Jones raises livestock and the farming operation requires that fences be built to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to construct the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but would be directly and primarily used in the production of agricultural products. Therefore, the exemption or refund applies.

c. Self-propelled implement has the same meaning as in 701—subrule 17.9(5), paragraph "*c,*" where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: Augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

e. Direct use in agricultural production. In determining whether farm machinery, equipment or any grain dryer is directly used in agricultural production, the fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment coming into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

f. Grain dryer. The term grain dryer includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

g. Replacement parts, differing meanings of the term for the period ending June 30, 1988, and for the period beginning July 1, 1988.

(1) For the period beginning July 1, 1985, and ending June 30, 1988, a replacement part is refundable or exempt only if its cost is depreciable for state and federal income tax purposes. 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 machinery or equipment or appreciably prolong its life. Replacement parts which only keep the machinery or equipment in its ordinarily efficient operating condition are not eligible for exemption or refund. 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 refund or exemption from tax. However, the person claiming the refund or exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

(2) On and after July 1, 1988, the sale or lease of a replacement part is exempt from tax if the replacement part is essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products. The term "replacement part" does not include attachments and accessories which are not essential to the operation of the farm machinery or equipment. Nonexclusive examples of attachments or accessories are: cigarette lighters, radios, and add-on air conditioning units.

18.44(3) *Taxable and nontaxable transactions.* The following are nonexclusive examples of sales and leases of farm machinery and equipment which are or are not subject to exemption and refund.

a. A lessor's purchase of farm machinery and equipment is not subject to tax, or is taxable subject to refund, if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee's use of the machinery or equipment is otherwise exempt or subject to refund. To claim exemption from tax or a refund of tax paid, the lessor need not make exempt use of the machinery or equipment so long as the lessee does.

b. To claim refund or exemption, the owner or lessee of farm machinery or equipment need not be a farmer so long as the machinery and equipment is directly and primarily used in the production of agricultural products, and the owner or lessee and the equipment or machinery meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and so used after purchase is entitled to the benefits of this rule even though that person is not the owner or occupant of the land where the airplane is used.

c. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for refund or exemption if those transactions are otherwise qualified under this rule.

18.44(4) *Auxiliary attachments.* The following is a list (not inclusive) of auxiliary attachments described in 18.44(1)*"b"*(4), the sale or first use in Iowa which is exempt from tax on and after July 1, 1995: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upperbeaters, silage bags, and weights.

if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

l. The term "replacement parts essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products" does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, and tools or utility boxes.

18.48(2) *Right of refund for farm machinery and equipment used in livestock or dairy production, basic requirements.* Rescinded IAB 10/13/93, effective 11/17/93.

18.48(3) *Treatment of replacement parts.* Rescinded IAB 10/13/93, effective 11/17/93.

18.48(4) *Exempt purchases on and after July 1, 1988.* Sales or rental of farm machinery and equipment used in livestock or dairy production and replacement parts therefor which occur on or after July 1, 1988, are exempt from sales and use tax if those sales or rentals meet the requirements for refund set out in subrule 18.48(2) or 18.48(3).

18.48(5) *Refunds for tax paid on the gross receipts from the sale of repair services and parts for the period beginning July 1, 1987, and ending June 30, 1988.* For the period beginning July 1, 1987, and ending June 30, 1988, tax paid on services rendered, furnished, or performed as part of the repair of machinery or equipment directly and primarily used in livestock or dairy production and otherwise meeting the requirements of subrule 18.48(1) is refundable. The right of refund ends as of July 1, 1988, and does not continue as an exemption. This right of refund is not applicable to repairs performed on farm machinery, equipment, and grain dryers described in rule 18.44(422,423).

18.48(6) *Auxiliary attachments exemption.* On and after July 1, 1995, sales of auxiliary attachments which improve the performance, safety, operation, or efficiency of machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt on and after that date.

18.48(7) *Lists.* Lists (representative but not all inclusive) of tangible personal property for which sales or use tax paid is or is not refundable.

LIST A. Property Used in Livestock and Dairy Production Which is Usually Real Property. See 18.48(1)"c"(1). Its sale is usually taxable.

barn ventilators*	livestock feeders*
conveyers*	silos
farrowing crates*	specialized flooring*
fence posts	sprinklers
fencing wire	stanchions
furnaces*	watering tanks*
gestation stalls*	ventilators*

*These items also appear in List D. Tax paid on their sale can be refundable or their sale exempt if the items are not real property.

LIST B. Taxable Farm Supplies Which Are Not Machinery or Equipment

baling wire	hog rings
binder twine	lubricants
burlap	marking chalk
disposable hypodermic syringes	packaging materials
ear tags	packages for one-time use

LIST C. Hand Tools—Taxable and Nontaxable

axes	lanterns
brooms	milk cans*
buckets	mops
cleaning brushes	paintbrushes
dehorners (nonelectric)*	pliers
garden hoses	scrapers
grease guns	screwdrivers
hammers	shovels
hay hooks*	wheelbarrows
hog ringers*	wrenches
lamps	

*Hand tools specially designed for use in livestock or dairy production are equipment. Tax paid on the sale or use of these hand tools is refundable.

LIST D. Farm Machinery and Equipment Directly and Primarily Used in Livestock or Dairy Production. Tax Paid is Usually Refundable or the Sale Exempt.

artificial insemination equipment
augers*
automatic feeding systems*
bulk feeding tanks*
bulk milk coolers
bulk milk tanks
cattle weaners and feeders
cattle currying and oiling machines
cattle feeders*
conveyers*
dehorners, electric
electric fence equipment
fans*
farrowing crates, houses and stalls*
feed bins*
feed carts
feed elevators*
feed grinders
feed tanks*
feeders
foggers
furnaces*
gates*
grain augers
head gates
heating pads and lamps
hog feeders*
hypodermic syringes and needles, nondisposable
livestock feeding, watering and handling equipment*
loading chutes*
LP gas tanks
manure handling equipment*
milk coolers
milk strainers
milking machines
refrigerators used to cool raw milk
silo unloaders
specialized flooring*
space heaters
sprayers
squeeze chutes*
vacuum coolers
ventilators*

*If not real property. See 18.48(1)"c"(1).

18.48(8) *Seller's and purchaser's liability for sales tax.* The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery or equipment meeting the requirements of subrule 18.48(4). An exemption certificate can take the form of a stamp imprinted onto one of the documents of sale. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the tax directly to the department.

This rule is intended to implement Iowa Code section 422.47C.

701—18.49(422,423) Aircraft sales, rental, and services exemption. For the purposes of this rule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air and is used in a scheduled interstate federal aviation administration certified air carrier operation.

18.49(1) *Exempt aircraft sales.* As of July 1, 1988, gross receipts from the sale of any aircraft are exempt from tax. The limitations on refunds set out in subrule 18.49(5) are not applicable to sales of aircraft occurring under this rule.

18.49(2) *Exempt rental of aircraft.* Effective May 1, 1995, and retroactive to July 1, 1988, the taxable rental (see rule 701—26.74(422,423)) of aircraft, as defined in the introductory paragraph of this rule, is exempt from tax.

18.49(3) *Exempt sale or rental of aircraft parts.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the sale or rental of any tangible personal property permanently affixed to any aircraft as a component part of that aircraft are exempt from tax. The term "component parts" includes, but is not limited to, repair or replacement parts and materials.

18.49(4) *Exempt performance of services.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the rendering, furnishing, or performing of services in connection with the repair, remodeling, or maintenance of aircraft (including aircraft engines and component materials or parts) are exempt from tax.

18.49(5) *Limitations on retroactivity.* For the retroactive exemption described in subrules 18.49(2), 18.49(3), and 18.49(4), refunds of tax, interest, or penalty are applicable to transactions occurring between July 1, 1988, and June 30, 1995, and will not be paid unless a claim for refund is filed prior to October 1, 1995. For the period ending June 30, 1995, refunds are limited to $25,000 in the aggregate. If the amount of claims totals more than $25,000 in the aggregate, the department will prorate the $25,000 among all claimants in relation to the amount of a valid claim in relation to the total amount of all valid claims.

701—18.50(422,423) Property used by a lending organization. On and after July 1, 1988, the gross receipts from the sale of tangible personal property to a nonprofit organization organized for the purpose of lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) which the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 422.45(36).

701—18.51(422,423) Sales to nonprofit legal aid organizations. On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit legal aid organization are exempt from tax.

This rule is intended to implement Iowa Code subsection 422.45(37).

701—18.52(422,423) Irrigation equipment used in farming operations. On and after July 1, 1989, the gross receipts from the sale or rental of irrigation equipment used in farming operations are exempt from tax. The term "irrigation equipment" includes, but is not limited to, circle irrigation systems and trickle irrigation systems. The term "farming operations" has the same meaning as the term "agricultural production" set out in 701—subrule 17.9(3) paragraph *"a,"* and as further characterized in 18.44(2)*"a."*

This rule is intended to implement Iowa Code section 422.45.

701—18.53(422,423) Sales to persons engaged in the consumer rental purchase business. On and after July 1, 1989, the gross receipts from the sale of tangible personal property, except vehicles subject to registration, to persons regularly engaged in the consumer purchase business are exempt from tax if the property (1) is sold for the purpose of utilization in a transaction involving a "consumer rental purchase agreement" as defined in Iowa Code subsection 537.3604(8), and (2) the gross receipts from the consumer rental of the property are subject to Iowa sales or use tax.

If property exempt under this rule is made use of for any purpose other than a consumer rental purchase, the person claiming the exemption is liable for the tax that would have been due had the exemption not existed. The tax shall be computed on the original purchase price to the person claiming the exemption. The aggregate of the tax paid on the consumer rental purchase of the property, not exceeding the amount of sales or use tax owed, shall be credited against the tax.

This rule is intended to implement Iowa Code section 422.45(18).

701—18.54(422,423) Sales of advertising material. On and after July 1, 1990, gross receipts from the sales of advertising material to any person in Iowa are exempt from tax if that person, or any agent of that person, will, after the sale, send that advertising material outside of Iowa and subsequent sole use of that material will be outside this state.

For the purposes of this subrule "advertising material" is tangible personal property only, including paper. Examples of "advertising material" include, but are not limited to, the following: brochures, catalogs, leaflets, fliers, order forms, return envelopes, and any similar items of tangible personal property which will be used to promote sales of property or services.

This rule is intended to implement Iowa Code section 422.45.

701—18.55(422,423) Drop shipment sales. A "drop shipment" generally involves two sales transactions and three parties. The first party is a consumer located inside Iowa. The second party is a retailer located outside the state. The third party is a supplier who may be located inside or outside of Iowa. The two sales transactions in question are the sale of property from the supplier to the out-of-state retailer, and the further sale of that property from the out-of-state retailer to the consumer in Iowa.

A "drop shipment sale" occurs when the consumer places an order for the purchase of tangible personal property with the out-of-state retailer. The retailer does not own the property ordered at the same time the consumer's order is placed. The retailer then purchases the property from the supplier. The supplier in turn ships the property directly to the consumer in Iowa. Under Iowa law the supplier in a drop shipment sale cannot be required to collect tax (either sales or use) from the consumer, even if the requisite "nexus" to require collection exists. See the next to last paragraph of this rule for a characterization of "nexus." The supplier transfers possession of the goods to the consumer; however, transfer of possession alone has never been held to be a "sale" for the purposes of Iowa sales and use tax law. *Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985) and *Cedar Valley Leasing v. Iowa Department of Revenue,* 274 N.W.2d 357 (Iowa 1979).

With reference to drop shipment sales: If delivery of the goods under the contract for sale has occurred outside of Iowa, sale of the goods has occurred outside of Iowa. If delivery of the goods under the contract for sale has occurred within Iowa, the sale has occurred here. See *Sturtz* above for more information regarding sales and delivery. If the sale has occurred in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa sales tax upon the "gross receipts" from its sale of the goods to the consumer. If the sale has occurred outside this state, and the retailer possesses the nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa retailer's use tax upon the purchase price of the goods. If the retailer does not have nexus sufficient to require it to collect either Iowa sales or Iowa use tax, or if the retailer fails to collect either tax, the consumer is obligated to pay a consumer use tax directly to the department upon the purchase price of the goods. These rules are illustrated in the following examples.

EXAMPLE A: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minneapolis retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has nexus with Iowa, and delivery under the contract for sale has occurred in this state. In this case, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE B: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minnesota retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has no nexus with Iowa. Delivery under the contract of sale is in Iowa. Under these circumstances, the consumer is obligated to pay consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE C: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale occurs in Iowa. Under these circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE D: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has nexus with this state; delivery under the contract for sale is in Minnesota. Under the circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa retailer's use tax. The supplier is not obligated to collect or pay any Iowa tax.

EXAMPLE E: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has no nexus with this state. Delivery can occur in either Minnesota or Iowa. In this example, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE F: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale is in Iowa. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE G: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa with delivery in Madison, Wisconsin. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa retailer's use tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE H: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has no nexus with Iowa. Delivery under the contract for sale may be in Iowa or Wisconsin. Under these circumstances, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

As used in these examples, the requirement of "nexus" is discussed in *Good's Furniture House Inc. v. Iowa State Bd. of Tax Review,* 382 N.W.2d 145 (Iowa 1986); cert. den. 479 U.S. 817; *State Tax Commission v. General Trading Co.,* 10 N.W.2d 659, 233 Iowa 877 (1943) affd. 64 S.Ct. 1028, 322 U.S. 335, 88 L.Ed. 1309; and *Nelson v. Sears, Roebuck & Co.,* 292 N.W. 130, 228 Iowa 1273 (1940) reversed 61 S.Ct. 586, 312 U.S. 359, 85 L.Ed. 522, as well as other judicial decisions, and Iowa Code section 422.43(12).

This rule is intended to implement Iowa Code subsections 422.42(2) and 422.42(5).

701—18.56(422,423) Wind energy conversion property. On and after July 1, 1993, the gross receipts from the sale of property used to convert wind energy to electrical energy or the gross receipts from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy shall be exempt from tax.

For the purposes of this rule, "property used to convert wind energy to electrical energy" means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 422.45 as amended by 1993 Iowa Acts, chapter 161.

[Filed 12/12/74]
[Filed 1/9/76, Notice 12/1/75—published 1/26/76, effective 3/1/76]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed effective date change 10/20/77—published 11/2/77, effective 10/20/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed 3/20/79, Notice 1/10/79—published 4/4/79, effective 5/9/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed 3/28/80, Notice 2/20/80—published 4/16/80, effective 5/21/80]
[Filed 5/23/80, Notice 4/16/80—published 6/11/80, effective 7/16/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 8/1/80, Notice 6/25/80—published 8/20/80, effective 9/24/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 3/13/81, Notice 2/4/81—published 4/1/81, effective 5/6/81]
[Filed 6/5/81, Notice 4/29/81—published 6/24/81, effective 7/29/81]
[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]
[Filed emergency 2/9/83—published 3/2/83, effective 3/1/83]
[Filed 4/22/83, Notices 3/2/83, 3/16/83—published 5/11/83, effective 6/15/83]
[Filed emergency 7/29/83—published 8/17/83, effective 7/29/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 11/30/84, Notice 7/18/84—published 12/19/84, effective 1/23/85]
[Filed 12/14/84, Notice 9/26/84—published 1/2/85, effective 2/6/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]
[Filed 10/18/85, Notice 9/11/85—published 11/6/85, effective 12/11/85]
[Filed 12/13/85, Notice 11/6/85—published 1/1/86, effective 2/5/86]
[Filed 1/10/86, Notice 9/11/85—published 1/29/86, effective 3/5/86]
[Filed 3/21/86, Notice 2/12/86—published 4/9/86, effective 5/14/86]
[Filed 3/21/86, Notice 9/11/85—published 4/9/86, effective 5/14/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed 10/31/86, Notice 9/24/86—published 11/19/86, effective 12/24/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 12/29/86, Notice 11/19/86—published 1/14/87, effective 2/18/87]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 10/30/87, Notice 9/23/87—published 11/18/87, effective 12/23/87]
[Filed 12/23/87, Notice 10/7/87—published 1/13/88, effective 2/17/88]
[Filed 1/7/88, Notice 12/2/87—published 1/27/88, effective 3/2/88]
[Filed 2/5/88, Notice 10/21/87—published 2/24/88, effective 3/30/88]
[Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]
[Filed 10/14/88, Notice 9/7/88—published 11/2/88, effective 12/7/88]
[Filed emergency 12/23/88—published 1/11/89, effective 1/2/89]
[Filed 3/3/89, Notice 1/25/89—published 3/22/89, effective 4/26/89]
[Filed 3/31/89, Notice 2/22/89—published 4/19/89, effective 5/24/89]
[Filed 8/16/89, Notice 7/12/89—published 9/6/89, effective 10/11/89]◊

Note: History for Ch 18 continued on next page

[Filed 10/26/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]◊
[Filed 1/5/90, Notice 11/29/89—published 1/24/90, effective 2/28/90]
[Filed 4/26/90, Notice 3/21/90—published 5/16/90, effective 6/20/90]
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
[Filed 9/28/90, Notice 8/22/90—published 10/17/90, effective 11/21/90]
[Filed 7/5/91, Notice 5/29/91—published 7/24/91, effective 8/28/91]
[Filed 10/11/91, Notice 9/4/91—published 10/30/91, effective 12/4/91]
[Filed 3/13/92, Notice 2/5/92—published 4/1/92, effective 5/6/92]
[Filed emergency 3/26/92—published 4/15/92, effective 4/1/92]
[Filed 6/5/92, Notice 4/15/92—published 6/24/92, effective 7/29/92]
[Filed 9/23/92, Notice 8/19/92—published 10/14/92, effective 11/18/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/8/93, Notice 9/1/93—published 10/27/93, effective 12/1/93]
[Filed 12/30/94, Notice 11/23/94—published 1/18/95, effective 2/22/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

◊Two ARCs

goods are taxable or exempt, depending upon whether the predominant service is storage or transportation. *Iowa Movers and Warehousemen's Association* supra.

b. Wrapping, packing and packaging predominantly for storage of merchandise is subject to tax unless the interstate commerce exemption is applicable.

c. Warehouses which sell packing materials to their customers are considered retailers of these materials and should collect sales tax. When the packaging materials are not billed separately to the customer, the warehouse will be subject to the standards set forth in rule 701—18.31(422,423) regarding tangible personal property purchased for use in performing services.

26.42(6) *Transit warehouses.* The department recognizes that the operations of transit warehouses present some administrative difficulties in the collection of sales taxes. Raw agricultural products or household goods are shipped to transit warehouses in bulk quantities and shipped to different locations at different times. Storage of raw agricultural products or household goods delivered in Iowa would be subject to tax, while storage of raw agricultural products or household goods placed into interstate commerce would be exempt from tax. Since it is extremely difficult under these circumstances to determine the cost of storage on raw agricultural products or household goods delivered in Iowa, the department will allow transit warehouses to compute tax on storage fees on the basis of a formula, the numerator of which is the quantity of raw agricultural products or household goods stored in the warehouse with intrastate delivery in Iowa, and the denominator of which is the total quantity of goods stored in the warehouse. This information, in most cases, must be supplied by principals storing goods in the warehouse. However, it is the responsibility of the warehouse to acquire the information needed to compute the Iowa sales tax under the formula. This information should be verified with the principal at least once every 90 days. Included in the numerator of the formula will be raw agricultural products or household goods picked up at an Iowa warehouse by a principal or purchaser, or raw agricultural products or household goods delivered to a principal or purchaser in Iowa even though the principal or purchaser may subsequently deliver the raw agricultural products or household goods to a common carrier for shipment outside Iowa.

26.42(7) *Government storage.* Storage of raw agricultural products or household goods is exempt from tax if the storage contract is with a tax-certifying or tax-levying body of the state of Iowa or to any instrumentality of the state, county, or municipal government, or with the federal government or its instrumentalities. Storage fees relating to raw agricultural products or household goods placed in storage by the producer and later consigned to the federal government under a loan agreement are not exempt from tax. In order for the storage to be exempt from tax, the federal government must actually own the raw agricultural products or household goods during the period the goods are stored and make payment to the warehouse for the storage.

Also refer to *Iowa Movers and Warehousemen's Association v. Briggs,* Equity No. 75910, Polk County District Court, May 8, 1974, and 237 N.W.2d 759.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—26.43(422) Telephone answering service. Persons engaged in the business of providing telephone answering service, whether by person or machine, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.44(422) Test laboratories. Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific or commercial purpose, except for tests on humans, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Included within the meaning of the phrase "test laboratories" are mobile testing laboratories and field testing by test laboratories. Test laboratory services performed on animals on or after July 1, 1991, are also exempt from tax.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—26.45(422) Termite, bug, roach and pest eradicators. Persons engaged in the business of eradicating or preventing the infestation by termites, bugs, roaches and all other living pests are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Persons who eradicate, prevent or control the infestation of any type of pest by means of spraying are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. However, persons who spray cropland used in agricultural production to eradicate or prevent infestation of the cropland by pests are performing a service which is not taxable. See 701—subrule 17.9(3) for a definition of "agricultural production."

701—26.46(422) Tin and sheet metal repair. Persons engaged in the business of repairing tin or sheet metal, whether the same has or has not been formed into a finished product are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.47(422) Turkish baths, massage and reducing salons. Persons engaged in the business of operating turkish baths, reducing salons or in the business of massaging are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Turkish baths" shall mean any type of facility wherein the individual is warmed by steam or dry heat. "Reducing salons" shall mean any type of establishment which offers facilities or a program of activities for the purpose of weight reduction. "Massaging" shall include the kneading, rubbing or manipulating of the body to condition the body, but not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts. Persons engaged in the business of operating health studios which, as a part of their operation, offer any or all of the services of turkish baths, massages or

701—26.80(422,423) Limousine service. On and after April 1, 1992, the gross receipts from the rendering, furnishing, or performing of a limousine service are subject to Iowa sales tax. A limousine service is one which provides a large or luxurious automobile with a driver by prearrangement. A limousine driver does not cruise the streets soliciting or accepting business, so a taxi service is not a limousine service. Charges for a limousine driver, whether billed as a part of or separate from the charges for a limousine, are taxable.

