State of Iowa

Iowa Administrative Code Supplement

Biweekly
January 27, 1999

KATHLEEN K. BATES
ADMINISTRATIVE CODE EDITOR

ROSEMARY DRAKE
DEPUTY EDITOR

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

Pursuant to Iowa Code section 17A.6, the Iowa Administrative Code (IAC) is a loose-leaf publication containing all rules adopted and filed by state government agencies and an index to those rules. The IAC is organized by agencies and divided into chapters. Each agency that has been delegated rule-making authority by the Iowa General Assembly has been assigned an agency number which appears in each rule adopted by that agency as well as at the top of each page of the agency's rules.

The first volume of the IAC contains explanatory information under the following headings:

General Information about the IAC
Chapter 17A of the Iowa Code
Style and Format of Rules
Table of Rules Implementing Statutes
Uniform Rules on Agency Procedure

Replacement pages incorporating amendments to rules are published and distributed on a biweekly basis as the Iowa Administrative Code Supplement. Each page of rules reflects the date of its publication; and each chapter of rules concludes with a historic listing of the dates on which that chapter changed, including dates of filing with the Administrative Rules Coordinator, publication of Notice of Intended Action in the Iowa Administrative Bulletin, publication of the IAC Supplement, and effective date of the change.

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.

Editor's telephone: (515)281-3355 or (515)281-8157
Fax: (515)281-4424

UPDATING INSTRUCTIONS
January 27, 1999, Biweekly Supplement

[Previous Supplement dated 1/13/99]

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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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		1.9
		9.1-9.13
		41.2
	[481]	1.1-1.11
		25.1-25.11
		40.1-40.4
		71.1-71.9
		72.1-72.4
		74.1-74.5
	[489]	1.1
		2.1-2.5
		3.1-3.6
	[493]	1.1-1.5
		4.1-4.15
	[561]	1.1-1.5
		4.4-4.6
		4.10

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		5.1
		5.3
	[567]	1.1-1.11
		3.1
		4.1
		5.1
		7.1
		9.1-9.4
		20.1-20.3
		40.1-40.6
		50.1-50.9
		60.1-60.4
		70.1-70.6
		90.1
		90.3
		140.1-140.5
	[571]	1.1-1.10
		3.1
		4.1
		5.1
		7.1
		8.1
	[581]	31.1-31.15
	[645]	23.3-23.6
		23.10
		23.11
		23.13
		104.3-104.5
		104.10
		104.11
		104.13
		123.3-123.6
		123.10
		123.11
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		228.11
		228.13
		281.3-281.6
		281.10
		281.11
		281.13
		303.3-303.13
	[650]	5.3
		5.5
		6.1
		6.2

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		7.1-7.3
	[653]	10.1-10.9
	[655]	1.1
		1.3
		2.3
		2.6
		3.1
		3.2
		3.4-3.6
		5.1-5.3
		6.1-6.3
		6.6
		7.2
	[657]	1.1
		1.2
	[661]	1.1-1.4
		1.6-1.8
	[685]	1.3
	[701]	8.1-8.4
	[705]	1.1-1.4
	[721]	3.1-3.10
		4.4
	[741]	2.2
	[751]	1.1-1.7
	[761]	1.1-1.8
		4.9
		10.1-10.4
		110.1
		400.6
		500.2
		511.2
		525.1
		528.1
		600.2
		604.3
		607.2
		615.3
		640.1
		700.2
		710.3
		750.3
		800.2
		910.2
	[765]	1.2
		2.3
		4.1
	[781]	1.1-1.3

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		7.1
		7.2
		8.1-8.3
		8.5-8.10
	[875]	3.12
		4.7
	[876]	1.1
		1.2
		3.1
		4.7
		4.23
		4.34
		7.1
		7.3
17A.4	[21]	1.1-1.7
	[25]	1.5
		1.6
	[61]	11.7
	[185]	2.1-2.8
	[189]	4.1-4.3
	[201]	10.1-10.8
	[223]	4.4-4.6
		4.10
		4.11
		4.13
	[261]	101.3-101.6
		101.11
		101.13
	[265]	1.4
		1.5
	[281]	4.3-4.6
	[282]	4.3-4.6
	[283]	2.1
		2.2
		3.1
		3.2
	[289]	4.3-4.6
		4.10
		4.11
		4.13
	[441]	3.5
		3.16
	[481]	4.3-4.6
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		4.11
	[641]	174.3-174.6
		174.11
		174.13
	[645]	23.3-23.6
		23.10
		23.11
		23.13
		104.3-104.5
		104.10
		104.11
		123.3-123.6
		123.10
		123.11
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		138.11
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		228.11
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		281.10
		281.11
		281.13
		303.3-303.13
		357.3-357.6
		357.10
		357.11
		357.13
	[650]	7.2
	[653]	10.1-10.9
	[655]	8.1
		8.2
		9.1
		10.1
		10.2
		11.1-11.3
	[657]	28.3-28.6
		28.10
		28.11
		28.13
	[685]	2.1
	[701]	6.4
		201.1

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	[765]	2.3
	[801]	4.3-4.5
		4.6
		4.11
		4.13
	[876]	9.1
		9.3
		9.6
		9.8-9.14
17A.5	[197]	5.1-5.4
	[645]	23.3-23.6
		23.10
		23.11
		23.13
		104.3-104.5
		104.10
		104.11
		123.1-123.6
		123.10
		123.11
		123.13
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		228.10
		228.11
		228.13
		281.3-281.6
		281.10
		281.11
		281.13
		303.3-303.13
	[761]	10.1-10.4
	[765]	2.3
17A.6	[201]	10.1-10.8
	[761]	10.1-10.4
	[765]	2.3
17A.7	[25]	1.5
	[141]	5.1
		5.2
	[191]	4.1-4.7
	[193B]	8.1-8.11
	[201]	10.1-10.8
	[223]	5.1
		5.3
	[263]	1.2

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17A.7 *(cont'd)*	[265]	1.4
	[281]	2.1
		2.3
	[282]	2.1
		2.3
	[283]	2.1
		2.2
		3.1
		3.2
	[289]	2.1
		2.3
	[301]	2.5
	[321]	17.1
		17.3
	[411]	3.1
		3.2
	[441]	4.1-4.3
	[486]	4.107
	[493]	2.1
		2.3
	[501]	1.11
	[591]	2.1
		2.3
	[597]	4.1
		4.3
	[605]	2.1
		2.3
	[645]	24.1
		24.3
		67.1
		67.3
		103.1
		103.3
		122.1
		122.3
		136.1
		136.3
		146.1
		146.3
		227.1
		227.3
		282.1
		282.3
		304.1
		304.3
		355.1
		355.3