This rule is intended to implement Iowa Code subsection 422.43(11).

[Filed December 12, 1974]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed effective date change 10/20/77—published 11/2/77, effective 10/20/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 8/18/78, Notice 7/12/78—published 9/6/78, effective 10/11/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed 8/1/80, Notice 6/25/80—published 8/20/80, effective 9/24/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 1/16/81, Notice 11/26/80—published 2/4/81, effective 3/11/81]
[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]
[Filed 8/13/82, Notice 7/7/82—published 9/1/82, effective 10/6/82]
[Filed emergency 2/9/83—published 3/2/83, effective 3/1/83]
[Filed 4/22/83, Notices 3/2/83, 3/16/83—published 5/11/83, effective 6/15/83]
[Filed 11/2/84, Notice 9/12/84—published 11/21/84, effective 12/26/84]
[Filed 11/30/84, Notice 7/18/84—published 12/19/84, effective 1/23/85]
[Filed 12/28/84, Notice 7/18/84—published 1/16/85, effective 2/20/85]
[Filed 1/10/85, Notice 10/10/84—published 1/30/85, effective 3/6/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]◊
[Filed 1/10/86, Notice 8/28/85—published 1/29/86, effective 3/5/86]
[Filed 4/18/86, Notice 9/11/85—published 5/7/86, effective 6/11/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 1/23/87, Notice 12/19/86—published 2/11/87, effective 3/18/87]
[Filed 7/24/87, Notice 6/17/87—published 8/12/87, effective 9/16/87]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 12/23/87, Notice 10/7/87—published 1/13/88, effective 2/17/88]
[Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 10/12/90, Notice 9/5/90—published 10/31/90, effective 12/5/90]
[Filed 10/11/91, Notice 9/4/91—published 10/30/91, effective 12/4/91]◊
[Filed emergency 3/26/92—published 4/15/92, effective 4/1/92]
[Filed 6/5/92, Notice 4/15/92—published 6/24/92, effective 7/29/92]
[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

◊ Two ARCs

CHAPTER 27
AUTOMOBILE RENTAL EXCISE TAX

701—27.1(422,422C,423) Definitions and characterizations. For the purposes of this chapter, the following definitions and characterizations of words apply.

"Automobile" means a motor vehicle subject to registration in any state and designed primarily for carrying nine or fewer passengers. Excluded from the meaning of the term "automobile" are delivery trucks designed primarily to carry cargo rather than passengers and motorcycles and motorized bicycles.

"Lessor" is a person engaged in the business of renting automobiles to users. Included within the meaning of the term "lessor" are motor vehicle dealers licensed under Iowa Code chapter 322 to sell new and used automobiles who also rent automobiles to users. A person need not be engaged in a profit-making enterprise to be in the business of renting automobiles.

"Rental" is a transfer of possession or right of possession to an automobile to a user for a valuable consideration for a period of 60 days or less.

"Rental price" means the total amount of consideration valued in money for renting an automobile.

"User" is any person to whom possession or right of possession of an automobile is transferred for a valuable consideration for a period of 60 or fewer days.

701—27.2(422,422C,423) Tax imposed upon rental of automobiles. On and after July 1, 1992, a tax at the rate of 5 percent is imposed on the rental price of any automobile if the rental transaction is taxed under Iowa sales or Iowa use tax law. The tax imposed is in addition to the Iowa state sales or use tax.

See rule 701—26.68(422) for a description of automobile rentals which are subject to Iowa sales tax and rule 701—33.8(423) for a description of automobile rentals which are subject to Iowa use tax. These rules should be used with care since they involve vehicles other than an "automobile" as that word is defined for the purpose of this chapter. For instance, rule 701—26.68(422) is concerned with boats and recreational vehicles as well as automobiles and other vehicles subject to registration. Summarizing the essential content of those rules regarding automobiles:

27.2(1) Sales tax is due on the rental price of the "rental" of an automobile if possession or the right to possession of the automobile is transferred, under a rental contract, in Iowa.

27.2(2) Use tax is due on the rental price if an automobile is rented outside Iowa, used in Iowa under the rental contract, and payment of the rental price is made in Iowa at the termination of the rental agreement.

701—27.3(422,422C,423) Lessor's obligation to collect tax. The lessor shall collect this automobile rental excise tax from the user or from any other person paying the rental price for an automobile. The lessor shall collect the tax by adding the tax to the rental price of the automobile. When collected, the tax shall be stated on any billing or invoice as a distinct item separate and apart from the rental price of the automobile and separate and apart from any state or local option sales or service tax or any state use tax.

701—27.4(422,422C,423) Administration of tax. The excise tax on automobile rental is levied in addition to the state sales and use taxes imposed by Iowa Code chapters 422 and 423. The director of revenue and finance is required to administer this excise tax on motor vehicle rental as nearly as possible in the fashion in which the state sales tax is administered. However, as an exception to this requirement, the director is to require only the filing of quarterly reports for motor vehicle excise tax. Quarterly, the correct amount of tax

CHAPTER 48
COMPOSITE RETURNS

701—48.1(422) Composite returns. For tax years of nonresident partners, shareholders, or beneficiaries which begin on or after January 1, 1987, a partnership, S corporation, or trust may be allowed or be required to file a composite return and pay the tax due on behalf of the nonresident partners, shareholders, or beneficiaries. For tax years beginning on or after January 1, 1995, professional athletic teams may be allowed or required to file a composite return and pay the tax due on behalf of nonresident team members.

This rule is intended to implement Iowa Code section 422.13.

701—48.2(422) Definitions. For the purposes of this chapter:

"Employee" means a nonresident member of a professional athletic team as defined in subrule 40.46(1).

"Partner" includes a member of a limited liability company which is treated as a partnership for tax purposes.

"Taxpayer" means a partnership, S corporation, professional athletic team, or trust which files a return and pays the tax on behalf of the nonresident partners, shareholders, employees, or beneficiaries.

"Tax year" means the tax year of the partners, shareholders, employees, or beneficiaries included in the composite return.

This rule is intended to implement Iowa Code section 422.13.

701—48.3(422) Filing requirements. A composite return may be allowed or required to be filed based upon the following:

1. The composite return must include all nonresident partners, shareholders, employees, or beneficiaries unless the taxpayer can demonstrate which nonresident partners , shareholders, employees, or beneficiaries are filing separate income tax returns because the partner, shareholder, employee or beneficiary has Iowa source income other than that which may be reported on a separate composite return, or has elected to file an Iowa individual income tax return. Nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident has less than the minimum statutory filing amount. For example, for 1993 the minimum income from Iowa sources before a nonresident is required to file an Iowa individual income tax return is $1,000 of income attributed to Iowa sources as determined by applying the allocation and apportionment provisions of 701—Chapter 54 to the nonresident's prorated share of the entity's income. In addition, nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident does not have more income from Iowa sources than the amount of one standard deduction for a single taxpayer plus an amount of income necessary to create a tax liability at the effective tax rate on the composite return sufficient to offset one personal exemption. For example, for 1993 a standard deduction for a single individual is $1,330 and at the maximum tax rate of 9.98 percent, $200 of income is required to offset the $20 personal exemption, while at a 5 percent tax rate $400 income is required. The taxpayer must include a list of all nonresident partners, shareholders, employees, or beneficiaries who are filing separate income tax returns. The list must also include the address and social security number or federal identification number of the nonresident partners, shareholders, employees, or beneficiaries. Requesting permission to file a composite return is an election which may not be withdrawn after the due date of the return (considering any extension of time to file), but the nonresidents may, as an individual or as a group, withdraw their election at any time prior to the due date (considering any extension of time to file).

2. Income of partners, shareholders, employees, or beneficiaries whose state of residence is not known by the taxpayer must be included in the composite return.

3. Income of partners in publicly traded limited partnerships held in street names by brokers must be included in the composite return unless the taxpayer can demonstrate that the partner is an Iowa resident.

4. A taxpayer who has been granted permission to file a composite return shall continue to file composite returns unless the taxpayer notifies the department in writing that the taxpayer wishes to discontinue filing composite returns. The notice shall be filed with the Iowa Department of Revenue and Finance, Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306, before the due date of the return for the tax year for which the change in filing is to be made.

A taxpayer who was required to file a composite return for the immediately preceding taxable year is required to file a composite return unless permission is given to discontinue filing a composite return.

5. Each nonresident partner, shareholder, employee, or beneficiary whose income is included in the composite return must have the same tax year, which must be the tax year of the majority of the nonresident partners, shareholders, employees, or beneficiaries. Those nonresident partners, shareholders, employees, or beneficiaries who are not included in the composite return must file separate individual income tax returns.

This rule is intended to implement Iowa Code section 422.13.

701—48.4(422) When the application for permission to file a composite return must be filed. The application must be filed no later than the due date (not including any extension of time to file) of the return for the tax year for which a composite return is to be filed.

The application letter must include the name, address, and federal employer's identification number of the partnership, S corporation, limited liability company, employer, or trust which will be filing the composite return on behalf of the nonresident partners, shareholders, members, employees, or beneficiaries.

The application is to be filed with the Iowa Department of Revenue and Finance, Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306.

This rule is intended to implement Iowa Code section 422.13.

701—48.5(422) The director may in accordance with rule 701—48.3(422) require the filing of a composite return under the following conditions.

1. The director may require the filing of a composite return if the nonresident partners, shareholders, or beneficiaries do not file individual income tax returns and pay the tax due.

2. Where some of the nonresident partners, shareholders, or beneficiaries file individual income tax returns and pay the tax due, but other nonresident partners, shareholders, or beneficiaries do not file individual returns, the director may require a composite return which includes the Iowa taxable income of those nonresident partners, shareholders, or beneficiaries who did not file individual returns.

This rule is intended to implement Iowa Code section 422.13.

701—48.6(422) Determination of composite Iowa income. Because a composite return is filed on behalf of the nonresident partners, shareholders, employees, or beneficiaries, it must be based upon the tax year of the majority of its partners, shareholders, employees, or beneficiaries. The composite return must be filed on Form IA 1040C, "Composite Iowa Individual Income Tax Return." Attach schedules as necessary to explain the return. For the purposes of this rule, federal income means federal ordinary income (loss) from trade or business activities plus those items of income which flow through separately less expense items which flow through separately to the partners, shareholders, or beneficiaries joining in the filing of a composite return.

1. Adjustments to federal income. For partnerships and trusts, make those adjustments to federal income set forth in Iowa Code section 422.7 except subsections 4 to 8, 12 to 15, 17, and 19 to 21. For S corporations, make those adjustments to federal income set forth in Iowa Code section 422.35.

701—48.9(422) Time and place for filing.

48.9(1) A composite return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the taxpayer's taxable year, or the last day of the period covered by an extension of time granted by the department. When the due date falls on a Saturday, Sunday, or legal holiday, the composite return is due the first business day following the Saturday, Sunday, or legal holdiay. If a return is placed in the mails, properly addressed, postage paid, and postmarked, on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Income Tax Return Processing, Department of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319.

48.9(2) Extension of time for filing composite returns. If the taxpayer has paid at least 90 percent of the tax required to be shown due by the due date and has not filed a return by the due date, the director will consider that the taxpayer has requested an extension of time to file the return and will automatically grant an extension of up to six months to file the return. The taxpayer does not have to file an application for extension form with the department to get the automatic extension to file the return within the six-month period after the due date and not be subject to penalty. However, if the taxpayer wants to make a tax payment to ensure that at least 90 percent of the tax has been paid on or before the due date, the payment should be made with the Iowa Tax Voucher form. This form can be requested from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.

To determine whether or not at least 90 percent of the tax was "paid" on or before the due date, the aggregate amount of tax credits applicable on the return, plus the tax payments made on or before the due date, are divided by the tax required to be shown due on the return. The tax required to be shown on the return is the sum of the income tax and minimum tax. The tax credits applicable are the credits set out in Iowa Code sections 422.10, 422.11A, 422.11B, 422.11C, 422.12, and 422.111.

If the aggregate of the tax credits and the tax payments are equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the "90 percent" test and no penalty will be assessed. However, the taxpayer will still be subject to statutory interest on any tax due when the return is filed.

Any tax elections, such as the election to carry forward a net operating loss occurring in the tax year, will be considered to be valid in instances when the return is filed within the six-month extended period after the due date. The fact that the taxpayer has paid less than 90 percent of the tax required to be shown due will not invalidate any tax elections made on the return, if the return is filed within the six-month extended period.

48.9(3) Rescinded IAB 2/1/95, effective 3/8/95.

This rule is intended to implement Iowa Code section 422.13.

[Filed 4/28/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]
[Filed 11/9/89, Notice 10/4/89—published 11/29/89, effective 1/3/90]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 12/20/91, Notice 11/13/91—published 1/8/92, effective 2/12/92]
[Filed 7/31/92, Notice 6/24/92—published 8/19/92, effective 9/23/92]
[Filed 8/27/93, Notice 7/21/93—published 9/15/93, effective 10/20/93]
[Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
[Filed 7/14/95, Notice 6/7/95—published 8/2/95, effective 9/6/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

52.1(4) *Taxation of "S" corporations, domestic international sales corporations and real estate investment trusts.* Certain corporations and other types of entities, which are taxable as corporations for federal purposes, may by federal election and qualification have a portion or all of their income taxable to the shareholders or the beneficiaries. Generally, the state of Iowa follows the federal provisions (with adjustments provided by Iowa law) for determining the amount and to whom the income is taxable. Examples of entities which may avail themselves of pass-through provisions for taxation of at least part of their net income are real estate investment trusts, small business corporations electing to file under Sections 1371-1378 of the Internal Revenue Code, domestic international sales corporations as authorized under Sections 991-997 of the Internal Revenue Code, and certain types of cooperatives and regulated investment companies. The entity's portion of the net income which is taxable as corporation net income for federal purposes is generally also taxable as Iowa corporation income (with adjustments as provided by Iowa law) and the shareholders or beneficiaries will report on their Iowa returns their share of the organization's income reportable for federal purposes as shareholder income (with adjustments provided by Iowa law). Nonresident shareholders or beneficiaries are required to report their distributive share of said income reasonably attributable to Iowa sources. Schedules shall be filed with the individual's return showing the computation of the income attributable to Iowa sources and the computation of the nonresident taxpayer's distributive share thereof. Entities with a nonresident beneficiary or shareholder shall include a schedule in the return computing the amount of income as determined under 701—Chapter 54. It will be the responsibility of the entity to make the apportionment of the income and supply the nonresident taxpayer with information regarding the nonresident taxpayer's Iowa taxable income.

For tax years beginning on or after January 1, 1995, S corporations which are subject to tax on built-in gains under Section 1374 of the Internal Revenue Code or passive investment income under Section 1375 of the Internal Revenue Code are subject to Iowa corporation income tax on this income to the extent received from business carried on in this state or from sources in this state.

a. The starting point for computing the Iowa tax on built-in gains is the amount of built-in gains subject to federal tax after considering the federal income limitation.

b. From the above amount, subtract 50 percent of the federal built-in gains tax and add any Iowa corporation income tax deducted in computing the federal net income of the S corporation.

c. The allocation and apportionment rules of 701—Chapter 54 apply if the S corporation is carrying on business within and without the state of Iowa.

d. Any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to any of the 15 subsequent taxable years, after the year of the net operating loss, the amount of the net recognized built-in gain shall be treated as taxable income.

e. Except for estimated and other advance tax payments and any credit carryforward under Iowa Code section 422.33 arising in a taxable year for which the corporation was a C corporation no credits shall be allowed against the built-in gains tax.

52.1(5) *Exempted corporations and organizations filing requirements.*

a. Exempt status. An organization that is exempt from federal income tax under Section 501 of the Internal Revenue Code, unless the exemption is denied under Section 501, 502, 503 or 504 of the Internal Revenue Code, is exempt from Iowa corporation income tax except as set forth in paragraph *"e"* of this subrule. The department may, if a question arises regarding the exempt status of an organization, request a copy of the federal determination letter.

b. Information returns. Every corporation shall file returns of information as provided by Iowa Code sections 422.15 and 422.16 and any regulations regarding information returns.

c. Annual return. An organization or association which is exempt from Iowa corporation income tax because it is exempt from federal income tax is not required to file an annual income tax return unless it is subject to the tax on unrelated business income. The organization shall inform the director in writing of any revocation of or change of exempt status by the Internal Revenue Service within 30 days after the federal determination.

d. Tax on unrelated business income for tax years beginning prior to January 1, 1988. Where a corporation or organization is subject to the federal income tax imposed by Section 511 of the Internal Revenue Code on unrelated business income, such corporation or organization is not subject to Iowa corporation income tax on the unrelated business income. Opinion of the Attorney General, Griger to Craft, February 13, 1978.

e. Tax on unrelated business income for tax years beginning on or after January 1, 1988. A tax is imposed on the unrelated business income of corporations, associations, and organizations exempt from the general business tax on corporations by Iowa Code section 422.34, subsections 2 through 6, to the extent this income is subject to tax under the Internal Revenue Code. The exempt organization is also subject to the alternative minimum tax imposed by Iowa Code section 422.33(4).

The exempt corporation, association, or organization must file Form IA 1120, Iowa Corporation Income Tax Return, to report its income and complete Form IA 4626 if subject to the alternative minimum tax. The exempt organization must make estimated tax payments if its expected income tax liability for the year is $1,000 or more.

The tax return is due the last day of the fourth month following the last day of the tax year and may be extended for six months by filing Form IA 7004 prior to the due date. For tax years beginning on or after January 1, 1991, the tax return is due on the fifteenth day of the fifth month following close of the tax year and may be extended six months by filing Form IA 7004 prior to the due date.

The starting point for computing Iowa taxable income is federal taxable income as properly computed before deduction for net operating losses. Federal taxable income shall be adjusted as required in Iowa Code section 422.35.

If the activities which generate the unrelated business income are carried on partly within and partly without the state, then the taxpayer should determine the portion of unrelated business income attributable to Iowa by the apportionment and allocation provisions of Iowa Code section 422.33.

The provisions of 701—Chapters 51, 52, 53, 54, 55 and 56 apply to the unrelated business income of organizations exempt from the general business tax on corporations.

52.1(6) *Income tax of corporations in liquidation.* When a corporation is in the process of liquidation, or in the hands of a receiver, the income tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such corporations, and must be filed at the same time and in the same manner as required of other corporations.

52.1(7) *Income tax returns for corporations dissolved.* Corporations which have been dissolved during the income year must file income tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a corporation dissolves and disposes of its assets without making provision for the payment of its accrued Iowa income tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

This rule is intended to implement Iowa Code sections 422.21, 422.32, 422.33, 422.34, 422.35 and 422.36.

701—52.2(422) Time and place for filing return.

52.2(1) *Returns of corporations.* A return of income for all corporations must be filed on or before the due date. The due date for all corporations excepting cooperative associations as defined in Section 6072(d) of the Internal Revenue Code is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the last day of the period covered by an extension of time granted by the director. When the due date falls on a Saturday, Sunday or a legal holiday, the return will be due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Corporate Income Tax Processing, Hoover State Office Building, Des Moines, Iowa 50319.

52.2(2) *Returns of cooperatives.* A return of income for cooperatives, defined in Section 6072(d) of the Internal Revenue Code, must be filed on or before the fifteenth day of the ninth month following the close of the taxpayer's taxable year.

52.2(3) *Short period returns.* Where under a provision of the Internal Revenue Code, a corporation is required to file a tax return for a period of less than 12 months, a short period Iowa return must be filed for the same period. The short period Iowa return is due 45 days after the federal due date, not considering any federal extension of time to file.

52.2(4) *Extension of time for filing returns for tax years beginning on or after January 1, 1991.* See 701—subrule 39.2(4).

This rule is intended to implement Iowa Code sections 422.21 and 422.24.

701—52.3(422) Form for filing.

52.3(1) *Use and completeness of prescribed forms.* Returns shall be made by corporations on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare the taxpayer's return so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing the taxpayer's gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making any return required by the statute.

Returns received which are not completed, but merely state "see schedule attached" are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return being filed after the due date.

52.3(2) *Form for filing—domestic corporations.* A domestic corporation, as defined by Iowa Code subsection 422.32(2), is required to file a complete Iowa return for each year of its existence regardless of whether the corporation has income, loss, or inactivity. However, the corporation may substitute a copy of the true and accurate federal income tax return as filed with the Internal Revenue Service in lieu of certain Iowa return schedules. This substitution is optional, but in all instances a detailed computation of the federal tax liability actually due the federal government shall be required as a part of the Iowa return. The Iowa schedules subject to the substitution provision are: income statement, balance sheet, reconciliation of income per books with income per return and analysis of unappropriated retained earnings per books.

When a domestic corporation is included in the filing of a consolidated federal income tax return, the Iowa corporation income tax return shall include a schedule of the consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group, and a schedule of capital gains on a separate basis.

52.11(10) *For refund claims received by the department after June 11, 1984.* If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

52.11(11) *Overpayment—interest accruing before July 1, 1980.* If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred prior to April 30, 1980, interest shall accrue from 60 days after the date of payment, at the statutory rate, to the date refunded.

52.11(12) *Interest commencing on or after January 1, 1982.* See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

52.11(13) *Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred on or after April 30, 1980, and before April 30, 1981, interest shall accrue from 30 days after the date of payment or due date of the return, whichever is the later, at the statutory rate, to the date refunded. Date of payment means the date the return is filed.

52.11(14) *Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code section 422.33 shall be deducted in the following sequence.