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	[653]	10.1-10.9
	[655]	8.1
		8.2
		9.1
		10.1
		10.2
		11.1-11.3
	[657]	1.1
		1.2
		26.1
		26.3
	[741]	2.5
	[761]	10.1-10.4
	[765]	2.3
	[801]	2.1
		2.3
	[877]	26.1
17A.9	[25]	1.7
	[141]	6.1-6.4
	[185]	3.1-3.7
	[193B]	8.1-8.11
	[193C]	1.1(3)
	[193E]	7.1-7.7
	[201]	11.1-11.3
	[205]	4.1
		4.3
	[223]	6.1
		6.3
	[263]	2.10
	[265]	1.6
		9.8-9.21
	[281]	3.1
		3.3
	[282]	3.1
		3.3
	[283]	3.1
		3.2
	[285]	1.1-1.11
	[289]	3.1
		3.3
	[301]	2.4
	[321]	18.1

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17A.9 *(cont'd)*	[321]	18.3
	[411]	4.1-4.3
	[441]	5.1-5.4
	[493]	3.1
		3.3
	[561]	6.1-6.7
		7.1-7.17
	[567]	6.1
	[571]	6.1
	[591]	3.1
		3.3
	[605]	3.1
		3.3
	[621]	10.1-10.6
	[645]	25.1
		25.3
		68.1
		68.3
		102.1
		102.3
		121.1
		121.3
		137.1
		137.3
		148.1
		148.3
		180.11
		230.1
		230.3
		240.3
		283.1
		283.3
		305.1
		305.3
		356.1
		356.3
	[650]	7.3
	[653]	10.10
	[655]	8.1
		8.2
		9.1
		10.1
		10.2
	[657]	1.1
		1.2
		27.1
		27.3

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17A.9 *(cont'd)*	[685]	3.1
	[741]	2.4
	[751]	3.1-3.6
	[761]	10.1-10.4
	[765]	2.3
	[801]	3.1 3.3
	[876]	5.1 5.3
	[877]	26.2
17A.10	[25]	1.8
	[201]	12.1-12.24 50.4 50.5
	[263]	3.12
	[265]	1.7 7.1-7.9 9.8-9.30
	[285]	1.1-1.11
	[301]	2.3
	[351]	1.1-1.5
	[441]	7.5
	[481]	10.16
	[645]	20.204 101.204 120.204 180.104 220.204 240.204 280.1-280.213 301.1-301.9 301.100-301.113
	[685]	4.1
	[741]	2.3
	[761]	400.56
	[781]	10.1
	[875]	3.12 38.5 38.10
	[876]	4.46 10.3
17A.11	[201]	12.1-12.24

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	[281]	6.1-6.14
	[481]	10.20 10.21 10.26
	[657]	1.2
	[701]	7.1-7.21 7.23-7.27
	[761]	400.56
	[811]	10.1-10.8 10.50-10.80
	[875]	38.5 38.10
17A.12	[201]	12.1-12.24 50.4 50.5
	[263]	3.7 3.16 3.17 3.22
	[265]	7.1-7.9 9.22-9.30
	[281]	6.1-6.14
	[351]	1.1-1.5 7.1-7.28
	[429]	9.1-9.6
	[441]	7.5 7.8-7.10 7.13 7.16 95.13
	[481]	10.5 10.11 10.20 10.21 25.1-25.11
	[567]	7.1 73.1-73.32
	[571]	7.1
	[591]	17.1-17.33
	[701]	7.14 7.16
	[705]	6.1-6.28
	[721]	22.1

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	[751]	4.1-4.27
	[761]	400.56
	[811]	10.1-10.8 10.50-10.80
	[875]	38.5 38.10
	[876]	4.6-4.9 4.11 4.28-4.30 4.35 4.39 4.45 4.46 4.48 7.1 7.3 10.3
17A.13	[201]	12.1-12.24
	[263]	3.10 3.23
	[265]	7.1-7.9 9.22-9.30
	[345]	6.2
	[351]	1.4 7.1-7.28
	[441]	95.13
	[481]	10.13 10.14 10.20 10.21
	[567]	7.1
	[571]	7.1
	[761]	400.56
	[811]	10.1-10.8 10.50-10.80
	[875]	38.5 38.10
	[876]	4.35
17A.14	[201]	12.1-12.24
	[263]	3.18-3.21
	[265]	7.1-7.9 9.22-9.30
	[345]	6.2

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	[481]	10.20 10.21 10.23
	[567]	7.1
	[571]	7.1
	[761]	400.56
	[811]	10.1-10.8 10.50-10.80
	[875]	38.5 38.10
	[876]	4.35 4.46 10.3
17A.15	[201]	12.1-12.24
	[265]	7.1-7.9 9.22-9.30
	[345]	6.4
	[441]	7.16 95.13
	[481]	10.25
	[567]	7.1
	[571]	7.1
	[701]	2.9 2.12 7.17
	[761]	400.56
	[811]	10.1-10.8 10.50-10.80
	[875]	38.5 38.10
	[876]	4.25 4.27-4.30
17A.16	[201]	12.1-12.24
	[263]	3.25 3.28 3.29
	[265]	7.1-7.9 9.22-9.30
	[281]	6.1-6.14
	[345]	6.4
	[441]	95.13

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	[571]	7.1
	[701]	7.20
	[761]	400.56
	[811]	10.1-10.8 10.50-10.80
	[875]	38.5 38.10
17A.17	[201]	12.1-12.24
	[263]	3.6
	[265]	9.22-9.30
	[345]	6.2
	[441]	95.13
	[481]	10.9 10.23
	[567]	7.1
	[571]	7.1
	[641]	173.9
	[645]	301.103 301.110
	[761]	400.56
	[875]	38.5 38.10
	[876]	4.38
17A.18	[185]	4.26 16.25
	[201]	12.1-12.24
	[265]	7.1-7.9 9.8-9.30
	[441]	95.13
	[567]	7.1 52.7
	[571]	7.1
	[701]	13.8
	[761]	400.56 910.8
	[875]	38.5 38.10
17A.19	[201]	12.1-12.24
	[263]	4.3 4.4
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	[481]	10.25
	[721]	22.1 22.4 22.19-22.29
	[761]	10.1-10.4 400.56
	[765]	2.3
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	[441]	95.13
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	[434]	1.1-1.3 2.1 2.2
	[441]	7.5 7.8 7.14 7.16 7.21
	[481]	10.2 10.10 10.18 10.19
	[650]	51.12
	[653]	12.50
	[701]	1.1 1.2 7.1-7.21 7.23-7.27
17A.31	[701]	6.5
	[761]	10.1-10.4
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18.3	[401]	1.1