1. Seed capital credit.
2. New jobs credit.
3. Investment tax credit.
4. Research activities credit under Iowa Code section 15.335.
5. Alternative minimum tax credit.
6. Research activities credit.
7. Motor fuel credit.
8. Estimated tax and payments with extensions.

This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110.

[Filed 12/12/74]
[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 6/22/78]
[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
[Filed emergency 6/6/80—published 6/25/80, effective 6/6/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]
[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]
[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]
[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]
[Filed 2/10/84, Notice 1/4/84—published 2/29/84, effective 4/5/84] ◊
[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]
[Filed 2/22/85, Notice 1/16/85—published 3/13/85, effective 4/17/85]
[Filed 3/8/85, Notice 1/30/85—published 3/27/85, effective 5/1/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]◊
[Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 1/22/86]
[Filed 6/27/86, Notice 5/7/86—published 7/16/86, effective 8/20/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]◊
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 2/5/88, Notice 12/30/87—published 2/24/88, effective 3/30/88]
[Filed 4/13/88, Notice 3/9/88—published 5/4/88, effective 6/8/88]
[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]◊
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]
[Filed 8/2/90, Notice 6/27/90—published 8/22/90, effective 9/26/90]
[Filed 9/13/90, Notice 8/8/90—published 10/3/90, effective 11/7/90]◊
[Filed 11/9/90, Notice 10/3/90—published 11/28/90, effective 1/2/91]
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 1/17/91, Notice 12/12/90—published 2/6/91, effective 3/13/91]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 11/19/93, Notice 10/13/93—published 12/8/93, effective 1/12/94]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

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58.4(2) *Full estimated payment prior to original delinquency date.* Rescinded IAB 3/15/95, effective 4/19/95.

58.4(3) *Penalty and interest on unpaid tax.* In computing penalty and interest on unpaid tax, refer to rule 701—10.66(422).

58.4(4) *Payment of tax by uncertified checks.* The department will accept uncertified checks in payment of franchise taxes, provided such checks are collectible for their full amount without any deduction for exchange or other charges. The date on which the department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two (2) or more financial institutions' taxes, the remittance must be accompanied by a letter of transmittal stating:

a. The name of the drawer of the check;

b. The amount of the check;

c. The amount of any cash, money order or other instrument included in the same remittance;

d. The name of each financial institution whose tax is to be paid by the remittance; and

e. The amount of payment on account of each financial institution.

58.4(5) *Procedure with respect to dishonored checks.* If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make the check good, the director will proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from the taxpayer's obligation until the check has been paid.

This rule is intended to implement Iowa Code chapter 422.

701—58.5(422) Minimum tax.

58.5(1) Effective for tax years beginning on or after January 1, 1982, but before January 1, 1987, an Iowa minimum tax is imposed in addition to the tax computed under Iowa Code section 422.60. The Iowa minimum tax on tax preference items is a percentage of the federal minimum tax on tax preference items. "Federal minimum tax" means the federal minimum tax for tax preferences computed under Sections 56 through 58 of the Internal Revenue Code for the tax year.

When a financial institution joins with at least one other corporation in the filing of a consolidated federal income tax return, and files a separate Iowa franchise tax return, the consolidated federal minimum tax shall be allocated to the separate entities included in the consolidated federal return. The allocation of the consolidated federal minimum tax shall be determined as follows: The consolidated federal minimum tax is multiplied by a fraction, the numerator of which is the sum of the taxpayer's federal tax preference items and the denominator of which is the total of the federal tax preference items of each entity included in the consolidated federal income tax return.

For tax years beginning on or after January 1, 1982, and prior to January 1, 1983, the Iowa minimum tax is 25 percent of the state's apportioned share of the federal minimum tax on tax preference items.

For tax years beginning on or after January 1, 1983, the Iowa minimum tax is 70 percent of the state's apportioned share of the federal minimum tax on tax preference items.

58.5(2) For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code section 422.63. The minimum tax rate is 60 percent of the maximum franchise tax rate rounded to the nearest one-tenth of one percent or three percent. Minimum taxable income is computed as follows:

	State taxable income as adjusted by Iowa Code sections 422.35 and 422.61(4)
Plus:	Tax preference items, adjustments and losses added back
Less:	Allocable income including allocable preference items
	Subtotal
Times:	Apportionment percentage
	Result
Plus:	Income allocable to Iowa including allocable preference items
Less:	Iowa alternative tax net operating loss deduction
	$40,000 exemption amount
Equals:	Iowa alternative minimum taxable income

For taxable years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under Section 57 except for subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by Section 56 except for subsections (a)(4), (c)(1), (d), (f), and (g) of the Internal Revenue Code used to compute federal alternative minimum taxable income computed without adjustments, the $40,000 exemption and the state alternative tax net operating loss deduction shall be substituted for the amounts in Sections 56(f)(1)(B) and 56(g)(1)(B) of the Internal Revenue Code. For tax years beginning on or after January 1, 1988, in making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code shall be subtracted net of amortization of any discount or premium. Losses to be added are those losses required to be added by Section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

a. Tax preference items are:

1. Intangible drilling costs;
2. Incentive stock options;
3. Reserves for losses on bad debts of financial institutions;
4. Appreciated property charitable deductions;
5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.

b. Adjustments are:

1. Depreciation;
2. Mining exploration and development;
3. Long-term contracts;
4. Iowa alternative minimum net operating loss deduction;
5. Book income or adjusted earnings and profits.

c. Losses added back are:

1. Farm losses;
2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—59.2(422) carried forward from tax years beginning before January 1, 1987, are deductible without adjustment.

Net operating losses from tax years beginning after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying allocation and apportionment. The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

701—58.6(422) Refunds and overpayments.

58.6(1) to **58.6(6)** Reserved.

58.6(7) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending after July 1, 1980.* If the amount of tax for any year is reduced as a result of a net operating loss or net capital loss carryback from another year, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or 30 days after payment of the tax, whichever is later. If the net operating loss or net capital loss carryback to a prior year eliminates or reduces an outstanding assessment or underpayment of tax for the prior year, the full amount of the outstanding assessment or underpayment shall bear interest at the statutory rate from the original due date of the tax for the prior year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

58.6(8) *Computation of interest on refunds resulting from net operating losses for tax years ending on or after April 30, 1981.* If the amount of tax is reduced as a result of a net operating loss or a net capital loss carryback, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss occurred or the first day of the second calendar month following the actual payment date, whichever is later.

58.6(9) *For refund claims received by the department after June 11, 1984.* If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

58.6(10) *Overpayment—interest accruing before July 1, 1980.* If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred prior to April 30, 1980, interest shall accrue from 60 days after the date of payment at the statutory rate, to the date refunded.

58.6(11) *Interest commencing on or after January 1, 1982.* See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

58.6(12) *Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred on or after April 30, 1980, and before April 30, 1981, interest shall accrue from 30 days after the date of payment or due date of the return, whichever is later, at the statutory rate, to the date refunded. "Date of payment" means the date the return is filed.

58.6(13) *Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

58.6(14) Renumbered as 701—subrule 10.66(5), IAB 1/23/91.

701—58.7(422) Allocation of franchise tax revenues. Each quarterly distribution shall be made up of the tax shown due on the franchise tax returns received during that quarter, net of all refunds of franchise tax established during that quarter. In determining the portion of franchise tax revenues to be distributed to cities and counties, each financial institution, as defined by Iowa Code section 422.61, is required to submit the appropriate allocation data with the filing of its Iowa franchise tax return. Each financial institution shall accumulate or maintain data to properly determine the business activity ratios as prescribed in subrule 58.7(1) and 58.7(2). The allocation shall be made on the basis of business activity for each office location. The word "office" shall mean a branch office, a drive-in bank depository or any other establishment whereby the business pertaining to the financial institution is carried on.

58.7(1) *"Business activity determination for a production credit association.* A production credit association shall measure its business activity on the basis of loan volume. "Loan volume" shall mean total loans originated during the taxable period. The business activity for each office location shall be that percentage of loans originated by each office to total loans originated for all office locations during the taxable period.

58.7(2) *Business activity determination for a financial institution other than a production credit association.* A financial institution, other than a production credit association, shall measure its business activity on a basis of net deposits. The business activity of each office shall be that percentage of average "savings and demand deposits net of withdrawals" for each office location to the total average "savings and demand deposits net of withdrawals" for all office locations.

This rule is intended to implement Iowa Code section 422.61.

[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 6/22/78]
[Filed emergency 3/2/79—published 3/21/79, effective 3/2/79]
[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
[Filed emergency 6/6/80—published 6/25/80, effective 6/6/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]
[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]
[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]
[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]
[Filed 2/10/84, Notice 1/4/84—published 2/29/84, effective 4/5/84]◊
[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]
[Filed 2/22/85, Notice 1/16/85—published 3/13/85, effective 4/17/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 1/22/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]◊
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]
[Filed 8/2/90, Notice 6/27/90—published 8/22/90, effective 9/26/90]
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 11/19/93, Notice 10/13/93—published 12/8/93, effective 1/12/94]
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

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b. Gains or losses from the sale, exchange, or other disposition of tangible personal property are allocable to this state if:

(1) The property has a situs in this state at the time of sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

c. Gains or losses from the sale, exchange, or other disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

This rule is intended to implement Iowa Code section 422.63.

701—59.28(422) Apportionment factor. In determining the total net taxable income, the apportionable income attributable to this state, as determined by use of the apportionment fraction, shall be added to the nonapportionable income allocable to this state.

59.28(1) Receipts derived from transactions and activities in the regular course of trade or business which produce business income are included in the denominator of the apportionment factor. Income which is not subject to the Iowa franchise tax shall not be included in the computation of the apportionment factor.

59.28(2) The numerator of the apportionment factor is that portion of the total receipts included in the denominator of the taxpayer attributable to this state during the income year determined as follows:

a. Receipts from the lease, rental, or other use of real property shall be included in the numerator if the real property is located in Iowa.

b. Receipts from the sale of tangible personal property shall be included in the numerator if the property is delivered or shipped to a purchaser in this state regardless of the f.o.b. point or other conditions of the sales.

c. Receipts from the use of tangible personal property shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

d. All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

e. Interest and other receipts from assets in the nature of loans (including federal funds sold and banker's acceptances) and installment obligations shall be attributed to the state where the borrower is located.

f. Interest income from a participating bank's portion of participation loan shall be attributed to the state where the borrower is located.

g. Interest income from loans solicited by traveling loan officers shall be attributed to the state where the borrower is located.

h. Interest or service charges from bank, travel, and entertainment credit card receivables and credit card holders' fees shall be attributed to the state in which the credit card holder resides in the case of an individual or, if a corporation, to the state of the corporation's commercial domicile.

i. Merchant discount income derived from bank and financial corporation credit card holder transactions with a merchant shall be attributed to the state in which the merchant is located. It shall be presumed that the location of the merchant is the address on the invoice submitted by the merchant to the taxpayer.

j. Receipts for the performance of fiduciary services are attributable to the state where the services are principally performed.

k. Receipts from investments of a bank in securities, the income from which constitutes business income, shall be attributed to its commercial domicile except that:

(1) Receipts from securities used to maintain reserves against deposits to meet federal and state reserve deposit requirements shall be attributed to each state based upon the ratio that total deposits in the state bear to total deposits everywhere.

(2) Receipts from securities owned by a bank but held by a state treasurer or other public official or pledged to secure public or trust funds deposited in the bank shall be attributed to the banking office at which the secured deposit is maintained.

l. Receipts (fees or charges) from the issuance of traveler's checks and money orders shall be attributed to the state where the taxpayer's office is located that issued the traveler's checks. If the traveler's checks are issued by an independent representative or agent of the taxpayer, the fees or charges shall be attributed to the state where the independent representative or agent issued the traveler's checks.

m. Fees, commissions, or other compensation for financial services rendered within this state.

n. Any other gross receipts resulting from the operation as a financial organization within the state to the extent the items do not represent a recapture of an expense.

This rule is intended to implement Iowa Code section 422.63.

701—59.29(422) Allocation and apportionment of income in special cases. If a taxpayer feels that the allocation and apportionment method as prescribed by rule 701—59.28(422) in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by rule 701—59.28(422) and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing the alternative method shall be submitted to the department. The department shall require detail and proof within the time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. The petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair,* 437 U.S. 267, 57 L.Ed.2d 197 (1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair,* supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair,* supra.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of*

Revenue, 414 N.W.2d 113 (Iowa 1987).

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule, "statutory method of apportionment" means the apportionment factor set forth in rule 701—59.28(422).

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the audit and compliance division if the request is the result of an audit or by the policy section of the technical services division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting the department's determination and the reasons therefor in accordance with rule 701—7.8(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory, or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing the taxpayer's return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.63.

Rules 701—59.25(422) to 701—59.29(422) are effective for tax years beginning on or after June 1, 1989.

[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 6/22/78]
[Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]
[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]
[Filed emergency 1/19/83—published 2/16/83, effective 1/19/83]
[Filed emergency 6/3/83—published 6/22/83, effective 6/3/83]
[Filed 3/23/84, Notice 2/15/84—published 4/11/84, effective 5/16/84]
[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 2/5/88, Notice 12/30/87—published 2/24/88, effective 3/30/88]
[Filed 6/8/89, Notice 5/3/89—published 6/28/89, effective 8/2/89]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]◊
[Filed 9/13/90, Notice 8/8/90—published 10/3/90, effective 11/7/90]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]
[Filed 7/2/92, Notice 5/27/92—published 7/22/92, effective 8/26/92]
[Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]
[Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

◊ Two ARCs

This rule is intended to implement Iowa Code sections 452A.34 and 452A.68.

[Filed 10/12/79, Notice 8/22/79—published 10/31/79, effective 12/5/79]
[Filed emergency 11/9/79—published 11/28/79, effective 11/9/79]
[Filed 2/1/80, Notice 12/26/79—published 2/20/80, effective 3/26/80]
[Filed 11/21/80, Notice 10/15/80—published 12/10/80, effective 1/14/81]
[Filed 12/4/81, Notice 10/28/81—published 12/23/81, effective 1/27/82]
[Filed 8/13/82, Notice 7/7/82—published 9/1/82, effective 10/6/82]
[Filed 11/2/84, Notice 9/26/84—published 11/21/84, effective 12/26/84]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/18/85, Notice 9/11/85—published 11/6/85, effective 12/11/85]
[Filed 5/30/86, Notice 4/23/86—published 6/18/86, effective 7/23/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 9/28/90, Notice 8/22/90—published 10/17/90, effective 11/21/90]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]

CHAPTERS 66 to 70
Reserved

TITLE IX
PROPERTY

CHAPTER 71
ASSESSMENT PRACTICES AND EQUALIZATION
[Prior to 12/17/86, Revenue Department[730]]

701—71.1(428,441) Classification of real estate.

71.1(1) *Responsibility of assessors.* All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. The classification shall be utilized on the abstract of assessment submitted to the department of revenue pursuant to Iowa Code section 441.45. See rule 71.8(428,441).

71.1(2) *Responsibility of boards of review, county auditors, and county treasurers.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall classify property as provided in this rule and adhere to the requirements of this rule.

71.1(3) *Agricultural real estate.* Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.

Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.

71.1(4) *Residential real estate.* Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, condominiums, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate.

71.1(5) *Commercial real estate.* Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services or merchandise are stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, structures consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1)*"j,"* except data processing equipment used in the manufacturing process. However, regardless of the number of sepa-

rate living quarters or any commercial use of the property, single- and two-family dwellings, condominiums, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate.

71.1(6) *Industrial real estate.*

a. Land and buildings.

(1) Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meats, or the combination of different materials with the intent of selling the product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.

(2) Whether property is used primarily as a manufacturing establishment and, therefore, assessed as industrial real estate depends upon the extent to which the property is used for the activities enumerated in subparagraph 71.1(6)*"a"*(1). Property in which the performance of these activities is only incidental to the property's primary use for another purpose is not a manufacturing establishment. For example, a grocery store in which bakery goods are prepared would be assessed as commercial real estate since the primary use of the grocery store premises is for the sale of goods not manufactured by the grocery and the industrial activity, i.e., baking, is only incidental to the store premises' primary use. However, property which is used primarily as a bakery would be assessed as industrial real estate even if baked goods are sold at retail on the premises since the bakery premises' primary use would be for an industrial activity to which the retail sale of baked goods is merely incidental. See *Lichty v. Board of Review of Waterloo,* 230 Iowa 750, 298 N.W. 654 (1941).

Similarly, a facility which has as its primary use the mixing and blending of products to manufacture feed would be assessed as industrial real estate even though a portion of the facility is used solely for the storage of grain, if the use for storage is merely incidental to the property's primary use as a manufacturing establishment. Conversely, a facility used primarily for the storage of grain would be assessed as commercial real estate even though a part of the facility is used to manufacture feed. In the latter situation, the industrial use of the property — the manufacture of feed — is merely incidental to the property's primary use for commercial purposes — the storage of grain.

(3) Property used primarily for the extraction of rock or mineral substances from the earth is not a manufacturing establishment if the only processing performed on the substance is to change its size by crushing or pulverizing. See *River Products Company v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982).

b. Machinery.

(1) Machinery includes equipment and devices, both automated and nonautomated, which is used in manufacturing as defined in Iowa Code section 428.20. See *Deere Manufacturing Co. v. Beiner,* 247 Iowa 1264, 78 N.W.2d 527 (1956).

(2) Machinery owned or used by a manufacturer but not used within the manufacturing establishment is not assessed as industrial real estate. For example, "X" operates a factory which manufactures building materials for sale. In addition, "X" uses some of these building materials in construction contracts. The machinery which "X" would primarily use at the construction site would not be used in a manufacturing establishment and, therefore, would not be assessed as industrial real estate.

(3) Machinery used in manufacturing but not used in or by a manufacturing establishment

is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963).

(4) Where the primary function of a manufacturing establishment is to manufacture personal property that is consumed by the manufacturer rather than sold, the machinery used in the manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963).

71.1(7) *Point-of-sale equipment.* As used in Iowa Code section 427A.1(1)*"j,"* the term "point-of-sale equipment" means input, output, and processing equipment used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and which is located at the counter, desk, or other specific point at which the transaction occurs. As used in this subrule, the term "sale" means the sale or rental of goods or services and includes both retail and wholesale transactions. Point-of-sale equipment does not include equipment used primarily for depositing or withdrawing funds from financial institution accounts.

This rule is intended to implement Iowa Code sections 427A.1, 428.4, 441.21 as amended by 1995 Iowa Acts, House File 559, and 441.22.

701—71.2(421,428,441) Assessment and valuation of real estate.

71.2(1) *Responsibility of assessor.* The valuation of real estate as established by city and county assessors shall be the actual value of the real estate as of January 1 of the year in which the assessment is made. New parcels of real estate created by the division of existing parcels of real estate shall be assessed separately as of January 1 of the year following the division of the existing parcel of real estate.

71.2(2) *Responsibility of other assessing officials.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall follow the provisions of subrule 71.2(1) and rules 71.3(421,428,441) to 71.7(421,427A,428,441).

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.3(421,428,441) Valuation of agricultural real estate. Agricultural real estate shall be assessed at its actual value as defined in Iowa Code section 441.21 by giving exclusive consideration to its productivity and net earning capacity. In determining the actual value of agricultural real estate, city and county assessors shall use the "Iowa Real Property Appraisal Manual" and any other guidelines issued by the department of revenue pursuant to Iowa Code section 421.17(18).

In determining the productivity and net earning capacity of agricultural real estate the assessor shall also use available data from Iowa State University, the Iowa crop and livestock reporting service, the department of revenue and finance, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed.

The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and spread such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.4(421,428,441) Valuation of residential real estate. Residential real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of residential real estate, city and county assessors shall use the appraisal manual issued by the department of revenue and finance pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.5(421,428,441) Valuation of commercial real estate. Commercial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21. The director of revenue and finance shall assess the property of long distance telephone companies as defined in Iowa Code section 476.1D(10) which property is first assessed for taxation on or after January 1, 1996, in the same manner as commercial real estate.

In determining the actual value of commercial real estate, city and county assessors shall use the appraisal manual issued by the department of revenue and finance pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4, 441.21 and Iowa Code section 476.1D(10) as amended by 1995 Iowa Acts, House File 518.

701—71.6(421,428,441) Valuation of industrial land and buildings. Industrial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of industrial land and buildings, city and county assessors shall use the appraisal manual issued by the department of revenue and finance pursuant to Iowa Code section 421.17(18), and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

Vacant building
Current year sale
Partial assessment
Prior equalization appraisal
Tax-exempt
Only one portion of a total property unit (example—a parking lot of a grocery store)
Value established by court action

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 2 is ineligible, use code number 3 as a substitute. If code number 3 is ineligible, use code number 4, etc., until an eligible property is found.

If the procedure described in 71.12(3)*"c"*(3)"3" moves the substitute property to a city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph moves the substitute property to a preceding city or township, go back to the procedure of 71.12(3)*"c"*(3)"3" even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(3)*"c"*(3)"2". Alternate properties are selected by using the same procedure described in 71.12(3)*"c"*(3)"3".

5. Follow procedures 71.12(3)*"c"*(3), items "1" to "4," for each of the other originally selected sequence numbers.

71.12(4) *Industrial real estate.* It is not possible to determine the level of assessment of industrial real estate by using accepted equalization methods. The lack of sales data precludes the use of an assessment/sales ratio study, the diverse nature of industrial real estate precludes the use of a county-wide or city-wide income capitalization study, and the limited number of industrial properties precludes the use of sample appraisals. The level of assessment of industrial real estate can only be determined by the valuation of individual parcels of industrial real estate. Any attempt to equalize industrial valuations by using accepted equalization methods would create an arbitrary result. However, under the circumstances set forth in Iowa Code section 421.17(10) the director may correct any errors in such assessments which are brought to the director's attention.

71.12(5) *Personal property.* Rescinded IAB 10/25/95, effective 11/29/95.

71.12(6) *Centrally assessed property.* Property assessed by the director of revenue and finance pursuant to Iowa Code chapters 428 and 433 to 438, inclusive, is equalized internally by the director in the making of the assessments. Further, the assessments are equalized with the aggregate valuations of other classes of property as a result of actions taken by the director of revenue and finance pursuant to rule 71.11(441).

71.12(7) *Miscellaneous real estate.* Since it is not possible to use accepted equalization methods to determine the level of assessment of mineral rights and interstate railroad and toll bridges, these classes of property shall not be subject to equalization by the director of revenue and finance. However, under the circumstances set forth in Iowa Code section 421.17(10) the director may correct any errors in assessments which are brought to the director's attention.

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.

701—71.13(441) Tentative equalization notices. Prior to the issuance of the final equalization order to each county auditor, a tentative equalization notice providing for proposed per-

centage adjustments to the aggregate valuations of classes of property as set forth in rule 701—17.12(441) shall be mailed to the county auditor whose valuations are proposed to be adjusted. The tentative equalization notice constitutes the ten days' notice required by Iowa Code section 441.48.

This rule is intended to implement Iowa Code sections 441.47 and 441.48.

701—71.14(441) Hearings before the director.

71.14(1) *Protests.* Written or oral protest against the proposed percentage adjustments as set forth in the tentative equalization notice issued by the director of revenue and finance shall be made only on behalf of the affected assessing jurisdiction. The protests shall be made only by officials of the assessing jurisdiction, including, but not limited to, an assessing jurisdiction's city council or board of supervisors, assessor, or city or county attorney. An assessing jurisdiction may submit a written protest in lieu of making an oral presentation before the director, or may submit an oral protest supported by written documentation. Protests against the adjustments in valuation contained in the tentative equalization notices shall be limited to a statement of the error or errors complained of and shall include such facts as might lead to their correction. No other factors shall be considered by the director in reviewing the protests. Protests and hearings on tentative equalization notices before the director are excluded from the provisions of the Iowa Administrative Procedure Act governing contested case proceedings.

71.14(2) *Conduct of hearing.* The director shall schedule each hearing so as to allow the same amount of time within which each assessing jurisdiction can make its presentation. During the hearing each assessing jurisdiction shall be afforded the opportunity to present evidence relevant to its protest. The director or the director's designated representative shall preside at the hearing which shall be held at the time and place designated by the director or such other time and place as may be mutually agreed upon by the director and the protesting assessing jurisdiction.

This rule is intended to implement Iowa Code section 441.48.

701—71.15(441) Final equalization order. After the tentative equalization notice has been issued and an opportunity for a hearing described in rule 71.14(441) has been afforded, the director shall issue a final equalization order by mail to the county auditor. The order shall specify any percentage adjustments in the aggregate valuations of any class of property to be made effective for the county as of January 1 of the year in which the order is issued. The final equalization order shall be issued on or before October 1 unless for good cause it cannot be issued until after October 1. The final equalization order shall be implemented by the county auditor.

An assessing jurisdiction may appeal a final equalization order to the state board of tax review. The protest must be filed or postmarked not later than ten days after the date the final equalization order is issued.

This rule is intended to implement Iowa Code sections 441.48 and 441.49.

701—71.16(441) Alternative method of implementing equalization orders.

71.16(1) *Application for permission to use an alternative method.* A request by an assessing jurisdiction for permission to use an alternative method of applying the final equalization order must be made in writing to the director of revenue and finance within ten days from the date the county auditor receives the final equalization order. The written request shall include the following information:

a. Facts evidencing the need to use an alternative method of implementing the final equalization order. Such facts shall clearly show that the proposed method is essential to ensure compliance with the provisions of Iowa Code section 441.21.

b. The exact methods to be employed in implementing the requested alternative method for each class of property.

c. The specific method of notifying affected property owners of the valuation changes.

d. Evidence that the alternative method will result in an aggregate property class valuation adjustment equivalent to that prescribed in the director's final equalization order.

The director of revenue and finance shall review each written request for an alternative method and shall notify the assessing jurisdiction of acceptance or rejection of the proposed method by October 15. The assessing jurisdiction shall immediately inform the county auditor of the director's decision. The county auditor shall include a description of any approved alternative method in the required newspaper publication of the final equalization order. In those instances where the approved alternative method includes individual property owner notification, the publication shall not be considered proper notice to the affected property owners.

71.16(2) *Implementation of alternative method.* If an alternative method is approved by the director of revenue and finance, any individual notification of property owners shall be completed by the assessor by not later than October 25.

71.16(3) *Appeal by property owners.* If an alternative method is approved by the director of revenue and finance the special session of the local board of review to hear equalization protests shall be extended to November 30. In such instances, protests may be filed up to and including November 4.

This rule is intended to implement Iowa Code section 441.49.

701—71.17(441) Special session of boards of review.

71.17(1) *Grounds for protest.* The only ground for protesting to the local board of review reconvened in special session pursuant to Iowa Code section 441.49 is that the application of the director's final equalization order results in a value greater than that permitted under Iowa Code section 441.21.

71.17(2) *Authority of board of review.* When in special session to hear protests resulting from equalization adjustments, the local board of review shall only act upon protests for those properties for which valuations have been increased as a result of the application of the director of revenue and finance's final equalization order.

The local board of review may adjust valuations of those properties it deems warranted, but under no circumstance shall the adjustment result in a value less than that which existed prior to the application of the director's equalization order. The local board of review shall not adjust the valuation of properties for which no protests have been filed.

71.17(3) *Report of board of review.* In the report to the director of revenue and finance of action taken by the local board of review in special session, the board of review shall report the aggregate valuation adjustments by class of property as well as all other information required by the director of revenue and finance to determine if such actions may have substantially altered the equalization order.

71.17(4) *Meetings of board of review.* If the final equalization order does not increase the valuation of any class of property, the board of review is not required to meet during the special session. If the final equalization order increases the valuation of one or more classes of property but no protests are filed by the times specified in Iowa Code section 441.49, the board of review is not required to meet during the special session.

This rule is intended to implement Iowa Code sections 421.17(10) and 441.49.

701—71.18(441) Judgment of assessors and local boards of review. Nothing stated in these rules should be construed as prohibiting the exercise of honest judgment, as provided by law, by the assessors and local boards of review in matters pertaining to valuing and assessing of individual properties within their respective jurisdictions.

701—71.19(441) Conference boards.

71.19(1) *Establishment and abolition of office.*

a. As referred to in Iowa Code section 441.1, the term "federal census" includes any special census conducted by the Bureau of the Census of the U.S. Department of Commerce as well as the Bureau's decennial census.

b. Within 60 days of receiving the certified results of a federal census indicating the population of a city having its own assessor has fallen below 10,000, the city council of the city shall repeal the ordinance providing for its own assessor.

c. Whenever the office of city assessor is abolished, all moneys in the assessment expense fund and the special appraiser fund shall be transferred to the appropriate accounts in the county assessor's office, and all equipment and supplies shall be transferred to the county assessor's office. Employees of the city assessor's office may, at the discretion of the county assessor, become employees of the county assessor. However, any deputy assessor of the city may not be appointed a deputy county assessor unless certified as eligible for appointment pursuant to Iowa Code sections 441.5 and 441.10.

71.19(2) *Membership.*

a. County conference boards. A county conference board consists of the county board of supervisors, the mayor of each incorporated city in the county whose property is assessed by the county assessor, and one member of the board of directors of each high school district in the county, provided the member is a resident of the county. Members representing school districts serve one-year terms, and the board of directors each year must notify the clerk of the conference board of its representative on the conference board. A member of the board of directors of a school district may serve on the county conference board even though the member lives in a city having its own assessor (1978 O.A.G. 466).

b. City conference boards. A city conference board consists of the county board of supervisors, the city council, and the entire board of directors of each school district whose property is assessed by the city assessor.

71.19(3) *Voting.*

a. Votes on matters before a conference board shall be by units as provided in Iowa Code section 441.2. At least two members of each voting unit must be present in order for the unit to cast a vote (1960 O.A.G. 226). In the event the vote of the members of a voting unit ends in a tie, that unit shall not cast a vote on the particular matter before the conference board.

b. If a member of a conference board is absent from a meeting, the member's vote may not be cast by another person, except that a mayor pro tem as provided in Iowa Code section 372.14(3) may vote for the mayor when the mayor is absent from or unable to perform official duties.

This rule is intended to implement Iowa Code sections 441.31 to 441.37.

701—71.20(441) Board of review.

71.20(1) *Membership.*

a. Occupation of members. One member of the county board of review must be actively engaged in farming as that member's primary occupation. However, it is not necessary for a board of review to have as a member one licensed real estate broker and one registered architect or person experienced in the building and construction field if the person cannot be located after a good faith effort to do so has been made by the conference board (1966 O.A.G. 416). In determining eligibility for membership on a board of review, a retired person is not considered to be employed in the occupation pursued prior to retirement, unless that person remains in reasonable contact with the former occupation, including some participation in matters associated with that occupation.

b. Residency of members. A person must be a resident of the assessor jurisdiction served to qualify for appointment as a member of the board of review. However, a member changing assessing jurisdiction residency after appointment to the board may continue to serve on the board until the member's current term of office expires.

c. Term of office. The term of office of members of boards of review shall be for six years and shall be staggered as provided in Iowa Code section 441.31. In the event of the death, resignation, or removal from office of a member of a board of review, the conference board or city council shall appoint a successor to serve the unexpired term of the previous incumbent.

d. Membership on other boards. A member of a board of review shall not at the same time serve on either the conference board or the examining board, or be an employee of the assessor's office (1948 O.A.G. 120, 1960 O.A.G. 226).

e. Number of members. A conference board or city council may at any time change the composition of a board of review to either three or five members. To reduce membership from five members to three members, the conference board or city council shall not appoint successors to fill the next two vacancies which occur (1970 O.A.G. 342). To increase membership from three members to five members, the conference board or city council shall appoint two additional members whose initial terms shall expire at such times so that no two board members' terms expire at the end of the same year. Also, the conference board or city council may increase the membership of the board of review by an additional two members if it determines that a large number of protests warrant the emergency appointments. The terms of the emergency members will not exceed two years.

f. Removal from office. A member of a board of review may be removed from office by the conference board or city council but only after specific charges have been filed by the conference board or city council.

g. Appointment of members. Members of a county board of review shall be appointed by the county conference board. Members of a city board of review shall be appointed by the city conference board in cities with an assessor or by the city council in cities without an assessor. A city without an assessor can only have a board of review if the population of the city is 75,000 or more.

71.20(2) *Sessions of boards of review.*

a. It is mandatory that a board of review convene on May 1 and adjourn no later than May 31 of each year. However, if either date falls on a Saturday, Sunday, or legal holiday, the board of review shall convene or adjourn on the following Monday.

b. Extended session. If a board of review determines it will be unable to complete its work by May 31, it may request that the director of revenue and finance extend its session up to July 15. The request must be signed by a majority of the membership of the board of review and must contain the reasons the board of review cannot complete its work by May 31. During the extended session, a board of review may perform the same functions as during its regular session unless specifically limited by the director of revenue and finance.

c. Special session. If a board of review is reconvened by the director of revenue and finance pursuant to Iowa Code section 421.17, the board of review shall perform those functions specified in the order of the director of revenue and finance and shall perform no other functions.

71.20(3) *Actions initiated by boards of review.*

a. Internal equalization of assessments. A board of review in reassessment years as provided in Iowa Code section 428.4 has the power to equalize individual assessments as established by the assessor, but cannot make percentage adjustments in the aggregate valuations of classes of property (1966 O.A.G. 416). In nonreassessment years, a board of review can adjust the valuation of an entire class of property by adjusting all assessment by a uniform percentage. Nothing contained in this rule shall restrict the director from exercising the responsibilities set forth in Iowa Code section 421.17.

b. Omitted assessments. A board of review may assess for taxation any property which was not assessed by the assessor, including property which the assessor determines erroneously is not subject to taxation by virtue of enjoying an exempt status (*Talley v. Brown*, 146 Iowa 360. 125 N.W. 248 (1910)).

c. Notice to taxpayers. If the value of any property is increased by a board of review or a board of review assesses property not previously assessed by the assessor, the person to whom the property is assessed shall be notified by regular mail of the board's action. The notification shall state that the taxpayer may protest the action by filing a written protest with the board of review within five days of the date of the notice. After at least five days have passed since notifying the taxpayer, the board of review shall meet to take final action on

the matter, including the consideration of any protest filed. However, if the valuations of all properties within a class of property are raised or lowered by a uniform percentage in a nonreassessment year, notice to taxpayers need be provided only by newspaper publication as described in Iowa Code section 441.35.

71.20(4) *Appeals to boards of review.*

a. A board of review may act only upon written protests which have been filed with the board of review between April 16 and May 5, inclusive. In the event May 5 falls on a Saturday or Sunday, protests filed the following Monday shall be considered to have been timely filed. Protests postmarked by May 5 or the following Monday if May 5 falls on a Saturday or Sunday shall also be considered to have been timely filed. All protests must be in writing and signed by the taxpayer or the taxpayer's authorized agent. A written request for an oral hearing must be made at the time of filing the protest and may be made by checking the appropriate box on the form prescribed by the department of revenue and finance. Protests may be filed for previous years if the taxpayer discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged.

b. Grounds for protest. Taxpayers may protest to a board of review on one or more of the grounds specified in Iowa Code section 441.37. The grounds for protest and procedures for considering protests are as follows:

(1) The assessment is not equitable when compared with those of similar properties in the same assessing district. If this ground is a basis for the protest, the protest must contain the legal descriptions and assessments of the comparable properties. The comparable properties selected by the taxpayer must be located within the same assessing district as the property for which the protest has been filed (*Maytag Co. v. Partridge,* 210 N.W. 2d 584 (Iowa 1973)). In considering a protest based upon this ground, the board of review should examine carefully all information used to determine the assessment of the subject property and the comparable properties and determine that those properties are indeed comparable to the subject property. It is the responsibility of the taxpayer to establish that the other properties submitted are comparable to the subject property and that inequalities exist in the assessments (*Chicago & N.W. Ry. Co. v. Iowa State Tax Commission*, 257 Iowa 1359, 137 N.W.2d 246 (1965).

(2) The property is assessed at more than its actual value as defined in Iowa Code section 441.21. If this ground is used, the taxpayer must state both the amount by which the property is overassessed and the amount considered to be the actual value of the property.

(3) The property is not assessable and should be exempt from taxation. If using this ground, taxpayers must state the reasons why it is felt the property is not assessable.

(4) There is an error in the assessment. An error in the assessment would most probably involve erroneous mathematical computations or errors in listing the property. The improper classification of property also constitutes an error in the assessment. If this ground is used, the taxpayer's protest must state the specific error alleged.

A board of review must determine:

1. If an error exists, and
2. How the error might be corrected.

(5) There is fraud in the assessment. If this ground of protest is used, the taxpayer's protest must state the specific fraud alleged, and the board of review must first determine if there is validity to the taxpayer's allegation. If it is determined there is fraud in the assessment, the board of review shall take action to correct the assessment and report the matter to the director of revenue and finance.

(6) There has been a change of value of real estate since the last assessment. The board of review must determine that the value of the property as of January 1 of the current year has changed since January 1 of the previous reassessment year. This is the only ground upon which a protest pertaining to the valuation of a property can be filed in a year in which the assessor has not assessed or reassessed the property pursuant to Iowa Code section 428.4. In a year subsequent to a year in which a property has been assessed or reassessed pursuant to Iowa Code section 428.4, a taxpayer cannot protest to the board of review based upon actions taken in the year in which the property was assessed or reassessed (*James Black Dry Goods*

Co. v. Board of Review for City of Waterloo, 260 Iowa 1269, 151 N.W.2d 534 (1967); *Commercial Merchants Nat'l Bank and Trust Co. v. Board of Review of Sioux City*, 229 Iowa 1081, 296 N.W. 203 (1941)).

c. Disposition of protests. After reaching a decision on a protest, the board of review shall give the taxpayer written notice of its decision. The notice shall contain the following information:

(1) The valuation and classification of the property as determined by the board of review.

(2) If the protest was based on the ground the property was not assessable, the notice shall state whether the exemption is allowed and the value at which the property would be assessed in the absence of the exemption.

(3) The specific reasons for the board's decision with respect to the protest.

(4) That the board of review's decision may be appealed to the district court within 20 days of the board's adjournment or May 31, whichever date is later. If the adjournment date is known, the date shall be stated on the notice. If the adjournment date is not known, the notice shall state the date will be no earlier than May 31. Written notice of appeal shall be filed with the clerk of district court and notice of the appeal shall be served on the chairperson, presiding officer, or clerk of the board of review.

This rule is intended to implement Iowa Code section 441.31 as amended by 1995 Iowa Acts, Senate File 385, and sections 441.32 to 441.38.

701—71.21(441) Assessors.

71.21(1) *Conflict of interest.* An assessor shall not act as a private appraiser, or as a real estate broker or option agent in the jurisdiction in which serving as assessor (1976 O.A.G. 744).

71.21(2) *Listing of property.*

a. Forms. Assessors may design and use their own forms in lieu of those prescribed by the department of revenue and finance provided that the forms contain all information contained on the prescribed form, are not substantially different from the prescribed form, and are approved by the director of revenue and finance.

b. Assessment rolls. Assessment rolls must be prepared in duplicate for each property in a reassessment year as defined in Iowa Code section 428.4. However, the copy of the roll does not have to be issued to a taxpayer unless there is a change in the assessment or the taxpayer requests the issuance of the duplicate copy.

c. Whenever a date specified in Iowa Code chapter 441 falls on a Saturday, Sunday, or legal holiday, the action required to be completed on or before that date shall be considered to have been timely completed if performed on or before the following day which is not a Saturday, Sunday, or holiday.

This rule is intended to implement Iowa Code chapter 441.

701—71.22 to **71.24** Reserved.

701—71.25(441,443) Omitted assessments.

71.25(1) *Property subject to omitted assessment.*

a. Land and buildings. An omitted assessment can be made only if land or buildings were not listed and assessed by the assessor. The failure to list and assess an entire building is an omission for which an omitted assessment can be made even if the land upon which the building is located has been listed and assessed. See *Okland v. Bilyeu,* 359 N.W.2d 412 (Iowa 1984). However, the failure to consider the value added as a result of an improvement made does not constitute an omission for which an omitted assessment can be made if the building or land to which the improvement was made has been listed and assessed.

b. Previously exempt property. Property which has been erroneously determined to be exempt from taxation may be restored to taxation by the making of an omitted assessment. See *Talley v. Brown,* 146 Iowa 360, 125 N.W. 243 (1910). An omitted assessment is also made

to restore to taxation previously exempt property which ceases to be eligible for an exemption.

71.25(2) *Officials authorized to make an omitted assessment.*

a. Local board of review. A local board of review may make an omitted assessment of property during its regular session only if the property was not listed and assessed as of January 1 of the current assessment year. For example, during its regular session which begins May 1, 1986, a local board of review may make an omitted assessment only of property that was not assessed by the assessor as of January 1, 1986. During that session, the board of review could not make an omitted assessment for an assessment year prior to 1986.

b. County auditor and local assessor. The county auditor and local assessor may make an omitted assessment. However, no omitted assessment can be made by the county auditor or local assessor if taxes based on the assessment year in question have been paid or otherwise legally discharged. For example, if a tract of land was listed and assessed and taxes levied against that assessment have been paid or legally discharged, no omitted assessment can be made of a building located upon that tract of land even though the building was not listed and assessed at the time the land was listed and assessed. See *Okland v. Bilyeu,* 359 N.W.2d 412, 417 (Iowa 1984).

c. County treasurer. The county treasurer may make an omitted assessment within four years from the date the tax list which should have contained the assessment should have been delivered to the county treasurer. For example, for the 1985 assessment year, the tax list is to be delivered to the county treasurer on or before June 30, 1986. Thus, the county treasurer may make an omitted assessment for the 1985 assessment year at any time on or before June 30, 1990. However, the county treasurer may make an omitted assessment of a building even if taxes levied against the land upon which the building is located have been paid or legally discharged. See *Okland v. Bilyeu,* 359 N.W.2d 412, 417 (Iowa 1984). The county treasurer may not make an omitted assessment if the omitted property is no longer owned by the person who owned the property on January 1 of the year the original assessment should have been made.

This rule is intended to implement Iowa Code section 443.6.

[Filed 5/11/71; amended 8/16/73]
[Filed 6/21/77, Notice 4/6/77—published 7/13/77, effective 8/17/77]
[Filed emergency 7/21/77—published 8/10/77, effective 7/21/77]
[Filed emergency 8/3/79—published 8/22/79, effective 8/3/79]
[Filed emergency 8/1/80—published 8/20/80, effective 8/1/80]
[Filed 3/25/81, Notice 2/18/81—published 4/15/81, effective 5/20/81]
[Filed 5/8/81, Notice 4/1/81—published 5/27/81, effective 7/1/81]
[Filed 3/25/83, Notice 2/16/83—published 4/13/83, effective 5/18/83]
[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
[Filed emergency 8/13/84—published 8/29/84, effective 8/13/84]
[Filed 8/10/84, Notice 7/4/84—published 8/29/84, effective 10/3/84]
[Filed 4/5/85, Notice 1/16/85—published 4/24/85, effective 5/29/85]
[Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]
[Filed 1/10/86, Notice 12/4/85—published 1/29/86, effective 3/5/86]
[Filed 3/21/86, Notice 2/12/86—published 4/9/86, effective 5/14/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 5/15/87, Notice 3/25/87—published 6/3/87, effective 7/8/87]
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]
[Filed 6/10/88, Notice 5/4/88—published 6/29/88, effective 8/3/88]
[Filed 9/2/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]
[Filed 12/7/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]
[Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

CHAPTER 74
MOBILE, MODULAR, AND MANUFACTURED HOME TAX
[Prior to 12/17/86, Revenue Department[730]]

701—74.1(435) Definitions.