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		7.7-7.17
		7.19
		7.21
	[761]	20.1-20.4
		20.8
18.4	[401]	1.2
		1.4
		4.1-4.3
		4.5-4.12
		6.1-6.26
		7.6
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		10.2
		10.3
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18.6	[401]	5.8
		5.9
		5.12
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		7.1-7.4
		7.18
		9.1
		9.3
		9.4
	[761]	20.1-20.4
		20.8
18.7	[401]	1.4
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18.10	[401]	1.6
		1.7
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18.12	[401]	7.4
18.18	[661]	14.1
18.32	[401]	5.8
18.33	[401]	5.8
18.34	[401]	5.8
18.35	[401]	5.8
18.36	[401]	5.8
18.37	[401]	5.8
18.38	[401]	5.8
18.45	[401]	5.8
18.59	[401]	5.6
18.76	[401]	5.6
18.77	[401]	5.6
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	[681]	3.101
		3.128
19A.3	[681]	3.3
		3.26
		3.67
19A.3(9)	[581]	8.11
19A.9	[581]	1.1
		2.1-2.4
		3.1-3.6
		4.1-4.11
		4.13
		5.1-5.6
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		11.1-11.3
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		13.1-13.3
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		21.22
		21.24
	[681]	3.26
		3.39
		3.67
		3.82
		3.83
		3.85
		3.89
		3.90
		3.101
		3.127
		3.128
		3.151
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		9.1
		9.2
		10.1-10.6
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20.15	[621]	5.2
		5.4
20.17	[621]	7.1
		7.4
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20.21	[621]	1.8
		7.1
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20.22	[621]	1.8
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	[645]	200.1-200.26
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	[765]	1.5
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21.3	[25]	1.3
	[263]	1.6
		3.5
	[653]	10.1-10.9
21.4	[721]	22.1
		22.3-22.18
21.5	[25]	1.3
	[220]	1.6
		3.5
	[653]	10.1-10.9
	[721]	22.1
		22.3-22.18
	[761]	4.9
21.7	[25]	1.3
	[205]	8.1-8.16
	[645]	20.300
		65.1-65.101

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		120.300
		180.300
		220.300
		240.300
21.8	[25]	1.3
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		10.1-10.8
	[193E]	2.18
		4.42
		5.1-5.18
	[205]	6.1-6.4
	[429]	3.1
	[481]	25.1-25.11
	[555]	6.1
		6.3
		6.6
		6.9-6.12
	[561]	2.1-2.4
	[567]	2.1
	[571]	2.1
	[611]	2.1
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CHAPTER 9
Reserved

CHAPTER 10
ENHANCED 911 TELEPHONE SYSTEMS
[Prior to 4/18/90, see Public Defense[601]Ch 10]
[Prior to 5/12/93, Disaster Services Division[607]Ch 10]

605—10.1(34A) Program description. The purpose of this program is to provide for the orderly development, installation, and operation of enhanced 911 emergency telephone systems and to provide a mechanism for the funding of these systems, either in whole or in part. These systems shall be operated under governmental management and control for the public benefit. These rules shall apply to each joint E911 service board or alternative 28E entity as provided in Iowa Code chapter 34A and to each provider of enhanced 911 service.

605—10.2(34A) Definitions. As used in this chapter, unless context otherwise requires:

"Access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the telephone company's switching office.

"Administrator," unless otherwise noted, means the administrator of the emergency management division.

"Automatic location identification (ALI)" means a system capability that enables an automatic display of information defining a geographical location of the telephone used to place the 911 call.

"Automatic number identification (ANI)" means a capability that enables the automatic display of the number of the telephone used to place the 911 call.

"Call attendant" means the person who initially answers a 911 call.

"Call detail recording" means a means of establishing chronological and operational accountability for each 911 call processed, consisting minimally of the caller's telephone number, the date and time the 911 telephone equipment established initial connection (trunk seizure), the time the call was answered, the time the call was transferred (if applicable), the time the call was disconnected, the trunk line used, and the identity of the call attendant's position, also known as an ANI printout.

"Call relay method" means the 911 call is answered at the PSAP, where the pertinent information is gathered, and the call attendant relays the caller's information to the appropriate public or private safety agency for further action.

"Call transfer method" means the call attendant determines the appropriate responding agency and transfers the 911 caller to that agency.

"Central office (CO)" means a telephone company facility that houses the switching and trunking equipment serving telephones in a defined area.

"Coin-free access (CFA)" means coin-free dialing or no-coin dial tone which enables a caller to dial 911 or "0" for operator without depositing money or incurring a charge.

"Conference transfer" means the capability of transferring a 911 call to the action agency and allowing the call attendant to monitor or participate in the call after it has been transferred to the action agency.

"Direct dispatch method" means 911 call answering and radio-dispatching functions, for a particular agency, are both performed at the PSAP.

"E911 communications council" means the council as established under the provisions of Iowa Code section 34A.15.

"E911 program manager" means that person appointed by the administrator of the emergency management division, and working with the E911 communications council, to perform the duties specifically set forth in Iowa Code chapter 34A and this chapter.

"Emergency call" means a telephone request for service which requires immediate action to prevent loss of life, reduce bodily injury, prevent or reduce loss of property and respond to other emergency situations determined by local policy.

"Enhanced 911 (E911)" means the general term referring to emergency telephone systems with specific electronically controlled features, such as ALI, ANI, and selective routing.

"Enhanced 911 (E911) operating authority" means the public entity, which operates an E911 telephone system for the public benefit, within a defined enhanced 911 service area.

"Enhanced 911 (E911) service area" means the geographic area to be served, or currently served under an enhanced 911 service plan, provided that any enhanced 911 service area shall at a minimum encompass one entire county. The enhanced 911 service area may encompass more than one county and need not be restricted to county boundaries. This definition applies only to wire-line enhanced 911 service.

"Enhanced 911 (E911) service plan (wire-line)" means a plan, produced by a joint E911 service board, which includes the information required by Iowa Code subsection 34A.2(6).

"Enhanced 911 service surcharge" means a charge set by the joint E911 service board, approved by local referendum, and assessed on each access line which physically terminates within the E911 service area.

"Enhanced wireless 911 service area" means the geographic area to be served, or currently served, by a PSAP under an enhanced wireless 911 service plan.

"Enhanced wireless 911 service, phase I" means an emergency wireless telephone system with specific electronically controlled features such as ANI, specific indication of wireless communications tower site location, selective routing by geographic location of the tower site.

"Enhanced wireless 911 service, phase II" means an emergency wireless telephone system with specific electronically controlled features such as ANI and ALI and selective routing by geographic location of the 911 caller.

"Exchange" means a defined geographic area served by one or more central offices in which the telephone company furnishes services.

"Implementation" means the activity between formal approval of an E911 service plan and a given system design, and commencement of operations.

"Joint E911 service board" means those entities created under the provisions of Iowa Code section 34A.3, which include the legal entities created pursuant to Iowa Code chapter 28E referenced in Iowa Code subsection 34A.3(3).

"911 call" means any telephone call that is made by dialing the digits 911.

"911 system" means a telephone system that automatically connects a caller, dialing the digits 911, to a PSAP.

"Nonrecurring costs" means one-time charges incurred by a joint E911 service board or operating authority including, but not limited to, expenditures for E911 service plan preparation, surcharge referendum, capital outlay, installation, and initial license to use subscriber names, addresses and telephone information.

"One-button transfer" means another term for a (fixed) transfer which allows the call attendant to transfer an incoming call by pressing a single button. For example, one button would transfer voice and data to a fire agency, and another button would be used for police, also known as "selective transfer."