1. *"Mobile home"* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. A "mobile home" is not built to a mandatory building code, contains no state or federal seals, and was built before June 15, 1976.

2. *"Manufactured home"* is a factory-built structure built under authority of 42 U.S.C. § 5403, is required by federal law to display a seal from the United States Department of Housing and Urban Development, and was constructed on or after June 15, 1976.

3. *"Modular home"* means a factory-built structure built on a permanent chassis which is manufactured to be used as a place of human habitation, is constructed to comply with the state of Iowa building code for modular factory-built structures, and must display the seal issued by the state building code commissioner.

4. *"Mobile home park"* means any land upon which three or more mobile, manufactured, or modular homes, or a combination of such homes are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available. It does not include homes where the owner of the land is providing temporary housing for the owner's employees or students.

Wherever used in this chapter, "home" means a mobile home, a manufactured home, or a modular home unless specific reference is made to a particular type of home.

This rule is intended to implement Iowa Code section 435.1 as amended by 1995 Iowa Acts, Senate File 458.

701—74.2(435) Movement of home to another county. If one or both installments of the tax for the current fiscal year have been paid and subsequently the home is moved to another county, the tax paid shall remain in the county in which originally collected. No reimbursement shall be made either to the owner of the home or to the county to which the home is moved. If only the first installment has been paid and the home is moved prior to January 1, the second installment shall be made to the county to which the home is moved.

This rule is intended to implement Iowa Code section 435.22.

701—74.3(435) Sale of home. If the owner of a home has paid one or both installments of the tax for the current fiscal year and subsequently sells the home, no reimbursement shall be made to the seller for any portion of the tax paid. If only the first installment has been paid and the home is sold prior to January 1, the purchaser is responsible for the second installment.

This rule is intended to implement Iowa Code section 435.22.

701—74.4(435) Reduced tax rate.

74.4(1) *Claimant.* The reduced rate of tax for Iowa residents who were at least 23 years of age on December 31 of the base year shall be computed as provided in Iowa Code subsection 435.22(2). The claimant's name must appear on the title to the home.

74.4(2) *Income.* In determining eligibility for the reduced tax rate, the claimant's income and that of the claimant's spouse shall be the income received during the base year, or the income tax accounting period ending during the base year, and must be less than $14,000. The base year is the calendar year immediately preceding the year in which the claim is filed.

74.4(3) *Claims.* Claims for the reduced tax rate must be filed with the county treasurer on or before June 1 immediately preceding the fiscal year during which the taxes are due and must contain an affidavit that the claimant intends to occupy the home for six months or more during the fiscal year. The director of revenue and finance may extend the time for filing a claim through December 31 if good cause exists. The claim forms shall be provided by the department of revenue and finance.

74.4(4) *Reports to department of revenue and finance.* On or before August 1 of each year, the county treasurer of each county shall report to the department of revenue and finance the amount of taxes not to be collected for the current fiscal year as a result of the reduced tax rate provided in Iowa Code section 435.22(2). All reports shall be made on forms provided by the department of revenue and finance.

74.4(5) *Payment of claims.* On December 15 of each year the department of revenue and finance shall remit to each county treasurer an amount equal to the taxes not collected during the current fiscal year as a result of the granting of the reduced tax rate.

This rule is intended to implement Iowa Code section 435.22 as amended by 1994 Iowa Acts, chapter 1165, and is effective for reduced tax rate claims filed on or after January 1, 1995.

701—74.5(435) Taxation—real estate. Homes located outside of mobile home parks must be placed on a permanent foundation and are subject to assessment and taxation as real estate. The homes are eligible for all property tax credits and exemptions applicable to other real estate. The assessor shall collect the title to a home only when a security interest is noted on the title and the secured party is given a mortgage on the land on which the home is located. Homes located outside mobile home parks as of July 1, 1994, are not subject to the permanent foundation requirements unless the home is relocated. The homes are subject to assessment as real estate beginning January 1, 1995.

This rule is intended to implement Iowa Code section 435.26 as amended by 1994 Iowa Acts, chapter 1110.

701—74.6(435) Taxation—square footage. Homes located within mobile home parks are subject to a square footage tax at the rates specified in Iowa Code section 435.22. It shall be the responsibility of the owner to provide the county treasurer with appropriate documentation to verify eligibility for the reduced tax due to the home's age. Any homes which are located within mobile home parks and which were assessed as real estate on January 1, 1994, will be subject to the square footage tax beginning July 1, 1995.

This rule is intended to implement Iowa Code section 435.22 as amended by 1994 Iowa Acts, chapter 1110.

701—74.7(435) Audit by department of revenue and finance. The director of revenue and finance may audit the books and records of the county treasurer to determine if the amounts certified by the county treasurer to the director of revenue and finance as tax not collected due to the reduced tax rate are true and correct. Upon investigation, the director of revenue and finance may order the county treasurer to reimburse the state of Iowa any amounts that were erroneously paid to the county treasurer. The director of revenue and finance may also require that additional payments be made to the county treasurer by the owner of a home if investigation reveals that the county treasurer did not receive the full amounts due in accordance with Iowa Code section 435.22.

The director of revenue and finance may initiate investigations or assist the county treasurer's investigations into eligibility of a claimant for the reduced tax rate in accordance with Iowa Code section 435.22. Upon investigation, the director of revenue and finance may order a claimant to reimburse the state of Iowa any amount erroneously claimed as a reduced tax rate which was reimbursed by the department of revenue and finance to the county treasurer in accordance with Iowa Code section 435.22. The director of revenue and finance may also issue a reimbursement directly to the claimant if it is determined the claimant did not receive the full benefits to which entitled pursuant to Iowa Code section 435.22.

This rule is intended to implement Iowa Code section 435.22.

701—74.8(435) Collection of tax.

74.8(1) *Partial payment of tax.* Partial payments of taxes may be allowed at the discretion of the county treasurer. If the treasurer elects to permit partial payments, the authorization shall apply to all taxpayers within the county. The treasurer may establish a minimum payment amount that must be made for partial payments to be accepted. If the partial payments made are insufficient to fully satisfy an installment due by the delinquency date, the unpaid portion of the installment shall draw interest as provided in Iowa Code section 445.39. Current year taxes may be paid at any time regardless of any prior year delinquent taxes. The minimum payment for delinquent taxes must be equal to or exceed the interest, fees, and costs attributed to the oldest delinquent installment due.

74.8(2) *When delinquent.* The date on which unpaid taxes become delinquent is to be determined as follows:

a. If the home is put to use between January 1 and March 31, the prorated tax for the period from the date the home is put to use through June 30 becomes delinquent on April 1.

b. If the home is put to use between April 1 and June 30, the prorated tax for the period from the date the home is put to use through June 30 becomes delinquent on October 1.

c. If the home is put to use between July 1 and September 30, the prorated tax for the period from the date the home is put to use through December 31 becomes delinquent on October 1.

d. If the home is put to use between October 1 and December 31, the prorated tax for the period from the date the home is put to use through December 31 becomes delinquent on April 1 of the following calendar year.

e. For purposes of this rule, a home is "put to use" upon its acquisition from a dealer or its being brought into Iowa for immediate use by a person who is not engaged in the business of manufacturing, sale, or transportation of homes.

74.8(3) *Collection of delinquent tax.* Delinquent taxes shall be collected by offering the home at tax sale in accordance with Iowa Code chapter 446.

This rule is intended to implement Iowa Code sections 435.24 and 435.25 and Iowa Code section 445.37 as amended by 1995 Iowa Acts, Senate File 458.

[Filed 8/19/77, Notice 7/13/77—published 9/7/77, effective 10/12/77]
[Filed emergency 8/1/80—published 8/20/80, effective 8/1/80]
[Filed 6/28/85, Notice 5/22/85—published 7/17/85, effective 8/21/85]
[Filed 8/9/85, Notice 7/3/85—published 8/28/85, effective 10/2/85]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 8/5/88, Notice 6/29/88—published 8/24/88, effective 9/28/88]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 12/7/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]
[Filed 9/23/92, Notice 8/19/92—published 10/14/92, effective 11/18/92]
[Filed 10/8/93, Notice 9/1/93—published 10/27/93, effective 12/1/93]
[Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

CHAPTER 75
PROPERTY TAX ADMINISTRATION

701—75.1(441) Tax year. The assessment date is January 1 for taxes for the fiscal year which commences 6 months after the assessment date and which become delinquent during the fiscal year commencing 18 months after the assessment date. For example, taxes payable in fiscal year 1991-1992 are for fiscal year 1990-1991 and are based on the January 1, 1990, assessment.

This rule is intended to implement Iowa Code section 441.46.

701—75.2(445) Partial payment of tax. Partial payments of taxes may be allowed at the discretion of the county treasurer. If the treasurer elects to permit partial payments, the authorization shall apply to all taxpayers within the county. The treasurer may establish a minimum payment amount that must be made for partial payments to be accepted. If the partial payments made are insufficient to fully satisfy an installment due by the delinquency date, the unpaid portion of the installment shall draw interest at the rate specified in Iowa Code section 445.39. Current year taxes may be paid at any time regardless of any outstanding prior year delinquent tax. The minimum payment for delinquent taxes must be equal to or exceed the interest, fees, and costs attributed to the oldest delinquent installment due.

This rule is intended to implement Iowa Code section 445.36A.

701—75.3(445) When delinquent. The first half installment of taxes shall become delinquent if not paid prior to October 1 and the second half installment shall become delinquent if not paid prior to April 1. Delinquent taxes shall draw interest at the rate specified in Iowa Code section 445.39.

This rule is intended to implement Iowa Code section 445.37 as amended by 1995 Iowa Acts, Senate File 458.

701—75.4(446) Payment of subsequent year taxes by purchaser. Taxes for a subsequent year may not be paid by the purchaser of the property sold at tax sale until 14 days following the date from which an installment becomes delinquent.

This rule is intended to implement Iowa Code section 446.32 as amended by 1993 Iowa Acts, chapter 73.

[Filed 12/7/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]
[Filed 9/23/92, Notice 8/19/92—published 10/14/92, effective 11/18/92]
[Filed 10/8/93, Notice 9/1/93—published 10/27/93, effective 12/1/93]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

CHAPTER 77
DETERMINATION OF VALUE OF UTILITY COMPANIES

[Prior to 12/17/86, Revenue Department(730)]

701—77.1(428,433,437,438) Definition of terms.

77.1(1) The term *"utility company"* shall mean and include all persons engaged in the operating of gasworks, waterworks, telephones, including telecommunication companies, pipelines, electric transmission lines, and electric light or power plants, as set forth in Iowa Code chapters 428, 433, 437, and 438.

77.1(2) The term *"unit value"* or *"unit market value"* shall mean the market value arrived at by using the appraisal method of valuing an entire operating property, considered as a whole and capable of performing the function for which it was created, such as (by way of illustration and not limitation) (1) generating, transmitting and distributing electricity; or (2) transporting or distributing natural gas.

77.1(3) The term *"operating property"* shall mean all property owned by or leased to a utility company, not otherwise taxed separately, made nontaxable by law, or property leased to companies valued and assessed pursuant to Iowa Code chapter 428, which is necessary to and without which the utility could not perform the activities for which the utility is formed, such as (by way of illustration and not limitation) (1) generating, transmitting and distributing electricity; or (2) transporting or distributing natural gas. With regard to property whose identity as "operating" or "nonoperating" property is not clearly ascertainable, the property shall be considered operating property if the utility could not reasonably be expected to perform the referenced activities in the absence of such property.

77.1(4) The term *"nonoperating property"* shall mean all property owned by a utility not defined by subrule 77.1(3) as "operating property."

77.1(5) The term *"comparable sales"* shall mean actual sales transactions, between willing buyers and willing sellers, neither being under any compulsion to buy or sell, of property which is similar in purpose, function and design to the property to which the comparison is being made. Where the determination of value is being made, the sale of a portion of a unit which is nominally similar in purpose and function to the unit being valued shall not be considered a comparable sale, absent proof by evidence other than the terms of the sale itself, that the sales price was based on some unit of measurement which is common both to the property sold and the property being valued and which is not affected by the fact that less than the entire unit is being sold, such as (by way of illustration and not limitation) the price per square foot of the property.

77.1(6) The term *"income approach to unit value"* shall mean the estimate of unit market value obtained by dividing an appropriate income stream by an appropriate discount rate.

77.1(7) The term *"stock and debt approach to unit value"* shall mean the estimate of unit market value determined by combining the market value of the stock, debt, current liabilities, other liabilities, including leases, except those leases of companies valued and assessed pursuant to Iowa Code chapter 428, and deferred credits associated with the operating property of a utility company.

77.1(8) The term *"cost approach to unit value"* shall mean the estimate of value determined by combining the original cost less a depreciation allowance for the operating property of a utility company.

77.1(9) The term *"respondent"* shall include the utility company whose property is to be valued.

77.1(10) The term *"leased assets"* shall mean both operational and capital leases.

77.1(11) The term *"original cost"* shall mean the actual cost of the property to its present owner, not the first cost at the time it was originally constructed and placed in service.

77.1(12) *"Long distance telephone company"* means an entity that provides telephone service and facilities between local exchanges and has been classified as such by the utilities board

of the department of commerce, but does not include a cellular service provider or a local exchange utility holding a certificate issued under Iowa Code section 476.29(12). The rules contained in 701—Chapter 71, rather than this chapter, apply to the assessment of long distance telephone company property first assessed for taxation on or after January 1, 1996.

This rule is intended to implement Iowa Code chapters 428, 433, 437 and 438 and Iowa Code section 476.1D(10) as amended by 1995 Iowa Acts, House File 518.

701—77.2(428,433,437,438) Filing of annual reports.

77.2(1) Annual reports required to be filed by the reporting utility company shall be on forms prescribed and supplied by the department. It shall be the responsibility of the utility company to obtain the forms supplied by the department.

77.2(2) Additional schedules or attachments submitted by respondent shall be identified as to subject matter, shall be typed on paper of similar size to that used in the annual report, and all data contained in the schedules or attachments shall be adequately explained and documented as to source. When such additional schedules or attachments are submitted, they shall be considered part of the annual report.

77.2(3) The director may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

This rule is intended to implement Iowa Code sections 428.23, 433.1, 433.2, 437.2, 437.4, 437.14, 438.3, 438.4, 438.5 and 438.6.

701—77.3(428,433,437,438) Comparable sales. Sale prices of comparable property in normal transactions shall be taken into consideration in arriving at its market value. In the event comparable sales are not available, the market value of operating property shall be determined by utilizing the three recognized unit approaches to value (i.e., stock and debt approach, income capitalization approach and the cost approach).

This rule is intended to implement Iowa Code sections 428.28, 433.1, 433.2, 437.2, 437.4, 437.14, 438.3, 438.4, 438.5 and 438.6.

701—77.4(428,433,437,438) Stock and debt approach to unit value.

77.4(1) The stock and debt approach to unit value estimates the market value of the operating property by combining the market values of the common stock, preferred stock, debt, current liabilities, other liabilities, leases, and deferred credits associated with the operating property of the utility company, on the basis that the market value of these items may be used as a surrogate for the market value of the operating property itself.

77.4(2) The market value of the long-term debt associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the utility company. This ratio shall then be multiplied times the gross market value of the long-term debt and the result obtained shall be the market value of the long-term debt associated with the operating property. The market value of publicly traded debt shall be determined by utilizing an average of the monthly high and low value of the debt for the 12 months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the securities are traded. If all or some of the securities are not publicly traded, the value of the securities shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have a similar maturity date and coupon rate, as well as risk indicators similar to the untraded security. In each instance, the utility company shall provide the department a statement of the market value of all securities and an explanation of how that market value was derived, including the identity

of any comparable securities utilized. In the event that any utility is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

77.4(3) The market value of the preferred stock associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the utility company. This ratio shall then be multiplied times the gross market value of the preferred stock and the result obtained shall be the market value of the preferred stock associated with the operating property.

The market value of publicly traded shares of preferred stock shall be determined by utilizing an average of the monthly high and low value of the preferred stock for the 12 months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the preferred stock is traded. If all or some series of the preferred stock are not publicly traded, the value of such preferred stock shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have the same or a similar dividend rate, as well as risk indicators similar to the untraded preferred stock. In each instance, the utility company shall provide the department a statement of the market value of its preferred stock and an explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any utility is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation fo the method used.

77.4(4) The market value of the common equity of a utility company associated with the company's operating property shall be determined by capitalizing the income available to the common equity holders from the operating property, by an appropriate common equity return rate, all of which shall be determined as follows:

a. The calculation of the income to be capitalized shall begin with the utility company's net income after taxes but before interest charges and preferred dividends for the 12-month period preceding the valuation date. The net income after taxes, but before interest charges and preferred dividends, shall be determined from the utility company's regulatory report, or if no regulatory report is filed, from the audited financial statements of the utility company. In the event that the respondent has no income or has negative income, an alternative method may be utilized to estimate the market value of the common equity.

b. For rate base regulated companies which do not earn a return on construction-work-in-progress, the income determined in subrule 77.4(4) shall be increased by the amount of income associated with the construction-work-in-progress which will be placed into service within one year of the assessment date. The income associated with the construction-work-in-progress shall be determined by multiplying the cost of said construction by the latest overall cost of capital as determined by the regulatory agency.

c. The income determined in 77.4(4)"*a*" shall be further reduced by that portion of the preferred dividends serviced by the income generated by the operating property, which shall be calculated by multiplying the total preferred dividend requirement by the ratio determined in 77.4(3).

d. The income determined in 77.4(4)"*a*" shall be further reduced by that portion of the debt service provided by the income generated by the operating property, which shall be calculated by multiplying the total debt service by the ratio determined in 77.4(2).

e. If there are any other interest payments required, a determination shall be made as to whether the underlying obligation was used to purchase operating or nonoperating assets. If no direct determination can be made, the interest payment shall be allocated in the same

fashion as the debt service and preferred dividends. If the underlying obligation can be shown to be associated particularly, or in some specific proportion, to operating or nonoperating property, the interest payment shall be allocated either entirely or in such proportion to operating or nonoperating property. It shall be the obligation of the utility company, in its reports to the department, to identify and detail any interest payments which are particularly associated with operating or nonoperating property, and if the utility company fails to do so, the department may determine that all such payments may be allocated between operating and nonoperating property in the same ratio as is the debt service and preferred stock dividends (see subrules 77.4(2) and 77.4(3)).

f. The income determined in 77.4(4)*"a"* shall be adjusted by deducting any net income included therein received from nonoperating property and, conversely, the referenced income shall be increased to account for any net loss created by any nonoperating property.

g. Any extraordinary item affecting the income determined herein shall be eliminated in the calculation of the income shown under this rule. Any construction-work-in-progress not placed into service within one year of the assessment date shall be separately valued by the department.

h. The equity rate of return for the utility company shall be determined by the use of the capital asset pricing model although where appropriate discounted cashflow model (commonly called the Gorden Growth Model $- r = \frac{D_1}{Po} + g$) may be utilized as an alternative. Only in circumstances where these models are not able to be utilized will reliance be placed on a risk premium model or upon an earnings-price ratio, or other similar model, for determining the expected market rate of return on equity.

i. The income attributable to operating property available to the common equity holder as determined in 77.4(4) *"a"* to *"g"* shall then be divided by the equity rate as determined in 77.4(4) "h," and the result shall be the market value of the common equity associated with the operating property.

77.4(5) In the event the utility company has entered into leases of operating property, the market value of the property leased shall be determined by calculating the net present value of the leases, which shall be accomplished by discounting the future lease payments for each lease. The following is offered as an illustration of the calculation of such market value:

Length of Lease	Annual Lease Payments
1. Lease (a) 5 years	$1,500,000
2. Lease (b) 7 years	$ 800,000
3. Lease (c) 3 years	$ 120,000

Net present value of leases (assuming 8 percent rate)

Lease (a) = $1{,}500{,}000 \div (1.08)^1 + 1{,}500{,}000 \div (1.08)^2 \ldots 1{,}500{,}000 \div (1.08)^5$

Lease (b) = $800{,}000 \div (1.08)^1 + 800{,}000 \div (1.08)^2 \ldots 800{,}000 \div (1.08)^7$

Lease (c) = $120{,}000 \div (1.08)^1 + 120{,}000 \div (1.08)^2 \ldots 120{,}000 \div (1.08)^3$

Net Present Value of Lease (a) =	$ 5,989,065
Net Present Value of Lease (b) =	$ 4,165,096
Net Present Value of Lease (c) =	$ 309,251
Total Lease Values	$10,463,412

The discount rate shall be equal to the utility company's overall market cost of capital.

77.4(6) In the event the utility company has other sources of capital, such as (by way of illustration and not limitation) current liabilities, accumulated deferred income taxes and accumulated investment tax credits which cannot be identified as having been utilized to purchase specific assets, the market value of such sources of capital shall be allocated between operating and nonoperating assets in the same manner as long-term debt or preferred stock (see subrules 77.4(2) and 77.4(3)). If any such source of capital was created specifically for the purchase of property which can be identified as operating property or nonoperating property, the utility company must identify such sources of capital in their annual report to the department, together with the appropriate evidence of such. If the utility company fails to provide such information, the department may determine that such sources of capital may be allocated in the same manner as long-term debt or preferred stock (see subrules 77.4(2) and 77.4(3)). The market value of any such source of capital, in the absence of evidence to the contrary submitted by the utility with its annual report, shall be the book value.