"Political subdivision" means a geographic or territorial division of the state that would have the following characteristics: defined geographic area, responsibilities for certain functions of local government, public elections and public officers, and taxing power. Excluded from this definition are departments and divisions of state government and agencies of the federal government.

"Provider" means a person, company or other business that provides, or offers to provide, 911 equipment, installation, maintenance, or access services.

"Public or private safety agency" means a unit of state or local government, a special purpose district, or a private firm, which provides or has the authority to provide firefighting, police, ambulance, or emergency medical services.

"Public safety answering point (PSAP)" means a 24-hour, state, local, or contracted communications facility, which has been designated by the local service board to receive 911 service calls and dispatch emergency response services in accordance with the E911 service plan.

"Public switched telephone network" means a complex of diversified channels and equipment that automatically routes communications between the calling person and called person or data equipment.

"Recurring costs" means repetitive charges incurred by a joint E911 service board or operating authority including, but not limited to, database management, lease of access lines, lease of equipment, network access fees, and applicable maintenance costs.

"Selective routing (SR)" means an enhanced 911 system feature that enables all 911 calls originating from within a defined geographical region to be answered at a predesignated PSAP.

"Subscriber" means any person, firm, association, corporation, agencies of federal, state and local government, or other legal entity responsible by law for payment for communication service from the telephone utility.

"Tariff" means a document filed by a telephone company with the state telephone utility regulatory commission which lists the communication services offered by the company and gives a schedule for rates and charges.

"Telecommunications device for the deaf (TDD)" means any type of instrument, such as a typewriter keyboard connected to the caller's telephone and involving special equipment at the PSAP which allows an emergency call to be made without speaking, also known as a TTY.

"Trunk" means a circuit used for connecting a subscriber to the public switched telephone network.

"Wireless communications service" means cellular, broadband PCS, and SMR which provide real-time two-way interconnected voice service, the networks of which utilize intelligent switching capability and offer seamless handoff to customers. This definition includes facilities-based service providers and non-facilities-based resellers. For purposes of wireless 911 surcharge, wireless communications service does not include services whose customers do not have access to 911, or a 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

"Wireless communications surcharge" means a surcharge of up to 50 cents imposed on each wireless communications service number provided in this state and collected as part of a wireless communications service provider's monthly billing to a subscriber.

605—10.3(34A) Joint E911 service boards. Each county board of supervisors shall establish a joint E911 service board.

10.3(1) *Membership.*

a. Each political subdivision of the state, having a public safety agency serving territory within the E911 service area, is entitled to voting membership.

b. Each private safety agency, such as privately owned ambulance services, airport security agencies, and private fire companies, serving territory within the E911 service area, is entitled to a nonvoting membership on the board.

c. Public and private safety agencies headquartered outside but operating within an E911 service area are entitled to membership according to their status as a public or private safety agency.

d. A political subdivision, which does not operate its own public safety agency, but contracts for the provision of public safety services, is not entitled to membership on the joint E911 service board. However, its contractor is entitled to membership according to the contractor's status as a public or private safety agency.

e. The joint E911 service board elects a chairperson and cochairperson.

10.3(2) *Alternate 28E entity.* The joint E911 service board may organize as an Iowa Code chapter 28E agency as authorized in Iowa Code subsection 34A.3(3), provided that the 28E entity meets the voting and membership requirements of Iowa Code subsection 34A.3(1).

10.3(3) *Joint E911 service board bylaws.* Each joint E911 service board shall develop bylaws to specify, at a minimum, the following information:

a. The name of the joint E911 service board.

b. A list of voting and nonvoting members.

c. The date for the commencement of operations.

d. The mission.

e. The powers and duties.

f. The manner for financing activities and maintaining a budget.

g. The manner for acquiring, holding and disposing of property.

h. The manner for electing or appointing officers and terms of office.

i. The manner by which members may vote to include, if applicable, the manner by which votes may be weighted.

j. The manner for appointing, hiring, disciplining, and terminating employees.

k. The rules for conducting meetings.

l. The permissible method or methods to be employed in accomplishing the partial or complete termination of the board and the disposing of property upon such complete or partial termination.

m. Any other necessary and proper rules or procedures.

Each member shall sign the adopted bylaws.

The joint E911 service board shall record the signed bylaws with the county recorder and shall forward a copy of the signed bylaws to the E911 program administrator at the state emergency management division.

10.3(4) *Executive board.* The joint E911 service board may, through its bylaws, establish an executive board to conduct the business of the joint E911 service board. The executive board will have such other duties and responsibilities as assigned by the joint E911 service board.

10.3(5) *Meetings.*

a. The provisions of Iowa Code chapter 21, "Official Meetings Open to the Public," are applicable to joint E911 service boards.

b. Joint E911 service boards shall conduct meetings in accordance with their established bylaws and applicable state law.

605—10.14(34A) Minimum operational and technical standards.

10.14(1) Each E911 system, supplemented with E911 surcharge moneys, shall, at a minimum, employ the following features:

a. ALI (automatic location identification).

b. ANI (automatic number identification).

c. Ability to selectively route.

d. Each PSAP shall provide two emergency seven-digit numbers arranged in rollover configuration for use by telephone company operators for transferring a calling party to the PSAP.

e. ANI and ALI information shall be maintained and updated in such a manner as to allow for 95 percent or greater degree of accuracy.

10.14(2) E911 public safety answering points shall adhere to the following minimum standards:

a. The PSAP shall operate 7 days per week, 24 hours per day, with operators on duty at all times.

b. The primary published emergency number in the E911 service area shall be 911.

c. All PSAPs will maintain interagency communications capabilities for emergency coordination purposes, to include radio as well as land line direct or dial line.

d. Each PSAP shall develop and maintain a PSAP standard operating procedure for receiving and dispatching emergency calls.

e. The date and time of each 911 emergency call shall be documented using an automated call detail recording device or other communications center log. Such logs shall be maintained for a period of not less than one year.

f. If a call transfer method of handling 911 calls is employed, a 99 percent degree of reliability of transferred calls from a PSAP to responding agencies shall be maintained. All transferred calls shall employ, to the closest extent possible, conference transfer capabilities which provide that the call be announced and monitored by the PSAP operator to ensure that the call has been properly transferred.

g. PSAPs not employing the transfer method of handling 911 emergency calls shall use the call relay method. Information shall be exchanged between the PSAP receiving the call and an appropriate emergency response agency or dispatch center having jurisdiction in the area of the emergency. In no case during an emergency 911 call shall the caller be referred to another telephone number and required to hang up and redial. The call relay method shall also prevail in circumstances where emergency calls enter the 911 system (whether by design or by happenstance) from outside the E911 service area.

h. Access control and security of PSAPs and associated dispatch centers shall be designed to prevent disruption of operations and provide a safe and secure environment of communication operations.

i. PSAP supervision shall ensure that all telephone company employees, whose normal activities may involve contact with facilities associated with the 911 service, are familiar with safeguarding of facilities' procedures.

j. Emergency electrical power shall be provided for the PSAP environment that will ensure continuous operations and communications during a power outage. Such power should start automatically in the event of power failure and shall have the ability to be sustained for a minimum of 48 hours.

k. The PSAP shall make every attempt to disallow the intrusion by automatic dialers, alarm systems, or automatic dialing and announcing devices on a 911 trunk. If intrusion by one of these devices should occur, those responsible for PSAP operations shall make every attempt to contact the responsible party to ensure there is no such further occurrence by notifying the party that knowing and intentional interference with emergency telephone calls constitutes a crime under Iowa Code section 727.5. Those responsible for PSAP operations shall report persons who repeatedly use automatic dialers, alarm systems, or automatic announcing devices on 911 trunk lines to the county attorney for investigation of possible violations of section 727.5.

l. Each PSAP shall be equipped with an appropriate telecommunications device for the deaf (TDD) in accordance with 28 CFR Part 35.162, July 26, 1991.

10.14(3) Service providers shall adhere to the following minimum requirements:

a. The PSAP shall be notified of service interruptions in accordance with the provisions of Iowa Administrative Code 199—paragraph 22.6(3)*"c."*

b. All service providers shall submit separate itemized bills to the E911 program manager, the department of public safety, a joint E911 service board or PSAP operating authority, as appropriate.

c. The service provider shall respond, within a reasonable length of time, to all appropriate requests for information from the administrator, the department of public safety, a joint E911 service board or operating authority and shall expressly comply with the provisions of Iowa Code section 34A.8.

10.14(4) Voluntary standards. Current technical and operations standards applying to E911 systems and services can be found in the "American Society for Testing and Materials Standard Guide for Planning and Developing 911 Enhanced Telephone Systems" and in publications issued by the National Emergency Number Association. Standards contained in these documents shall be considered as guidance, and adherence thereto shall be voluntary. Notwithstanding the minimum standards published in these rules, it is intended that E911 telephone service providers, joint E911 service boards and operating authorities employ the best and most affordable technologies and methods available in providing E911 services to the public.

605—10.15(34A) Administrative hearings and appeals.

10.15(1) E911 program manager decisions regarding the acceptance or refusal of an E911 service plan, in whole or in part, the implementation of E911 and the imposition of the E911 surcharge within a specific E911 service area may be contested by an affected party.

10.15(2) Request for a hearing shall be made in writing to the E911 program manager within 30 days of the E911 program manager's mailing or serving a decision and shall state the reason(s) for the request and shall be signed by the appropriate authority.

10.15(3) The E911 program manager shall schedule a hearing within ten working days of receipt of the request for hearing. The E911 program manager shall preside over the hearing at which time the appellant may present any evidence, documentation, or other information regarding the matter in dispute.

10.15(4) The E911 program manager shall issue a ruling regarding the matter within 20 working days of the hearing.

10.15(5) Any party adversely affected by the E911 program manager's ruling may file a written request for a rehearing within 20 days of issuance of the ruling. A rehearing will be conducted only when additional evidence is available, the evidence is material to the case, and good cause existed for the failure to present the evidence at the initial hearing. The E911 program manager will schedule a hearing within 20 days after the receipt of the written request. The E911 program manager shall issue a ruling regarding the matter within 20 working days of the hearing.

10.15(6) Any party adversely affected by the E911 program manager's ruling may file a written appeal to the administrator of the emergency management division. The appeal request shall contain information identifying the appealing party, the ruling being appealed, specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief. The administrator shall issue a ruling regarding the matter within 90 days of the hearing. The administrator's ruling constitutes final agency action for purposes of judicial review.

605—10.16(34A) Confidentiality. All financial or operations information provided by a wireless service provider to the E911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and Iowa Administrative Code 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said wireless service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the administrator if the aggregated information does not reveal any information attributable to an individual wireless service provider.

These rules are intended to implement Iowa Code chapter 34A.

[Filed emergency 2/17/89—published 3/8/89, effective 2/17/89]
[Filed 6/1/89, Notice 3/8/89—published 6/28/89, effective 8/2/89*]
[Filed emergency 8/29/89—published 9/20/89, effective 8/29/89]
[Filed 3/20/90, Notice 2/7/90—published 4/18/90, effective 5/23/90]
[Filed 4/22/93, Notice 3/17/93—published 5/12/93, effective 6/16/93]
[Filed emergency 9/3/98—published 9/23/98, effective 9/4/98]
[Filed 11/12/98, Notice 9/23/98—published 12/2/98, effective 1/6/99]
[Filed without Notice 1/7/99—published 1/27/99, effective 3/3/99]

*Effective date of 8/2/89 delayed 70 days by the Administrative Rules Review Committee at its July 11, 1989, meeting.

CHAPTERS 11 to 99
Reserved

CHAPTER 41
DETERMINATION OF TAXABLE INCOME

701—40.34(422) Exemption of restitution payments for persons of Japanese ancestry. For tax years beginning on or after January 1, 1988, restitution payments authorized by P.L. 100-383 to individuals of Japanese ancestry who were interned during World War II are exempt from Iowa income tax to the extent the payments are included in federal adjusted gross income. P.L. 100-383 provides for a payment of $20,000 for each qualifying individual who was alive on August 10, 1988. In cases where the qualifying individuals have died prior to the time that the restitution payments were received, the restitution payments received by the survivors of the interned individuals are also exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.7.

701—40.35(422) Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans. For tax years beginning on or after January 1, 1989, proceeds from settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide received by a disabled veteran or the beneficiary of a disabled veteran for damages from exposure to the herbicide are exempt from Iowa income tax to the extent the proceeds are included in federal adjusted gross income. For purposes of this rule, Vietnam herbicide means a herbicide, defoliant, or other causative agent containing a dioxin, including, but not limited to, Agent Orange used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975.

This rule is intended to implement Iowa Code section 422.7.

701—40.36(422) Exemption of interest earned on bonds issued to finance beginning farmer loan program. Interest earned on or after July 1, 1989, from bonds or notes issued by the agricultural development authority to finance the beginning farmer loan program is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 175.17 and 422.7.

701—40.37(422) Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board. Interest received from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board is exempt from state individual income tax. This is effective for interest received from these bonds on or after May 5, 1989, but before July 1, 2009.

This rule is intended to implement Iowa Code section 455G.6.