77.4(7) The value determined by summing the portions of the enumerated sources of capital associated with the operating property of the utility company provided in subrules 77.4(2) to 77.4(6) shall be the unit value of the operating properties determined by the stock and debt approach to unit value.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

701—77.5(428,433,437,438) Income capitalization approach to unit value.

77.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream. The purpose and intent of the income indicator of value is to match income with sources of capital and therefore every source of capital utilized or available to be utilized to purchase assets should be reflected in the capitalization rate determination as well as all operating income.

In the event the utility company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

If the utility company is one which is not allowed to earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will not reflect the earnings on those assets, and as a consequence, a separate adjustment to the income indicator of value must be made to account for the value of those assets. In such instances, the income indicator of value shall be increased by an amount equal to the book value of the source of capital involved, such as the accumulated deferred income taxes. If any other operating property is clearly not income producing, therefore, not reflected in the income stream, the value of that asset shall be determined separately and added to the value of the other operating property as determined using the income indicator of value. The capitalization rate shall be adjusted, if necessary, for the market rate of return for the sources of capital utilized to purchase such nonincome producing properties where the sources can be clearly identified, otherwise the cost of the sources of capital shall be presumed to be equal to the overall market weighted costs of the identified sources of capital.

77.5(2) If the utility company is one which can earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will reflect the earnings on those assets, and as a consequence, a separate adjustment to the capitalization rate is required. The capitalization rate shall be determined by utilizing, where appropriate, market rates of return weighted according to a market determined capital structure, with the

exception of deferred credits whose market value shall be equal to its value on the company's books and whose cost shall be zero. All sources of capital shall be considered in the capital structure as well as market costs associated with each source of capital, otherwise the cost of the sources of capital shall be presumed to be equal to the overall market weighted costs of the identified sources of capital. The following is an example of the application of this rule:

	(1) Market Value	(2) Market Rate of Return	(3) % to Total	(4) Component (Col. 2 × Col. 3)
Common Stock	60,000	15%	62.50	9.38
Preferred Stock	5,000	13%	5.21	.68
Debt	25,000	12%	26.04	3.12
Deferred Credits	6,000	—0—	6.25	—0—
	96,000		100.00	13.18

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

701—77.6(428,433,437,438) Cost approach to unit value. The cost approach to unit value shall be determined by combining the cost of the operating properties of the utility and deducting therefrom an allowance for depreciation calculated on a straight line basis. Other forms of depreciation may be deducted if found to exist.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

701—77.7(428,433,437,438) Correlation. In making a final determination of value the director may give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the utility company's entire operating property. Generally, the stock and debt indicator of value shall be considered to be the most useful, the income indicator the next most useful and the cost indicator the least useful. If circumstances dictate that a particular indicator is inappropriate or less reliable for a particular company, the correlation of the indicators of value shall be adjusted accordingly.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

701—77.8(428,433,437,438) Allocation of unit value to state.

77.8(1) *Allocation by director.* The director shall allocate that portion of the total unit value of the utility company's operating property to the state of Iowa based on factors which are representative of the ratio that the utility company's property and activity in the state of Iowa bear to the utility company's total property and activity. These factors are:

a. Gross operating property weighted 75 percent, and

b. Gross operating revenues, or MCF miles, or barrel miles weighted 25 percent. The selection of the property and use factor to be utilized shall depend on the type of utility being valued.

77.8(2) *Alternative methods.* In the event that the allocation prescribed by subrule 77.8(1) does not fairly and reasonably allocate unit value of the utility company's operating property to the state of Iowa, the director shall consider such other factors as the director deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

[Filed 2/1/79, Notice 12/27/78—published 2/21/79, effective 3/28/79]
[Filed 5/22/81, Notice 4/15/81—published 6/10/81, effective 7/15/81]
[Filed 6/22/83, Notice 3/16/83—published 6/22/83, effective 7/27/83*]
[Filed 4/6/84, Notice 2/29/84—published 4/25/84, effective 5/30/84]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

*Effective date of Ch 77 delayed seventy days by the administrative rules review committee on 7/14/83. Seventy-day delay of effective date lifted, see IAB 8/31/83.

79.1(5) *Refunds.* County recorders shall not refund any overpayment of a real estate transfer tax. The grantor of the real property for which the real estate transfer tax has been overpaid shall petition the state appeal board for a refund of the overpayment amount deposited in the general fund of the state. A refund of the remaining portion of the overpayment shall be petitioned from the board of supervisors of the county in which the tax was paid.

This rule is intended to implement Iowa Code chapter 428A.

701—79.2(428A) Taxable status of real estate transfers.

79.2(1) *Federal rules and regulations.* In factual situations not covered by these rules and involving those portions of Iowa law which are consistent with the former federal statutes (26 USCA 4361) that imposed a real estate transfer tax, the department of revenue and finance and county recorders shall follow the federal rules and regulations in administering the provisions of chapter 428A. (1968 O.A.G. 643)

79.2(2) *Transfer of realty to a corporation or partnership.* Capital stock, partnership shares and debt securities received in exchange for real property constitutes consideration which is subject to the real estate transfer tax. Where the value of the capital stock is definite or may be definitely determined in a dollar amount, the specific dollar amount is subject to the tax. Where the value of the capital stock is not definitely measurable in a dollar amount, the tax imposed is to be calculated on the fair market value of the realty transferred. For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21. (1976 O.A.G. 776)

Real estate transfer tax is not due when real property is conveyed to a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code section 428A.2 in an incorporation or organization action where the only consideration is the issuance of capital stock, partnership shares, or debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company. Actual consideration other than these shares or debt securities is subject to real estate transfer tax.

79.2(3) *Trades of real estate.* Real estate transfers involving the exchange of one piece of real property for another are transfers subject to the real estate transfer tax. Each grantor of the real estate is liable for the tax based on the fair market value of the property received in the trade as well as other consideration including but not limited to cash and assumption of debt. (1972 O.A.G. 654)

For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21.

79.2(4) *Conveyance to the United States government or the state of Iowa.* Any conveyance of real estate to the United States or any agency or instrumentality thereof or to the state of Iowa or any agency, instrumentality, or political subdivision thereof not exempt from the real estate transfer tax pursuant to Iowa Code section 428A.2, is subject to the real estate transfer tax. (1968 O.A.G. 579) An exception to this rule is any conveyance to the United States Department of Agriculture, Farmers Home Administration, which is specifically exempted by federal law (7 USCS §1984).

79.2(5) *Conveyance of property on leased land.* The transfer of buildings or other structures located on leased land is subject to the real estate transfer tax. The fact that the person who owns a building or other structure does not own the land upon which the property is located does not exempt this type of conveyance from the real estate transfer tax. (1972 O.A.G. 318)

79.2(6) *Mortgage default.* In the factual situation where a defaulting mortgagor issues a deed or other conveyance instrument to the mortgagee as satisfaction of the mortgage debt, the transaction is subject to the real estate transfer tax. The consideration upon which the tax is calculated is the outstanding unsatisfied mortgage debt.

However, as an exception to this rule, a conveyance of real property to lienholders in lieu of forfeiture or foreclosure action is exempt from real estate transfer tax.

79.2(7) *Completion of contract.* A deed or other conveyance instrument given at the time of completion of a single real estate contract is subject to the real estate transfer tax. The tax is to be computed on the full amount of the purchase price as stated in the contract and not solely on the last installment payment made prior to the issuance of the deed or other

conveyance instrument. If the original contract is assigned to a third party or parties prior to fulfillment of such contract, the tax is to be computed only on the original contract price upon completion of the contract.

When a single deed or other conveyance instrument is given at the time of completion of multiple successive real estate contracts, separate taxes are to be computed and paid based upon the full purchase price stated in each contract. For example, if A sells real estate to B on an installment contract, and then B sells the same property to C on another installment contract, and subsequently both A and B transfer their respective interests in the property to C via one deed, A is liable for a tax computed on the full purchase price stated in the original contract to which A was a party and B is liable for a tax computed on the full purchase price stated in the subsequent contract to which B was a party.

79.2(8) *Assignments of contract.* Assignments of real estate contracts by contract sellers and contract buyers are not subject to the real estate transfer tax. (1970 O.A.G. 605)

79.2(9) *Corporate and partnership dissolution.* A conveyance of realty by a corporation or partnership in liquidation or in dissolution to its shareholders or partners subject to the debts of the corporation or partnership is a conveyance subject to the real estate transfer tax. However, if there are no debts and the conveyance is made solely for the cancellation and retirement of the capital stock or dissolution, the tax does not apply.

Real estate transfer tax is not due when real property is conveyed from a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code section 428A.2 to its shareholders, partners, or members in a dissolution action where the only consideration is capital stock, partnership shares, or debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, including the assumption of debts by the shareholders, partners, or members. Actual consideration other than these shares or debt securities is subject to the real estate transfer tax.

79.2(10) *Security instruments.* Any deed or instrument given exclusively to secure a loan or debt is not subject to the real estate transfer tax.

79.2(11) *Marriage dissolution exemption.* Marriage dissolution exemption from the real estate transfer tax provided in Iowa Code section 428A.2(16) applies only to real property conveyances between former spouses specifically mandated by a dissolution decree.

79.2(12) *Family debt cancellation exemption.* The family debt cancellation exemption from the real estate transfer tax provided in Iowa Code section 428A.2(11) applies only to real estate conveyances between husband and wife, or parent and child and indebtedness between these parties.

The amount of indebtedness subject to exemption shall not exceed the fair market value of the property being transferred.

EXAMPLE 1. A son is indebted to his father for $10,000. The son transfers real property with a fair market value of $12,000 to his father as satisfaction of the indebtedness. No real estate transfer tax is due in this situation.

EXAMPLE 2. A son is indebted to his father for $10,000. The son transfers real property with a fair market value of $4,000 to his father as satisfaction of the indebtedness. Real estate transfer tax is due on $6,000 in this situation.

This rule is intended to implement Iowa Code section 428A.1 and section 428A.2 as amended by 1995 Iowa Acts, Senate File 189.

701—79.3(428A) Declarations of value: Responsibility of county recorders and city and county assessors.

79.3(1) *Forms and procedures.* County recorders and county and city assessors shall use only the declaration of value forms and procedures prescribed and provided by the director of revenue and finance for reporting real estate transfers.

79.3(2) *Report of sales.* County recorders and city and county assessors shall complete the appropriate portions of the real estate transfer-declaration of value form for each real estate transfer for which a declaration of value has been completed by the buyer, seller, or agent. The completion of the real estate transfer-declaration of value forms constitutes the preparation of a quarterly sales report to the director of revenue and finance as required by Iowa Code section 421.17(6).

79.3(3) *Transmittal of forms.* Real estate transfer-declaration of value forms filed with the county recorder shall be transmitted promptly to the appropriate assessor. City and county assessors shall transmit to the department of revenue and finance within 60 days of the end of each calendar quarter all real estate transfer-declaration of value forms received from the county recorder during that calendar quarter. Under no circumstances shall the assessor retain any real estate transfer-declaration of value form longer than designated in this subrule.

79.3(4) *Completion of forms.* County recorders and city and county assessors shall complete declaration of value forms in accordance with instructions issued by the department. The assessed values entered on the forms are to be the final values as of January 1 of the year in which the transfer occurred.

This rule is intended to implement Iowa Code section 428A.1.

701—79.4(428) Certain transfers of agricultural realty.

79.4(1) In determining whether agricultural realty is purchased by a corporation, limited partnership, trust, alien, or nonresident alien for purposes of providing information required for such transfers by Iowa Code section 428A.1, the definitions in this rule shall apply.

79.4(2) Corporation defined. "Corporation" means a domestic or foreign corporation and includes a nonprofit corporation and cooperatives.

79.4(3) Limited partnership defined. "Limited partnership" means a partnership as defined in Iowa Code section 545.1 and which owns or leases agricultural land or is engaged in farming.

79.4(4) Trust defined. "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as a trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

Trust does not include a person acting in a fiduciary capacity as an executor, administrator, personal representative, guardian, conservator or receiver.

79.4(5) Alien defined. "Alien" means a person born out of the United States and unnaturalized under the Constitution and laws of the United States. (*Breuer v. Beery*, 189 N.W. 714, 194 Iowa 243, 244 (1922).)

79.4(6) Nonresident alien defined. "Nonresident alien" means an alien as defined in subrule 79.4(5) who is not a resident of the state of Iowa.

This rule is intended to implement Iowa Code section 428A.1.

701—79.5(428A) Form completion and filing requirements.

79.5(1) *Real estate transfer—declaration of value form.* A real estate transfer-declaration of value form shall be completed for any deed, contract, instrument or writing that grants, assigns, transfers or otherwise conveys real property, except those specifically exempted by law, if the document presented for recording clearly states on its face that it is a document exempt from the reporting requirements as enumerated in Iowa Code section 428A.2, subsections 2 to 13 and 16 to 21, or is a deed given in fulfillment of a previously recorded real estate contract. A real estate transfer-declaration of value form is not required for any transaction that does not grant, assign, transfer or convey real property.

79.5(2) *Real estate transfer—declaration of value: Real estate transfer tax.* Requirements for completing real estate transfer-declaration of value forms or exceptions from filing the forms shall not be construed to alter the liability for the real estate transfer tax or the amount of such tax as provided in Iowa Code chapter 428A.

79.5(3) *Agent defined.* As used in Iowa Code section 428A.1, an agent is defined as any person designated or approved by the buyer or seller to act on behalf of the buyer or seller in the real estate transfer transaction.

79.5(4) *Government agency filing requirements.* The real estate transfer-declaration of value form does not have to be completed for any real estate transfer document in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantor, assignor, transferor or conveyor or for any transfer in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantee or assignee where there is no consideration. However, any transfer in which any unit of government is the grantee or assignee where there is consideration is subject to the real estate transfer-declaration of value filing requirements (1980 O.A.G. 92) and any transfer to which the United States or any agency or instrumentality thereof is a party to the transfer is subject to the real estate transfer-declaration of value filing requirements. An exception to this subrule is conveyances for public purposes occurring through the exercise of the power of eminent domain.

79.5(5) *Recording refused.* The county recorder shall refuse to record any document for which a real estate transfer-declaration of value is required if the form is not completed accurately and completely by the buyer or seller or the agent of either. The declaration of value shall include the social security number or federal identification number of the buyer and seller and all other information required by the director of revenue and finance, *(Iowa Association of Realtors et al v. Iowa Department of Revenue,* CE 18-10479, Polk County District Court, February 4, 1983.) However, if having made good faith effort, the person or person's agent completing the declaration of value is unable to obtain the social security or federal identification number of the other party to the transaction due to factors beyond the control of the person or person's agent, a signed affidavit stating that the effort was made and the reasons why the number could not be obtained shall be submitted with the incomplete declaration of value. The declaration of value with attached affidavit shall be considered sufficient compliance with Iowa Code section 428A.1 and the affidavit shall be considered a part of the declaration of value subject to the provisions of Iowa Code section 428A.15.

This rule is intended to implement Iowa Code sections 428A.1, 428A.2 and 428A.4.

701—79.6(428A) Public access to declarations of value. Declarations of value are public records and shall be made available for public inspection in accordance with Iowa Code chapter 68A.

This rule is intended to implement Iowa Code chapter 428A.

[Filed 8/17/79, Notice 7/11/79—published 9/5/79, effective 10/10/79*]
[Filed 12/15/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 7/2/82, Notice 5/26/82—published 7/21/82, effective 8/25/82]
[Filed 9/10/82, Notice 8/4/82—published 9/29/82, effective 11/3/82]
[Filed 8/25/83, Notice 7/20/83—published 9/14/83, effective 10/19/83]
[Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 3/13/92, Notice 2/5/92—published 4/1/92, effective 5/6/92]
[Filed 9/23/92, Notice 8/19/92—published 10/14/92, effective 11/18/92]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

*Effective date of subrule 79.1(4) was delayed by the administrative rules review committee seventy days and delay was lifted on November 14, 1979.

80.4(4) As used in Iowa Code section 427.1(34), the term physically or mentally handicapped means a person whose physical or mental condition is such that they are unable to engage in substantial gainful employment.

80.4(5) The exemption granted in Iowa Code section 427.1(34) extends only to property which is both owned and operated by a nonprofit organization. Property either owned or operated by a private person is not eligible for exemption under Iowa Code section 427.1(34).

80.4(6) The income of persons living in housing eligible for exemption under Iowa Code section 427.1(34) shall not be considered in determining the property's taxable status.

80.4(7) An organization seeking an exemption under Iowa Code section 427.1(34) shall file a statement with the local assessor, board of review or county auditor pursuant to Iowa Code sections 427.1(23) and 427.1(24).

80.4(8) The exemption authorized by Iowa Code section 427.1(34) extends only until the terms of the original low-rent housing development mortgage on the property are paid in full or expire. If an additional mortgage has been secured, the exemption shall extend only until the original mortgage is paid in full or otherwise discharged.

80.4(9) In complying with the requirements of Iowa Code sections 427.1(23) and 427.1(24), the provisions of rule 701—78.4(427) shall apply.

80.4(10) In determining the taxable status of property for which an exemption is claimed under Iowa Code section 427.1(34), the appropriate local tax official shall follow rules 701—78.1(427,441) to 701—78.5(427).

80.4(11) If only a portion of a structure is used to provide low-rent housing units to the elderly and the handicapped, the exemption for the property on which the structure is located shall be limited to that portion of the structure so used. The valuation exempted shall bear the same relationship to the total value of the property as the area of the structure used to provide low-rent housing for the elderly and the handicapped bears to the total area of the structure unless a better method for determining the exempt valuation is available.

80.4(12) The property tax exemption provided in Iowa Code section 427.1(34) shall be based upon occupancy by elderly or handicapped persons as of July 1 of the assessment year. However, nothing in this subrule shall prevent the taxation of such property in accordance with the provisions of Iowa Code section 427.19.

This rule is intended to implement Iowa Code sections 427.1(23), 427.1(24) and 427.1(34).

701—80.5(427) Speculative shell buildings.

80.5(1) *Authority of city council and board of supervisors.* A city council or county board of supervisors may enact an ordinance granting property tax exemptions for value added as a result of new construction, reconstruction or renovation of speculative shell buildings owned by community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499A, or for-profit entities. See Iowa Code section 427.1(41) for definitions. The percentage of exemption and period of time over which the exemption may be allowed are established by the council or board in the ordinance authorizing the exemption and the same exemption applies to all qualifying property within that jurisdiction.

80.5(2) *Eligibility for exemption.* The value added by new construction, reconstruction, or renovation and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a tax exemption becomes effective is not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect on February 1 of that calendar year. This subrule does not apply to new construction projects having received prior approval.

80.5(3) *Application for exemption.*

a. A community development organization, not-for-profit cooperative association, or for-profit entity must file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year in which the value added is first assessed. If approved, no application for exemption is required to be filed in subsequent years for that value added. An application cannot be filed if a valid ordinance has not been enacted. If an application is not

filed by February 1 of the year in which the value added is first assessed, the organization, association, or entity cannot receive, in subsequent years, the exemption for that value added. However, if the organization, association, or entity has received prior approval, the application must be filed by February 1 of the year in which the total value added for the new construction is first assessed.

b. In the event that February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

c. Applications submitted by mail must be accepted if postmarked on or before February 1, or in the event that February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday is acceptable.

80.5(4) *Prior approval.* To obtain prior approval for a project, the proposal of the organization, association, or entity must be approved by a specific ordinance addressing the proposal and passed by the city council or board of supervisors. The original ordinance providing for the exemption does not constitute the granting of prior approval for a project. If an organization, association, or entity has obtained a prior approval ordinance from a city council or board of supervisors, the exemption cannot be obtained until the year in which all value added for the completed project is first assessed. Reconstruction and renovation projects must receive prior approval to qualify for exemption.

80.5(5) *Termination of exemption.* The exemption continues until the property is leased or sold, the time period specified in the ordinance elapses, or the exemption is terminated by ordinance of the city council or board of supervisors. If the ordinance authorizing the exemption is repealed, all existing exemptions continue until their expiration and any projects having received prior approval for exemption are to be granted an exemption upon completion of the project.

This rule is intended to implement Iowa Code section 427.1(41) as amended by 1995 Iowa Acts, House File 556.

701—80.6(427B) Industrial property tax exemption.

80.6(1) *Authority of city council and board of supervisors.* A partial exemption ordinance enacted pursuant to Iowa Code section 427B.1 shall be available to all qualifying property. A city council or county board of supervisors does not have the authority to enact an ordinance granting a partial exemption to only certain qualifying properties (1980 O.A.G. 639). As used in this rule, the term "qualifying property" means property classified and assessed as real estate pursuant to subrule 71.1(6), warehouses and distribution centers, research service facilities, and owner-operated cattle facilities. Warehouse means a building or structure used as a public warehouse for the storage of goods pursuant to Iowa Code sections 554.7101 to 554.7603, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. Distribution center means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. Distribution center does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods. A research service facility is one or more buildings devoted primarily to research and development activities or corporate research services. Research and development activities include, but are not limited to, the design and production or manufacture of prototype products for experimental use. A research service facility does not have as its primary purpose the providing of on-site services to the public. Owner-operated cattle facility means a building or structure used primarily in the raising of cattle and which is operated by the person owning the facility.

80.6(2) *Prior approval.* Only upon enactment of a partial property tax exemption ordinance in accordance with Iowa Code section 427B.1 may a city council or board of supervisors enact a prior approval ordinance for pending individual projects in accordance with Iowa Code section 427B.4. To obtain prior approval for a project, a property owner's proposal must be

80.11(2) *Application for credit.* To obtain the credit, the designated person must file an application for credit with the assessor on or after July 1 and on or before October 15 of each year. The county board of supervisors shall review all claims and make a determination as to eligibility.