701—40.38(422) Capital gains deduction or exclusion for certain types of net capital gains. Effective for tax years beginning on or after January 1, 1990, but prior to January 1, 1998, a deduction is allowed in computing net income for 45 percent of the net capital gains described in subrules 40.38(1) to 40.38(4). See subrules 40.38(6) through 40.38(14) for the capital gain deduction or exclusion which is applicable for net capital gains received in tax years beginning on or after January 1, 1998. However, the aggregate net capital gains from subrules 40.38(1) to 40.38(4) which are to be considered for the tax year for the capital gain deduction cannot exceed $17,500 for all individual taxpayers except married taxpayers filing separate state returns. In the case of married taxpayers filing separate returns, the aggregate net capital gains to be considered for the deduction cannot exceed $8,750 per spouse. Married taxpayers filing separately on the combined return form shall prorate the $17,500 capital gain deduction limitation between the spouses in the ratio of each spouse's net capital gains from subrules 40.38(1) to 40.38(4) to the total net capital gains of both spouses from subrules 40.38(1) to 40.38(4). The capital gain deduction authorized in this rule does not apply to estates or trusts. Effective for tax years beginning on or after January 1, 1994, the capital gain deduction is not allowed for purposes of computation of a net operating loss for the tax year and for purposes of computing the income for a tax year to which a net operating loss is carried. Subrule 40.38(5) includes information on how the capital gain deduction is treated in a tax year with a net operating loss and in a tax year with the capital gain deduction where a net operating loss deduction is carried.

40.38(1) Net capital gains from sales or exchanges of real property, tangible personal property, or other assets of a business owned by the taxpayer for a minimum of ten years and in which the taxpayer has materially participated for a minimum of ten years. Net capital gains from the sales or exchanges of real property, tangible personal property, or other assets from a business the taxpayer has owned for ten years and in which the taxpayer materially participated as defined in Section 469(h) of the Internal Revenue Code for ten years qualify for the capital gain deduction on limited amounts of capital gains provided in subrule 40.38(2). In the case of installment sales of real property, tangible personal property, or other assets of a business, where the selling price of the business assets is paid to the seller in one or more years after the year in which the sales transaction occurred, all installments received on or after January 1, 1990, qualify for the capital gains deduction described in subrule 40.38(2), assuming the taxpayers had met the ownership and material participation requirements at the time the sales transactions occurred. *Herbert Clausen and Sylvia Clausen v. the Iowa Department of Revenue and Finance,* Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 1996 from the sale of the taxpayer's farmland in 1988, the installment received in 1996 would qualify for the 45 percent capital gain deduction provided in subrule 40.38(2) if the taxpayer had owned the farmland at least ten years at the time of the sale and the taxpayer had materially participated in the farm business for a minimum of ten years at the time of the sale. The following terms and definitions clarify which sales and exchanges of assets of a business qualify for the capital gain deduction authorized in rule 701—40.38(422).

a. Business. A business includes any activity engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. In addition, a business for purposes of the capital gains deduction in rule 40.38(422) must have been owned by the taxpayer for at least ten years and the taxpayer must have materially participated in the business for at least ten years.

b. Assets of a business. Those assets of a business which may qualify for capital gain treatment under rule 40.38(422) if the assets are sold or exchanged under the conditions described in this rule are real property, tangible personal property, or other assets of a business which were held by the business more than one year at the time the assets were sold or exchanged. However, for purposes of this subrule, tangible personal property of a business does not include cattle or horses described in subrule 40.38(2), other livestock described in subrule 40.38(3), or timber which is described in subrule 40.38(4).

c. Material participation in a business if the taxpayer has been involved in the operation of the business on a regular, continuous, and substantial basis for ten or more years at the time assets of the business are sold or exchanged. If the taxpayer has involvement in a business which meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the Treasury rules for material participation in §1.469-5 and §1.469-5T, for ten years or more immediately before the sale or exchange of the assets of a business, the taxpayer shall be considered to have satisfied the material participation requirement for this subrule. In determining whether or not a particular taxpayer has material participation in a business, participation of the taxpayer's spouse in a business must also be taken into account. The spouse's participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer, or if the spouse has no ownership interest in the business. A taxpayer is most likely to have material participation in a business if that business is the taxpayer's principal business. However, it is possible for a taxpayer to have had material participation in more than one business in a tax year for purposes of this subrule.

A highly relevant factor in material participation in a business is how regularly the taxpayer is present at the place where the principal operations of a business are carried on. In addition, a taxpayer is likely to have material participation in a business if the taxpayer performs all functions of the business.

40.38(4) Net capital gains from sales of timber held by the taxpayer more than one year. Effective for tax years beginning on or after January 1, 1990, capital gains from qualifying sales of timber held by the taxpayer for more than one year are eligible for the capital gains deduction described in rule 40.38(422). In all of the following examples of circumstances where gains from sales of timber qualify for capital gains treatment, it is assumed that the timber sold was held by the owner for more than one year at the time the timber was sold. The owner of the timber can be the owner of the land on which the timber was cut or the holder of a contract to cut the timber. In the case where a taxpayer sells standing timber the taxpayer held for investment, any gain from the sale is a capital gain. Timber includes standing trees usable for lumber, pulpwood, veneer, poles, pilings, crossties, and other wood products. It does not apply to sales of pulpwood cut by a contractor from the tops and limbs of felled trees. Under the general rule, the cutting of timber results in no gain or loss, and it is not until the sale or exchange that gain or loss is realized. But if a taxpayer owned, or had a contractual right to cut timber, the taxpayer may make an election to treat the cutting of timber as a sale or exchange in the year the timber is cut. Gain or loss on the cutting of the timber is determined by subtracting the adjusted basis for depletion of the timber from the fair market value of the timber on the first day of the tax year in which the timber is cut. For example, the gain on this type of transaction is computed as follows:

Fair market value of timber on January 1, 1990	$400,000
Minus: Adjusted basis for depletion	100,000
Capital gain on cutting of timber	$300,000

The fair market value shown above of $400,000 is the basis of the timber. A later sale of the cut timber, including treetops and stumps would result in ordinary income for the taxpayer and not a capital gain.

Evergreen trees, such as those used as Christmas trees, that are more than six years old at the time they are severed from their roots and sold for ornamental purposes, are included in the definition of timber for purposes of this subrule. The term "evergreen trees" is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees. Where customers of the taxpayer cut down the Christmas tree of their choice on the taxpayer's farm, there is no sale until the tree is cut. However, "evergreen trees" sold in a live state do not qualify for capital gain treatment.

Capital gains or losses also are received from sales of timber by a taxpayer who has a contract which gives the taxpayer an economic interest in the timber. The date of disposal of the timber shall be the day the timber is cut, unless payment for the timber is received before the timber is cut. Under this circumstance, the taxpayer may treat the date of the payment as the date of disposal of the timber.

Additional information about gains and losses from the sale of timber is included under Treasury Regulations §1.631-1 and §1.631-2.

40.38(5) Treatment of capital gain deduction for tax years with net operating losses and for tax years to which net operating losses are carried. The following paragraphs describe the tax treatment of the capital gain deduction in a tax year with a net operating loss and the tax treatment of a capital gain deduction in a tax year to which a net operating loss was carried:

a. For tax years beginning on or after January 1, 1994, the capital gain deduction otherwise allowable on a return is not allowed for purposes of computing a net operating loss from the return which can be carried to another tax year and applied against the income for the other tax year.