80.11(3) *Application of credit.* The county auditor shall apply the credit to each eligible tract of land in an amount equal to the school district tax rate which is in excess of $5.40 multiplied by the taxable value of the eligible tract.

This rule is intended to implement Iowa Code chapter 425A.

701—80.12(427) Methane gas conversion property.

80.12(1) *Application for exemption.* An application for exemption is required to be filed with the appropriate assessing authority by February 1 of each year. The assessed value of the property is to be prorated to reflect the appropriate amount of exemption if the property used to convert the methane gas to energy also uses another fuel. The first year exemption shall be equal to the estimated ratio that the methane gas consumed bears to the total fuel consumed times the assessed value of the property. The exemption for subsequent years shall be based on the actual ratio for the previous year.

80.12(2) *Eligibility for exemption.* To qualify for exemption, the property must be used in connection with a publicly owned sanitary landfill where methane gas is produced as a byproduct of waste decomposition and converted to energy.

This rule is intended to implement Iowa Code section 427.1(43).

701—80.13(427B) Wind energy conversion property. A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property. If the ordinance is repealed, the special valuation applies through the nineteenth assessment year following the first year the property was assessed. The special valuation applies to property first assessed on or after the effective date of the ordinance. The local assessor shall value the property in accordance with the schedule provided in Iowa Code Supplement section 427B.26(2). Public utility property qualifies for special valuation provided the taxpayer files a declaration of intent with the local assessor by February 1 of the assessment year the property is first assessed for tax to have the property locally assessed.

This rule is intended to implement Iowa Code section 427B.26.

[Filed 1/16/81, Notice 12/10/80—published 2/4/81, effective 3/11/81]
[Filed 2/12/82, Notice 1/6/82—published 3/3/82, effective 4/7/82]
[Filed 4/8/83, Notice 3/2/83—published 4/27/83, effective 6/1/83]
[Filed 7/1/83, Notice 5/25/83—published 7/20/83, effective 8/24/83]
[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]◊
[Filed 8/10/84, Notice 7/4/84—published 8/29/84, effective 10/3/84]
[Filed 12/14/84, Notice 11/7/84—published 1/2/85, effective 2/6/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]
[Filed 9/2/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 12/7/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]
[Filed 10/11/91, Notice 9/4/91—published 10/30/91, effective 12/4/91]
[Filed 9/23/92, Notice 8/19/92—published 10/14/92, effective 11/18/92]
[Filed 10/8/93, Notice 9/1/93—published 10/27/93, effective 12/1/93]
[Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

◊Two ARCs.

CHAPTER 107
LOCAL OPTION SALES AND SERVICE TAX*

[Prior to 12/17/86, Revenue Department[730]]

701—107.1(422B) Definitions. The following words and terms are used in the administration of the local option sales and service tax:

The word "city" means a municipal corporation and includes towns in Iowa which were incorporated prior to July 1, 1975, but a city does not mean a county, township, school district, or any special purpose district or authority.

When the word "department" is used, it means the "Iowa department of revenue and finance."

The term "unincorporated area of the county" means all areas of a county which are outside the corporate limits of all cities which are located within the geographical area of the county.

701—107.2(422B) Local option sales and service tax. Only a county may impose a tax upon the gross receipts of sales of tangible personal property sold within the county and upon the gross receipts from services rendered, furnished, or performed within the county. The local option sales and service tax may not be imposed by a city except under the circumstances described in rule 107.14(422B). However, the tax may be imposed by a county for transactions in a specified city. The tax may not be imposed on any transaction not subject to state sales tax. Consequently, there is no local option use tax. The local sales and service tax may be imposed at any rate of not more than 1 percent. See rule 701—14.2(422,423) for a tax table setting out the combined rate for a state sales tax of 4 percent and a local sales tax of 1 percent.

The local option sales and service tax can be imposed upon the unincorporated area of any county only if a majority of those voting in the area favor its imposition. The tax can be imposed upon any incorporated area within a county only if a majority of those voting in that area favor its imposition. All cities within a county contiguous to each other must be treated as part of one incorporated area and tax can be imposed in such an incorporated area only if the majority of persons voting in the total area covered by the contiguous cities favor imposition of the tax. For the purposes of this rule, the local option sales and service tax can only be imposed in those areas specified in the ordinance of a county board of supervisors which imposes the tax.

701—107.3(422B) Transactions subject to and excluded from local option sales tax.

107.3(1) *Sales of tangible personal property.* The local option sales tax is imposed upon the gross receipts from "sales" of tangible personal property which occur within that portion of a county where a tax is imposed. The taxable event is "delivery" of the tangible personal property pursuant to contract for sale. If "delivery" occurs within a county, a sale has occurred there, and local option sales tax may be due. If delivery has not occurred within a county, local option sales tax is not due. Whether the contract for sale becomes binding or title passes within the county is irrelevant. *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985). Delivery usually, but not always, occurs when the seller of tangible personal property transfers physical possession of the property to the buyer.

EXAMPLE 1. Assume that the whole of Polk County has enacted a local option sales tax and Jasper County has not. Mr. Jones, from Jasper County, comes to Smith's Furniture Showroom located in Polk County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. The furniture which has been purchased is placed on a Smith's Furniture Showroom truck and delivered to Mr. Jones' home in Jasper County. Because delivery has occurred within Jasper County, no Polk County local option sales tax will be collected on the transaction.

EXAMPLE 2. Assume the same factual circumstances as exist in the previous example except that Mr. Jones has driven from Jasper County to Smith's Furniture Showroom in a pickup truck and the furniture which Mr. Jones has contracted to buy is delivered onto his truck at the Smith's Furniture Showroom loading ramp. Since delivery occurred in Polk County, Polk County local option sales tax would be due upon the gross receipts of the sale.

*Objection filed September 21, 1992; removed by the Administrative Rules Review Committee, effective 11/29/95.

EXAMPLE 3. Again, assume that the whole of Polk County has enacted a local option sales tax. Again, assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson's Furniture House delivers the furniture in its own truck from Newton to Ms. Wilson's home in Des Moines. Jackson's Furniture House is obligated to collect the Polk County local option sales tax and to remit that tax to the department of revenue and finance. Since delivery has occurred within Polk County, the sale has occured there and the gross receipts of the sale are subject to Polk County's local option tax.

EXAMPLE 4. Assume the same circumstances as in Example 3 except that Ms. Wilson has driven to Jackson's Furniture House in Newton in a pickup truck. She takes delivery of the furniture in her pickup truck from the Jackson's Furniture House loading dock. In this situation delivery has occurred outside of Polk County; therefore, no obligation to pay Polk County local option sales tax exists with regard to the gross receipts of the sale.

107.3(2) *Taxation of sales of tangible personal property moved by carrier.*

a. Ordinarily, property "sold" in a local option sales tax jurisdiction is subject to that jurisdiction's tax. Property moved into or out of a local option sales tax jurisdiction by common carrier is "sold" when the seller transfers physical possession of the property to a carrier for shipment to a buyer unless the buyer and seller indicate their intent that the sale will occur elsewhere by use of the term F.O.B. or of a phrase similar to F.O.B. See Iowa Code section 554.2504. Use of an F.O.B. point located at a place other than that where a seller transfers possession of goods to a carrier usually indicates that the buyer and seller have agreed that sale of the goods will occur at the F.O.B. point. See *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985). In the following examples, assume that Dubuque County has enacted a local option sales tax and Polk County has not.

EXAMPLE A: Assume that company A is located in Dubuque County and customer B is located in Des Moines, Iowa, in Polk County. Customer B orders a load of office furniture from company A. A and B agree that A will secure a common carrier to transport the office furniture to B. A secures the services of Dubuque Cartage Co., which takes possession of the furniture in Dubuque, Iowa, and transports it to Des Moines. There is no mention of the term F.O.B. or any other indication of a delivery point in the contract of sale between A and B. In this case, sale of the furniture was in Dubuque County. A is obligated to collect from B a local option sales tax imposed by Dubuque County.

EXAMPLE B: Assume the same facts as in Example A except that delivery of the office furniture is "F.O.B. Des Moines." In this case, sale of the office furniture has occurred in Des Moines in Polk County and not in Dubuque County. Because of this, A cannot collect from B local option sales tax imposed by Dubuque County.

b. Taxation of property imported into a local option sales tax jurisdiction by a carrier. In the examples below, assume that the whole of Dubuque County, Iowa, has imposed a local option sales tax and that no portion of Polk County has imposed this tax. Further assume, unless otherwise noted, that any seller has the contacts (described in rule 107.8(422B)) with Dubuque County necessary for the county to require the seller to collect its local option sales tax.

EXAMPLE A: Company A is located in Dubuque County. The company orders a load of office furniture from seller B located in Chicago, Illinois. Under the contract of sale, it is the obligation of B to place the furniture upon a carrier for transport to A. Chicago Transport picks up the furniture at B's loading dock in Chicago. Under these circumstances, sale of the furniture took place when B transferred possession of the furniture to Chicago Transport. Since sale of the furniture occurred in Illinois, the sale of the furniture is not subject to the Dubuque County local option sales tax.

EXAMPLE B: Assume the same facts as in Example A except that the contract for sale of the furniture between A and B calls for delivery of the furniture "F.O.B. Dubuque County."

Iowa sales tax can be used to determine if the rentals are subject to a local option service tax. For example, a short-term rental of a vehicle has occurred within a county imposing a local option sales tax when, pursuant to a rental contract, possession of a vehicle is transferred to a customer. The tax is collectible when any lump sum or periodic payment is due under the rental agreement and paid within the local option county. Transfer of possession of the vehicle must have occurred in the county imposing the local option tax; a contract for rental need not have been executed there.

EXAMPLE 1. Assume that the whole of Polk County has a local option service tax. Customer A signs a rental contract with and takes possession of a rental car from an office of a rental agency located in Des Moines. Thereafter, A drives the car from Des Moines to Dubuque, Iowa, and back. In Des Moines, the rental agency collects gross receipts from the rental of $100. Such gross receipts would be subject to Polk County local option sales tax.

EXAMPLE 2. Assume the same facts as in Example 1 except that customer B drives the automobile to Dubuque, Iowa, where no local option tax is imposed and drops it off at a rental agency office there. Also in Dubuque, the customer pays a total charge for the rental of $50. No Polk County local option service tax is due. Transfer of possession occurred in Polk County, but payment for the rental did not.

EXAMPLE 3. Assume the same facts as in Examples 1 and 2, except that before taking possession of the vehicle in Des Moines, customer A pays the rental agency a $25 deposit. Also, rental of the vehicle is on a mileage and per-day basis. Customer A drives the vehicle to Dubuque, Iowa. There it is discovered that the mileage and per day charges add up to $50. Customer A pays the rental agency an additional $25 in Dubuque which has no local option tax. Polk County local option service tax is due upon the $25 deposit paid in Des Moines, but not upon the $25 paid in Dubuque. Only the payment made under the lease in Des Moines is subject to Polk County local option tax.

EXAMPLE 4. Assume the same taxation situation as in Example 1. Customer A rents a car in Dubuque, Iowa, which has no local option tax and drives it to Des Moines which has a local option tax. In Des Moines, A pays $50 for the use of the car. Since transfer of possession of the vehicle did not take place in Polk County, the leasing transaction is not subject to local option service tax. Payment under the lease alone, within a county, does not allow imposition of that county's local option sales tax.

701—107.7(422B) Special rules regarding utility payments. Delivery of gas and water occurs and the services of electricity, heat, communication, and cable television are rendered, furnished, or performed at the address of the subscriber who is billed for the purchase of this property or services. If a telephone subscriber with an address in a local option service tax county uses a telephone credit card within Iowa but outside that county to make an intrastate telephone call, billings to the subscriber's number within the local option service tax county are subject to local option tax.

EXAMPLE. Assume the whole of Polk County, but no other county in Iowa, has a local option service tax. Mrs. Adams lives in Polk County and has a telephone credit card. While staying at a Fort Dodge hotel, Mrs. Adams uses a telephone credit card to call a number in Cedar Rapids. The charge for this use is billed to Mrs. Adams' number in Polk County. The amount of the charge is subject to Polk County local option service tax.

701—107.8(422B) Contacts with county necessary to impose collection obligation upon a retailer. Before any retailer can be required to collect the local option sales or service tax certain minimal connections must exist between the county and the retailer. Basically, the county must have performed or be performing certain services for the retailer for which it can demand repayment in the form of tax. Maintaining any sort of office, sending any solicitor or salesperson, whether independent contractor or employee, or transporting property which the retailer sells into the county in the retailer's own vehicle are nonexclusive examples of

activities which require the county's protection. In return for this protection, tax may be imposed. The mere soliciting and acceptance of business by mail and sending products ordered by mail or common carrier to the county are not activities which require a retailer to collect local option sales or service tax.

Rules 107.1(422B) to 107.8(422B) are intended to implement Iowa Code chapter 422B.

701—107.9(422B) Sales not subject to local option tax. The local option sales and service tax is imposed upon the same basis as the Iowa state sales and service tax, with seven exceptions:

1. The sale of Iowa lottery tickets or shares is not subject to local option sales tax.
2. All gross receipts from the sale of motor fuel and special fuel as defined in Iowa Code chapter 452A.
3. For the period beginning July 1, 1985, and ending June 30, 1987, the sale or rental of farm machinery and equipment and industrial machinery, equipment, and certain computers is not subject to local option sales or service tax.
4. For taxes imposed on and after January 1, 1986, the gross receipts from the rental of rooms, apartments, or other sleeping quarters which are taxed under Iowa Code chapter 422A during the period in which the hotel and motel tax is imposed shall be exempt from local option sales tax.
5. For taxes imposed on or after January 1, 1986, the gross receipts from the sale of natural gas or electricity in a city or county shall be exempt from tax if the gross receipts are subject to a franchise or user fee during the period the franchise or user fee is imposed.
6. Rescinded IAB 10/25/95, effective 11/29/95.
7. On and after July 1, 1989, the gross receipts from sales of equipment by the Iowa state department of transportation are exempt from local option sales tax.

When tangible personal property is sold within a local option sales tax jurisdiction and the seller is obligated to transport it to a point outside Iowa or to transfer it to a common carrier or to the mails or parcel post for subsequent movement to a point outside Iowa, gross receipts from the sale are exempt from local option sales tax provided the property is not returned to any point within Iowa except solely in the course of interstate commerce or transportation. (Iowa Code subsection 422.45(46).) Property sold in a local option sales tax jurisdiction for subsequent transport to a point outside the jurisdiction but otherwise within the borders of Iowa is not exempt from tax.

Any limitation upon the right of a subdivision of the state to impose a sales or service tax upon a transaction is not applicable to the local option sales and service tax if the statute which contains the limitation has an effective date prior to July 1, 1985. As a nonexclusive example, a county is not prohibited from imposing a local option sales tax upon the gross receipts from sales of cigarettes or tobacco products which are subject to state sales tax.

This rule is intended to implement Iowa Code section 422B.8.

701—107.10(422B) Local option sales and service tax payments to local governments. When a local sales and service tax is imposed, the director shall remit 90 percent of the estimated tax receipts for the city or county to the city or county after the end of each quarter no later than the following dates: November 10, February 10, May 10, and August 10. The director shall remit a final payment of the remainder of tax money due to the city or county for the fiscal year before the due date for the payment of the first quarter of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. The shares are to be remitted to the board of supervisors if the tax is imposed in the unincorporated areas of the county, and to each city where the tax is imposed.

gambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters which are part of a local option sales tax jurisdiction and 25 of those miles which are not. The amount of state sales tax due and the amount of local option sales tax due using a "distance" apportionment formula are determined as follows:

Computation of state sales tax due

1. $10,000 ÷ 1.04 = $9,615.38
2. $10,000 − $9,615.38 = $384.62 = amount of state sales tax due

Computation of local option tax due

1. $9,615.38 ÷ 1.01 = $9,520.18
2. $9,615.38 − $9,520.18 = $95.20
3. $95.20 × ½ = $47.60 = amount of local option sales tax due

EXAMPLE B: The gambling excursion boat "Blue Diamond" is based in Davenport. Assume that, as in Example A, during a particular cruise there occurs $10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example A, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this case, all calculations are the same as those performed in Example A, except that the last calculation is performed as follows:

$95.20 × ⅔ = $63.40 = amount of local option sales tax due

EXAMPLE C: The excursion gambling boat "Golconda" is based in Dubuque, Iowa. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles the Golconda is passing through waters which are part of a local option sales tax jurisdiction. Assume that on one particular cruise, $100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the $100,000 amount but not state sales tax. Thus, the total amount collected is $104,000; $100,000 in gross receipts, $4,000 in state sales tax. Local option tax is calculated as follows: Divide $100,000 by 1.01. This result is $99,009.90. Subtract this from $100,000 leaving $990.10. $990.10 is the amount of local option tax which would be due if all sales during the cruise had occurred in a jurisdiction imposing a local option tax. Since only half the distance traveled was in a jurisdiction imposing the tax, $990.10 is multiplied by .5 to discover the amount of local option tax due ($495.05).

EXAMPLE D: The gambling excursion boat "Black Jack" is based in Davenport. Assume that during a particular cruise there is $150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is $156,000; $6,000 in state sales tax and $150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example B, the Black Jack's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example tax is computed as follows:

1. $150,000 ÷ 1.01 = $148,514.85
2. $150,000 − $148,514.85 = $1,485.15
3. $1,485.15 × ⅔ = $989.11 = amount of tax due

Upon beginning operation, a licensee may choose to employ either the "distance" method of apportionment set out in Examples A and C or the "time" method set out in B and D above without informing the department in advance of filing a sales tax return of its choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method, and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and 422B.8.

701—107.13(421,422B) Officers and partners, personal liability for unpaid tax. If a retailer or purchaser fails to pay local option sales tax when due for taxes due and unpaid on and after July 1, 1990, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting local option sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to local option tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax. See rule 701—12.15(422,423) for a description of various criteria used to determine personal liability and for a characterization of the term "accounts receivable."

This rule is intended to implement Iowa Code section 421.26 and chapter 422B.

701—107.14(422B) Local option sales and service tax imposed by a city.

107.14(1) On or before January 1, 1998, a city may impose by ordinance of its council a local sales and service tax if all of the following circumstances exist:

a. The city's corporate boundaries include areas of two Iowa counties.

b. All the residents of the city live in one county as determined by the latest federal census preceding the election described in paragraph *"c"* immediately below.

c. The county in which the city's residents reside has held an election on the questions of the imposition of a local sales and services tax and a majority of those voting on the question in the city favored its imposition.

d. The city has entered into an agreement on the distribution of the sales and services tax revenues collected from the area where the city tax is imposed with the county where such area is located.

107.14(2) Imposition of the tax is subject to the following restrictions:

a. The tax shall only be imposed in the area of the city located in the county where none of its residents reside.

b. The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

c. The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.

d. The tax shall be imposed on the same basis as provided in rule 107.9(422B).

e. The city shall assist the department of revenue and finance to identify the businesses in the area which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.

f. The agreement on the distribution of the revenue collected from the city-imposed tax shall provide that 50 percent of such revenue shall be remitted to the county in which the part of the city where the city tax is imposed is located.

[Filed emergency 12/13/85—published 1/1/86, effective 1/1/86]
[Filed 2/7/86, Notice 1/1/86—published 2/26/86, effective 4/2/86]
[Filed 10/31/86, Notice 9/24/86—published 11/19/86, effective 12/24/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 9/30/88, Notice 8/24/88—published 10/19/88, effective 11/23/88]◊
[Filed 10/26/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed emergency 3/15/91—published 4/3/91, effective 3/15/91]
[Filed 5/10/91, Notice 4/3/91—published 5/29/91, effective 7/3/91]
[Filed 5/23/91, Notice 4/17/91—published 6/12/91, effective 7/17/91]
[Filed 3/26/92, Notice 2/19/92—published 4/15/92, effective 5/20/92]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]

CHAPTERS 108 to 110
Reserved

TITLE XV
CHAPTERS 111 and 112
Reserved

CHAPTER 113
Rescinded, effective 10/15/86

CHAPTERS 114 to 119
Reserved

◊Two ARCs

CHAPTER 15
REQUIRED PUBLIC FUNDS CUSTODIAL AGREEMENT PROVISIONS

781—15.1(12B) Scope.

15.1(1) Iowa Code section 12B.10C requires the treasurer of state to adopt rules requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds. A public funds custodial agreement is defined in Iowa Code section 12B.10C as any contractual agreement pursuant to which one or more persons including, but not limited to, investment advisors, investment companies, trustees, agents and custodians, are authorized to act as a custodian of or to designate another person to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments.

15.1(2) These rules shall apply to any public unit, as defined in 781—Chapter 13, which uses a public funds custodial agreement for the investment of public funds. Public funds are defined in Iowa Code section 12C.1(2)*"b"* as moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in Iowa Code section 12C.1(1); a legal or administrative entity created pursuant to Iowa Code chapter 28E; or an electric power agency as defined in Iowa Code section 28F.2.

15.1(3) A public unit may only enter into a contractual arrangement pursuant to which a person is authorized to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments (including the safekeeping of investments owned by a public unit) if that person is the trust or safekeeping department of a national or state bank located in the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa. Provided, however, the treasurer of state may exercise its discretion under Iowa Code section 12C.4 to enter into public funds custodial agreements with a custodian located outside the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal or state laws. Each public unit whose investments involve the use of a public funds custodial agreement shall require the inclusion in the public funds custodial agreement those provisions contained in rule 15.2(12B) of this chapter.

15.1(4) Investments of public funds invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness are not subject to these rules.

15.1(5) The public safety peace officers' retirement system governed by Iowa Code chapter 97A, the Iowa public employees' retirement system governed by Iowa Code chapter 97B, investments by the Iowa finance authority governed by Iowa Code chapter 16, the state fire and police retirement system governed by Iowa Code chapter 411, and the judicial retirement system governed by Iowa Code chapter 602, article 9, are not subject to these rules. These rules also do not apply to public funds custodial agreements entered into by the treasurer of state when such agreements are on behalf of any of the entities specified in this section.