EXAMPLE. Joe Jones filed a 1994 return showing a net loss of $12,000. On this return Mr. Jones claimed a capital gain deduction of $3,000 from sale of breeding stock, other than cattle or horses, held 12 months or more which was considered in computing the loss of $12,000. However, the $3,000 capital gain deduction is not allowed in the computation of the net operating loss deduction for 1994 for purposes of carrying the net operating loss deduction to another tax year. Thus, the net operating loss deduction for 1994 is $9,000.

b. In the case of net operating losses for tax years beginning on or after January 1, 1994, which are carried back to a tax year prior to 1994 where the taxpayer has claimed the capital gains deduction described above, the capital gains deduction is not allowed for purposes of computing the income to which the net operating loss deduction is applied.

EXAMPLE. John Brown had a net operating loss of $20,000 on the Iowa return he filed for 1994. Mr. Brown elected to carry back the net operating loss to his 1991 Iowa return. The 1991 return showed a taxable income of $27,000 which included a capital gain deduction of $3,000. For purposes of computing the income in the carryback year to which the net operating loss would be applied, the income was increased by $3,000 to disallow the capital gain deduction properly allowed in computing taxable income for the carryback year. Therefore, the net operating loss deduction from 1994 was applied to an income of $30,000 for the carryback year.

40.38(6) Exclusion of net capital gains from the sales of real property, from the sales of assets of a business entity, from the sales of certain livestock of a business, from the sales of timber, from liquidation of assets of certain corporations, and from certain stock sales which are treated as acquisition of assets of the corporation. For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(7) to 40.38(13) are excluded in the computation of net income for qualified individual taxpayers. Net capital gains means capital gains net of capital losses because Iowa's starting point for computing net income is federal adjusted gross income. This capital gain exclusion does not apply to estates and trusts. Subrule 40.38(14) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

40.38(7) Net capital gains from the sale of real property used in a business. Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent the owner had held the real property in the business for ten or more years and the owner had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1), paragraph "*c.*"

Note that for purposes of taxation of capital gains from the sales of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(8).

In situations in which real property was sold by a partnership, subchapter S corporation, or limited liability company, and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gain from their net incomes if the real property was owned for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is, if the owner of the business had owned and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

Capital gains from the sale of real property by a C corporation do not qualify for the capital gain exclusion except under the specific circumstances of a liquidation described in subrule 40.38(12).

Capital gains from the sale of real property held for ten or more years for speculation but not used in a business also do not qualify for the capital gain exclusion.

EXAMPLE 1. ABC Company, an S corporation, owned 1,000 acres of land. John Doe is the sole shareholder of ABC Company and had materially participated in ABC Company and owned ABC Company for more than ten years at the time 500 acres of the land were sold for a capital gain of $100,000 in 1998. The capital gain recognized in 1998 by ABC Company and which passed to John Doe as the shareholder of ABC Company is exempt from Iowa income tax because Mr. Doe met the material participation and ownership time requirements.

EXAMPLE 2. John Smith and Sam Smith both owned 50 percent of the stock in Smith and Company which was an S corporation that held 1,000 acres of farmland. Sam Smith had managed all the farming operations for the corporation from the time the corporation was formed in 1980. John Smith was an attorney who lived and practiced law in Denver, Colorado. John Smith was the father of Sam Smith. In 1998, Smith and Company sold 200 acres of the farmland for a $50,000 gain. $25,000 of the gain passed through to John Smith and $25,000 of the gain passed through to Sam Smith. The farmland was sold to Jerry Smith, who was another son of John Smith. Both John Smith and Sam Smith had owned the corporation for at least ten years at the time the land was sold, but only Sam Smith had materially participated in the corporation for the last ten years. Sam Smith could exclude the $25,000 capital gain from the land sale because he had met the time of ownership and time of material participation requirements. John Smith could not exclude the $25,000 gain since although he had met the time of ownership requirement, he did not meet the material participation requirement. Although the land sold by the corporation was sold to John Smith's son, a lineal descendant of John Smith, the capital gain John Smith realized from the land sale does not qualify for exemption for state income tax purposes. There is no waiver of the ten-year material participation requirement for taxpayer's sales of real estate from a business to a lineal descendant of the taxpayer as is described for sales of business assets in subrule 40.38(8).

EXAMPLE 3. Jerry Jones had owned and had materially participated in a farming business for 15 years and raised row crops in the business. There were 500 acres of land in the farming business; 300 acres had been held for 15 years, and 200 acres had been held for 5 years. If Mr. Jones sold the 200 acres of land that had been held only 5 years, any capital gain from the sale of this land would not be excludable since the land was part of the farming business but had been owned for less than 10 years. If the 300 acres of land that had been held for 15 years had been sold, the capital gain from that sale would qualify for exclusion.

EXAMPLE 4. John Pike owned a farming business for more than ten years. In this business, Mr. Pike farmed a neighbor's land on a crop-share basis throughout the period. Mr. Pike bought 80 acres of land in 1992 and farmed that land until the land was sold in 1998 for a capital gain of $20,000. The capital gain was taxable on Mr. Pike's Iowa return since the farmland had been held for less than ten years although the business had been operated by Mr. Pike for more than ten years.

EXAMPLE 5. Joe and John Perry were brothers in a partnership for six years which owned 80 acres of land. The brothers dissolved the partnership in 1993, formed an S corporation, and included the land in the assets of the S corporation. The land was sold in 1998 to Brian Perry, who was the grandson of John Perry. The Perry brothers realized a capital gain of $15,000 from the land sale which was divided equally between the brothers. Joe Perry was able to exclude the capital gain he had received from the sale as he had owned the land and had materially participated in the business for at least ten years at the time the land was sold. John Perry was unable to exclude the capital gain because although he had owned the land for ten years, he had not materially participated in the business for ten years when the land was sold. The fact that the land was sold to a lineal descendant of John Perry is not relevant because the sale involved only real property held in a business and not the sale of all, or substantially all, of the tangible personal property and intangible property of the business.

EXAMPLE 6. Todd Myers had a farming business which he had owned and which he had materially participated in for 20 years. There were two tracts of farmland in the farming business. In 1998 he sold one tract of farmland in the farming business that he had owned for more than ten years for a $50,000 capital gain. The farmland was sold to a person who was not a lineal descendant. During the same year, Mr. Myers had $30,000 in long-term capital losses from sales of stock. In this situation, on Mr. Myers's 1998 Iowa return, the capital gains would be applied against the capital losses and the remaining $20,000 in capital gains could be excluded.

40.38(8) Net capital gains from the sale of assets of a business by an individual that had owned the business ten years and had materially participated in or had been employed in the business for ten years. Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent the individual had owned the business for ten or more years and the individual had materially participated in or had been employed in the business for ten or more years. In addition to the ownership and material participation qualifications for the capital gain exclusion, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

For purposes of this rule, the term "substantially all of the tangible property or service of the business" means that the sale of the assets of a business during the tax year must represent at least 90 percent of the fair market value of all of the tangible personal property and service of the business on the date of sale of the business assets. Thus, if the fair market value of a business's tangible personal property and service was $400,000, the business must sell tangible personal property and service of the business that had a fair market value of 90 percent of the total value of those assets to achieve the 90 percent or more standard. However, this does not mean that the amount raised from the sale of the assets must be $360,000 in order for the 90 percent standard to be met, only that the assets involved in the sale of the business must represent 90 percent of the total value of the business assets.