15.1(6) These rules do not apply to custodial agreements between an open-end management investment company registered with the Federal Securities Exchange Commission under the Federal Investment Company Act of 1940, 15 U.S.C. Sec. 80(a) and a custodian bank.

15.1(7) These rules do not apply to custodial agreements entered into by a public unit or the treasurer of state for the purposes of securing public funds deposits under Iowa Code chapter 12C.

15.1(8) These rules do not apply to Treasury Direct accounts established by a public unit with a Federal Reserve Bank for the purpose of making direct purchases of United States Treasury bills, notes or bonds.

781—15.2(12B) Required provisions for inclusion in public funds custodial agreements. All public funds custodial agreements shall be in writing and shall include the following provisions:

15.2(1) The custodian shall represent and warrant that it lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa, unless such a custodian is located out of state and is used by the treasurer of state for purposes permitted in Iowa Code section 12C.4, and that it has the resources and expertise to act as the custodian of public funds or any security or document of ownership or title evidencing public funds investments and to perform its responsibilities under the public funds custodial agreement.

15.2(2) The scope of duties and services to be performed by the custodian shall be described in detail satisfactory to the public unit and shall include, as applicable, custodial, settlement, collection of income and investment proceeds, and securities valuation services.

15.2(3) The custodian shall agree to provide the public unit with receipts, advices or other written confirmation or acknowledgment of its custody, on behalf of the public unit, of all assets delivered to it for the account of the public unit and subject to the public funds custodial agreement.

15.2(4) The custodian shall agree to segregate public funds assets separate from bank assets and to maintain records adequate to describe the fiduciary capacity of the custodian and the ownership of the assets by the public unit.

15.2(5) The custodian shall agree to maintain adequate records regarding a description of the assets, all receipts, deliveries and locations of the assets, together with a current inventory thereof, all purchases and sales, all receipts and disbursements of cash and all debits and credits pertaining to transactions relating to the assets, including but not limited to interest payments. The custodian shall agree to conduct periodic inspections in order to verify the accuracy of the inventory, including the securities, if any, held by a subcustodian.

15.2(6) The custodian shall agree that all records of investment transactions, documentation, orders and reports, whether in written or machine-readable form, relating to the public funds custodial agreement and the services provided thereunder, regardless of who performs the services, shall be considered records of the public unit and open to inspection and examination by the public unit, its employees and its designees. To the extent records are maintained by others, the custodian shall agree to obtain from the other person an identical right to examination and inspection of the records and to obtain the information and records upon request of the public unit and to enforce its rights in order to obtain any records held by another person. The custodian shall agree to make all such records available upon reasonable request for inspection and audit by the public unit, its employees or designees, and to allow these records or excerpts of these records to be copied and removed to facilitate the audit or to comply with public records requirements.

15.2(7) If the custodian proposes to use a subcustodian or other agent to perform any services in connection with the public funds custodial agreement, the custodian shall agree that it shall be responsible for the acts or omissions of any subcustodians or other agent used as though the acts and omissions of any subcustodian or agent were the acts and omissions of the custodian.

15.2(8) The custodian shall agree that it will receive all assets purchased by or for the public unit from the persons through or from whom the same were purchased, and only upon receipt thereof (delivery versus payment basis) pay, out of assets held on account of the public unit, the total amount payable on the purchase as set forth in the instructions received by the custodian. The custodian shall agree to secure possession of all investment instruments that are the subject of or are the underlying obligations for any repurchase agreement.

15.2(9) The custodian shall agree that it will transfer assets for sale pursuant to instructions delivered to the custodian only upon receipt of the total amount payable to the public unit in connection with the settlement of the transaction, provided that the same conforms

to the total amount payable to the public unit as shown in the instructions with respect to such sale. No assets may be delivered out of the account of the public unit without full payment (no "free deliveries" of investment securities shall be permitted).

15.2(10) If a public unit has engaged an investment advisor or investment manager, the public funds custodial agreement must limit the authority of the investment manager or advisor to authorizing a sale or purchase of an investment on a delivery versus payment basis pursuant to an instruction procedure which is consistent with the requirements of the public funds custodial agreement and the internal control policies of the public unit. The public funds custodial agreement shall not permit an investment manager or investment advisor to deliver, transfer, or move cash or securities to another account, location or entity.

15.2(11) The delivery, transfer or movement of cash or securities held in custody for the public unit (except for trades on a delivery versus payment basis) shall only be made pursuant to instructions given to the custodian by the treasurer of the public unit, or other employees designated by the treasurer, consistent with the internal controls established by the public unit.

15.2(12) The public funds custodial agreement shall specify in satisfactory detail the procedures for instructions to be furnished to the custodian in connection with the sales or purchases of securities and the delivery, transfer or movement of cash or securities held in the custody account. The instruction provisions must be consistent with the internal control policies established by the public unit. At a minimum, these procedures must certify the individual or individuals authorized to issue instructions, the scope of their authority, require current specimen signatures of authorized individuals to be maintained by the custodian and require written instructions to be furnished to the custodian. If oral instructions are permitted, the procedures or protocol for them must be specified in detail and must address verification and confirmation procedures and follow-up written instructions required by the custodian and the public unit.

15.2(13) At a minimum, the public funds custodial agreement shall require the custodian to furnish the following reports to the public unit: A monthly report describing in satisfactory detail the inventory of the account and transaction history during the preceding month; other reports at such times as may be adequate to satisfy the public unit's internal control procedures for reconcilement; and written notice to the public unit within 30 days of receipt of all communications from the person performing the audit of the custodian or any regulatory authority of a material weakness in internal control structure, or regulatory orders or sanctions against the custodian, with regard to the services being performed under the public funds custodial agreement.

15.2(14) The custodian shall agree to furnish to the public unit the audited financial statements and related report on internal control structure as required by Iowa Code section 11.6(1)*"b"*(2) as amended and recodified from time to time.

15.2(15) The public funds custodial agreement shall not provide for the compensation of the custodian based on investment performance.

15.2(16) The custodian shall agree to comply with all applicable federal laws and regulations and all applicable laws and administrative rules of the state of Iowa, including all amendments to laws, regulations and rules adopted following the execution and delivery of the public funds custodial agreement at any time during the term of the public funds custodial agreement.

15.2(17) The public funds custodial agreement shall require that all investments shall be made in accordance with the laws of the state of Iowa, as then in effect.

15.2(18) At a minimum, the custodian shall agree to exercise the standard of care expected of a prudent professional custodian of public funds in holding, maintaining and servicing the securities and cash under the public funds custodial agreement.

15.2(19) The provisions described in these rules shall not be limited or avoided by other contractual provisions in the public funds custodial agreement.

15.2(20) Any provisions limiting the liability of the custodian shall not relieve the custodian

of liability as a result of its own negligence, lack of good faith or willful misconduct.

15.2(21) If the custodian intends to perform services pursuant to the public funds custodial agreement in its safekeeping department, the custodian shall represent and warrant that it performs similar services for other customers in its safekeeping department.

781—15.3(12B) Optional provisions which public units should consider. The provisions set forth in rule 15.2(12B) are minimum requirements and are not exclusive. A public unit should determine whether the services performed by the custodian pursuant to the agreement will be performed in the safekeeping department or the trust department and, based upon the advice of its counsel, should also consider other appropriate or more favorable provisions that may customarily be included in a public funds custodial agreement. Such things include, but are not limited to: additional representations and warranties; agreements or covenants pertaining to insurance and fidelity bond of the custodian and its employees; permitted use of subcustodians; adequate description of fees and expenses and billing procedures; the requirement of additional reports including advices of transactions; conditions to the effectiveness of the public funds custodial agreement regarding deliveries of related documents and certificates; a higher standard of care; the ability of the public unit to terminate the public funds custodial agreement on a short-term basis without cause; and indemnification and default provisions, including recovery of attorneys' fees.

781—15.4(12B) Custodial functions. The required provisions contained in rule 15.2(12B) address only custodial functions and do not purport to address discretionary authority pertaining to the investments which shall be set forth in a separate written contract with the investment manager or advisor.

781—15.5(12B) Implementation deadline. Public units shall have until January 31, 1993, to incorporate the required provisions contained in rule 15.2(12B) into existing public funds custodial agreements. Any new public funds custodial agreement executed after the effective date of these rules shall contain the provisions of rule 15.2(12B).

These rules are intended to implement Iowa Code section 12B.10C.

[Filed emergency 9/1/92—published 9/30/92, effective 9/1/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 10/5/95, Notice 8/30/95—published 10/25/95, effective 11/30/95]

VOTER REGISTRATION COMMISSION[821]

Prior to 3/21/90, Voter Registration Commission[845]

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CHAPTER 1
ORGANIZATION, PURPOSE, PROCEDURES AND DEFINITIONS

[Prior to 3/21/90, see Voter Registration Commission[845], Ch 1]

821—1.1(47) Voter registration commission composition. The commission consists of four members: the state commissioner of elections, and the chairpersons of the two state political parties whose candidates for President of the United States or for governor, as the case may be, in the most recent general election, received the greatest and the second greatest number of votes, or their designees, and a person appointed by the president of the Iowa State Association of County Auditors.

821—1.2(47) State registrar of voters. The senior administrator of the applications, systems and programming division of the department of general services is the state registrar of voters. The state registrar is responsbile for the regulation of the preservation, preparation and maintenance of voter registration records and the preparation of precinct election registers for all elections administered by any county commissioner of elections. This regulation activity is in accordance with the policies of the voter registration commission.

821—1.3(47) General operating rules.

1.3(1) The chair of the commission is the state commissioner of elections or the state commissioner's designee.

1.3(2) Any member of the commission, including the chair, may make and second any motion.

1.3(3) To prevail, a motion, declaratory ruling, or ruling in a contested case must receive the votes of a majority of commissioners present and voting.

1.3(4) Rescinded IAB 10/25/95, effective 10/6/95.

1.3(5) A designee of a statutory member shall present a letter from the statutory member appointing the designee.

1.3(6) A quorum of the commission is four members. No official action may be taken in the absence of a quorum.

1.3(7) Any member of the public may petition the commission concerning any subject under the commission's authority. Any member of the public may propose new rules or modifications to existing rules of the commission. Petitions or proposed rule changes may be in letter form, filed with the registrar and addressed to the commission. Any such letter must include a discussion of the problem or issue, addressing and supporting rationale for any proposed action by the commission. In addition, any such petition must state the legal authority which petitioner believes confers jurisdiction over the subject matter to the commission. Action on petitions received shall be taken not later than the second regular commission meeting following receipt of the petition. In the event a hearing is held on an issue, the hearing shall be scheduled within 90 days of receipt of the petition.

821—1.4(47) Voter registration staff.

1.4(1) *Voter registration system.* Under the general direction of the state registrar of voters, the director of voter registration conducts and directs those activities necessary to implement and maintain the statewide voter registration system. The voter registration staff includes clerical and technical personnel temporarily or permanently assigned by the registrar to support the voter registration function.

1.4(2) *Intergovernmental relations.* The voter registration director and staff are responsible for working with and assisting county commissioners in performing their voter registration duties under the law, including acquisition of voter registration data processing services, preparation of election registers, maintaining voter registration files, processing registration applications and related activities. The director and staff are responsible for communicating with state and federal court officials to arrange for the provision of information from voter registration records to the courts for use in the jury selection process. The director and staff are also responsible for ensuring the transfer of electronic registration data from registration agencies and the department of transportation to the appropriate county commissioner.

1.4(3) *Staff support to the commission.* The registrar and voter registration staff provide support services to the commission as required in the performance of the commission's official duties.

821—1.5(47) Declaratory ruling by voter registration commission. Any member of the commission or the public may petition the commission for a declaratory ruling as to the applicability of any statutory provision, rule or other written statement of law or policy. The petition must be filed with the registrar at least seven days before the regular or special meeting at which the petition is to be considered. The registrar shall provide a copy of the petition to each voter registration commissioner at least four days before the meeting. Declaratory rulings shall be made in writing and placed on file with the registrar.

821—1.6(47) Contested cases.

1.6(1) *Hearings.* Hearings for contested cases under the authority of the voter registration commission shall be presided over by the voter registration commission. Notice shall be given, the hearing conducted and the records of the hearing kept in accordance with Iowa Code section 17A.12.

1.6(2) *Rules of evidence.* Rules of evidence shall be those enumerated under Iowa Code section 17A.14.

821—1.7(47) Definitions. The following terms have the meanings assigned to them by this rule wherever the terms appear in these rules, unless the context of usage clearly requires otherwise.

"Agency" means a voter registration agency and the office of driver services, department of transportation.

"Commission" or *"voter registration commission"* means the voter registration commission as defined in Iowa Code section 47.8.

"Commissioner" or *"county commissioner"* means the county commissioner of registration as defined in Iowa Code section 48.1.

"Driver license clerk" means an employee of the office of driver services, department of transportation, who has face-to-face contact with clients seeking a driver license or nonoperator identification card, or a county employee in the office of the county treasurer who performs a similar function.

"NCOA" means National Change of Address, and refers to the collection and distribution of information by the United States Postal Service or its licensed vendors; programs instituted to support that collection and distribution; or the information itself.

"Registrar" or *"state registrar"* means the state registrar of voters as defined in Iowa Code section 47.7.

"Voter registration agency" means any department, division, or bureau in state government which provides voter registration services pursuant to Iowa Code section 48A.18. A department, division, or bureau which merely makes mail-in voter registration applications available to its clients, employees, or general public is not a voter registration agency, nor is the office of driver services, department of transportation.

"Voter registration commissioner" means a member of the voter registration commission.

Rules 1.1(47) to 1.7(47) are intended to implement Iowa Code sections 47.7 and 47.8.

[Filed 7/5/77, Notice 6/1/77—published 7/27/77, effective 8/31/77]
[Filed 8/30/89, Notice 4/5/89—published 9/20/89, effective 10/25/89]
[Filed 3/1/90, Notice 9/6/89—published 3/21/90, effective 4/25/90]
[Filed 11/4/94, Notice 9/28/94—published 11/23/94, effective 1/5/95]
[Filed emergency 10/6/95—published 10/25/95, effective 10/6/95]

CHAPTER 2
VOTER REGISTRATION APPLICATIONS, ACCEPTABILITY, REGISTRATION DATES, AND EFFECTIVE DATES

[Prior to 3/21/90, see Voter Registration Commission[845], Ch 2]

821—2.1(48A) Required elements. In addition to the spaces required by Iowa Code section 48A.11, every voter registration form shall include room for the county commissioner to make notations indicating such items as the date the form was received, the precinct and school district of the registrant, any other special district or note deemed necessary or appropriate by the commissioner, and the date the registration is effective. The notations may be on the reverse of the form.

821—2.2(48A) Agency code. In addition to the spaces and statements required to be included on registration forms by Iowa Code section 48A.11, and rule 2.1(48A), registration forms used by voter registration agencies shall contain a code, to be devised by the registrar, indicating the type of agency. The agency type code shall be on a perforated stub attached to the registration form.

821—2.3(48A) Federal mail-in application. Rules 2.1(48A) and 2.2(48A) do not apply to the mail voter registration form prescribed by the federal election commission, which shall be accepted in accordance with Iowa Code section 48A.12, and shall not be used by voter registration agencies.

821—2.4(48A) Paperless (electronic) registration forms. Any voter registration agency and the office of driver services, department of transportation, may devise a system of collecting registration applications without using paper forms, in accordance with the following restrictions:

2.4(1) All information required to be disclosed on a voter registration form shall be collected by the agency and captured electronically. The applicant shall also be asked to disclose the optional information solicited by the form if that information is not captured as a part of the agency's own record-making process.

2.4(2) The applicant shall be shown a list of the eligibility requirements for registering to vote and the penalties for falsely registering, printed in large, easy-to-read type, and shall be advised to read them.

2.4(3) The application to register to vote and the signature of the applicant shall be recorded in digitized form in the agency's computer system and shall be kept permanently by the agency. The system shall ensure that neither the application form nor the signature, once captured, can be edited.

2.4(4) The agency shall develop procedures so that the digitized signature can be retrieved and reproduced on paper. Within three working days of receipt of an order from a state or federal court, the agency shall provide a reproduction of the requested application and signature.

2.4(5) The agency shall transmit electronic registration records to the registrar in accordance with 821—Chapter 8.

821—2.5(48A) Acquisition of registration forms. To ensure that forms used by the various voter registration agencies contain no distinguishing characteristics that could be used to identify the agency from which the form came, all agency forms shall be ordered through the state registrar of voters. The registrar shall negotiate a contract for the procurement of the forms in accordance with all procurement laws and rules.

821—2.6(48A) Production of forms. Any person or organization, except voter registration agencies, may cause the printing and production of the mail-in voter registration application. Applications so produced shall be identical in size, shape, weight and similar in color of paper, type size, and color of ink to those available from the registrar, except that the independently produced applications may not contain an agency type code, may be preaddressed to a particular county commissioner on the reverse of the form, and may contain postage.

821—2.7(48A) Availability of forms. Mail-in registration applications shall be available for purchase, at the cost of production, from the state registrar of voters. Application forms for an individual's personal use shall be available free of charge at the office of the registrar, all voter registration agencies, and the office of driver services, department of transportation.

821—2.8(48A) Incomplete applications acceptable. No commissioner shall refuse to register or accept an application from an applicant unable to specify the correct ward, precinct, or school district for the applicant's address. The commissioner shall make a determination of the correct political subdivisions from maps, legal descriptions, and other means at the commissioner's disposal.

821—2.9(48A) Optional data not required. No commissioner shall refuse to register or accept an application from an applicant who fails or declines to reveal the applicant's social security number, telephone number or political party affiliation.

821—2.10(48A) Alternate (nonmailable) registration forms. An alternate registration form is authorized for the use of voter registration agencies and nongovernmental organizations engaging in registration programs and registration drives. The form shall contain spaces for all of the required and optional information solicited by the standard form, a list of the qualifications to register to vote, a statement to be signed by the applicant that the applicant is eligible to register to vote, and a statement of the penalty for submission of a false voter registration form. The forms shall be the same size as the mail-in form available from the registrar. The face of the form shall contain spaces for all the personal information asked of the applicant, along with the attestation and warning. The reverse of the form may contain the list of qualifications, and may contain space for the county commissioner's notations. The form may be printed as a detachable part of a larger piece, or may be printed by itself. Because registration forms are frequently kept for many years, registration forms shall be printed on paper at least as thick as 20-pound xerographic paper.

The intent of this rule is to make available a mechanism for individuals, groups and organizations to conduct registration drives without requiring them to purchase the relatively expensive mail-in registration forms. To that end, the state registrar shall make available, without charge, a limited quantity of forms as determined by the voter registration commission, and camera-ready copies of a form meeting the requirements of this rule.

821—2.11(48A) Registration forms in languages other than English. Notwithstanding any other provision of these rules, any county commissioner may cause production of any approved voter registration application in a language other than English if the commissioner determines that such a form would be of value in the commissioner's county. The registrar shall assist any county commissioner with the translation of voter registration forms upon the request of the county commissioner.

821—2.12(48A) Date of registration. For the purposes of record keeping and determining timeliness of an application to register to vote, the date of registration of an application received from a source other than the United States Postal Service is the date the application is received by the commissioner, or submitted to a voter registration agency, or submitted to the office of driver services, department of transportation, whichever is earlier. The date of registration of an application delivered to the commissioner by the United States Postal Service is the postage cancellation date on the application or on the envelope containing the application. If the postage cancellation date is missing or illegible, the registration date is the date of the second day preceding the application's receipt in the commissioner's office.

821—2.13(48A) Effective date of registration. Effective dates of registration shall be determined as follows.

2.13(1) If the applicant is at least 18 years of age and registration in the applicant's precinct is not closed due to a pending election, the effective date of registration is the date of registration.

2.13(2) If the applicant is at least 18 years of age and registration is closed in the applicant's precinct due to a pending election, the effective date of registration is the date of the day after the pending election.

2.13(3) If the applicant is less than 18 years of age and registration is not closed in the applicant's precinct due to a pending election, the effective date of registration is the date of the applicant's eighteenth birthday.

2.13(4) If the applicant is less than 18 years of age and registration is closed in the applicant's precinct due to a pending election, the effective date of registration is the date of the day after the pending election, or of the applicant's eighteenth birthday, whichever is later.

These rules are intended to implement Iowa Code chapter 48A.

[Filed emergency 6/2/76—published 6/28/76, effective 6/2/76]
[Filed 7/24/78, Notice 6/14/78—published 8/9/78, effective 9/13/78]
[Filed 2/20/80, Notice 12/26/79—published 3/5/80, effective 4/9/80]
[Filed emergency after Notice 7/27/82, Notice 6/9/82—published 8/18/82, effective 7/27/82]
[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
[Filed emergency after Notice 8/22/84, Notice 7/18/84—published 9/12/84, effective 8/22/84]
[Filed 1/24/86, Notice 12/4/85—published 2/12/86, effective 3/19/86]
[Filed emergency 9/4/86—published 9/24/86, effective 9/4/86]
[Filed 8/30/89, Notice 4/5/89—published 9/20/89, effective 10/25/89]
[Filed 3/1/90, Notice 9/6/89—published 3/21/90, effective 4/25/90]
[Filed 10/12/90, Notice 9/19/90—published 10/31/90, effective 12/5/90]
[Filed 11/4/94, Notice 9/28/94—published 11/23/94, effective 1/5/95]
[Filed emergency 10/6/95—published 10/25/95, effective 10/6/95]

COUNTIES(*cont'd*)

DRUGS(*cont'd*)

ELECTIONS(*cont'd*)