Note that if the 90 percent of assets test is met, capital gains from other assets of the business can also be excluded. Some of these assets include, but are not limited to, stock of another corporation, bonds, including municipal bonds, and interests in other businesses. Note also that if the 90 percent test has been met, all of the individual assets of the business do not have to have been held for ten years on the date of sale for the capital gains from the sale of these assets to be excluded in computing the taxpayer's net income. This statement is made with the assumption that the taxpayer has owned the business and materially participated in the business for ten years prior to the sale of the assets of the business.

In most instances, the sale of merchandise or inventory of a business will not result in capital gains for the seller of a business, so the proceeds from the sale of these items would not be excluded from taxation.

For the purposes of this rule, the term "service of the business" means intangible assets used in the business or for the production of business income which, if sold for a gain, would result in a capital gain for federal income tax purposes. Intangible assets that are used in the business or for the production of income include, but are not limited to, the following items: (1) goodwill, (2) going concern value, (3) information base, (4) patent, copyright, formula, design, or similar item, (5) client lists, and (6) any franchise, trademark, or trade name. The type of business that owns the intangible asset is immaterial, whether the business is a manufacturing business, retail business, or a service business, such as a law or accounting firm.

However, when the business owned by the taxpayer for a minimum of ten years is sold to an individual or individuals who are all lineal descendants of the taxpayer, the taxpayer does not need to have materially participated in the business for ten years prior to the sale of the business in order for the capital gain to be excluded in the computation of net income.

For purposes of these rules, the term "lineal descendant" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

In situations in which substantially all the tangible personal property or service was sold by a partnership, subchapter S corporation, or limited liability company, and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had owned the business for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale.

Note that additional information on sales of business assets which may qualify for the exclusion and criteria for material participation in a business may be found in subrule 40.38(1).

Installments received in the tax year from installment sales of businesses are eligible for the exclusion if all relevant criteria were met at the time of the installment sale which would make the capital gains from the sale exempt from taxation if the installment sale of the business had occurred on or after January 1, 1998.

Sale of capital stock of an Iowa corporation or an Iowa farm corporation to a lineal descendant or to another individual does not constitute the sale of a business for purposes of the capital gain exclusion, whether the corporation is a C corporation or an S corporation.

Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain exclusion.

Note that the sale of one activity of a business or one distinct part of a business may not constitute the sale of a business for purposes of this rule unless the activity or distinct part is a separate business entity such as a partnership or sole proprietorship which is owned by the "business" or unless it represents the sale of at least 90 percent of the fair market value of the tangible personal property or service of the business.

In order to determine whether the sale of the business assets constitutes the sale of a business for purposes of excluding capital gains recognized from the sale, refer to 701—subrule 54.2(1) relating to a unitary business. If activities or locations comprise a unitary business, then 90 percent or more of that unitary business must be sold to meet the requirement for capital gains from the sale to be excluded from taxation. If the activity or location constitutes a separate, distinct, non-unitary business, then 90 percent of the assets of that location or activity must be sold to qualify for the exemption of the capital gain. The burden of proof is on the taxpayer to show that a sale of assets of a business meets the 90 percent standard.

EXAMPLE 1. Joe Rich is the sole owner of Eagle Company, which is an S corporation. In 1998, Mr. Rich sold all the stock of Eagle Company to his son, Mark Rich, and recognized a $100,000 gain on the sale of the stock. This capital gain would be taxable on Joe Rich's 1998 Iowa return since the sale of stock of a corporation did not constitute the sale of the tangible personal property and service of a business.

EXAMPLE 2. Randall Insurance Agency, a sole proprietorship, is owned solely by Peter Randall. In 1998, Peter Randall received capital gains from the sale of all tangible assets of the insurance agency. In addition, Mr. Randall had capital gains from the sale of client lists and goodwill to the new owners of the business. Since Mr. Randall had owned the insurance agency for more than ten years and had materially participated in the insurance agency for more than ten years at the time of the sale of the tangible property and intangible property of the business, Mr. Randall can exclude the capital gains from the sale of the tangible assets and the intangible assets in computing net income on his 1998 Iowa return.

EXAMPLE 3. Joe Brown owned and materially participated in a sole proprietorship for more than ten years. During the 1998 tax year, Mr. Brown sold two delivery trucks and had capital gains from the sale of the trucks. The trucks were valued at $30,000 at the time of sale which was about 10 percent of the tangible personal property of the business. Mr. Brown could not exclude the capital gains from the sale of the trucks on his 1998 Iowa return as the sale of those assets did not involve the sale of substantially all of the tangible personal property and service of Mr. Brown's business.

EXAMPLE 4. Rich Bennet owned a restaurant and a gift shop in the same building that were part of a sole proprietorship owned only by Mr. Bennet, who had owned and materially participated in both business activities for over ten years. Mr. Bennet sold the gift shop in 1998 for $100,000 and had a capital gain of $40,000 from the sale. The total fair market value of all tangible personal property and intangible assets in the proprietorship at the time the gift shop was sold was $250,000. Mr. Bennet could not exclude the capital gain on his 1998 Iowa return because he had not sold at least 90 percent of the tangible and intangible assets of the business.

EXAMPLE 5. Joe and Ray Johnson were partners in a farm partnership that they had owned for 12 years in 1998 when the partnership was sold to Ray's son Charles. Joe Johnson had materially participated in the partnership for the whole time that the business was in operation, so he could exclude the capital gain he had received from the sale of his interest in the partnership. Although Ray Johnson had not materially participated in the farm business, he could exclude the capital gain he received from the sale of the partnership because the sale of the partnership was to his son, a lineal descendant.

EXAMPLE 6. Kevin and Ron Barker owned a partnership which held a chain of six gas stations in an Iowa city. In 1998, the Barkers sold 100 percent of the property of two of the gas stations and received a capital gain from the sale of $30,000. Separate business records were kept for each of the gas stations. Since the partnership was considered to be a unitary business and the Barkers sold less than 90 percent of the fair market value of the business, the Barkers could not exclude the capital gain from the sale of the gas stations from the incomes reported on their 1998 Iowa returns. However, any gain from the sale of the real property may qualify for exclusion, assuming the ten-year ownership and material participation qualifications are met.

EXAMPLE 7. Rudy Stern owned a cafe in one Iowa city and a fast-food restaurant in another Iowa city. Mr. Stern had owned both businesses and had materially participated in the operation of both businesses for ten years. Each business was operated with a separate manager and kept separate business records. In 1998, Mr. Stern sold all the tangible and intangible assets associated with the cafe and received a capital gain from the sale of the cafe. Mr. Stern can exclude the capital gain from his net income for 1998 because the cafe and fast-food restaurant were considered to be separate and distinct non-unitary businesses.

40.38(9) Net capital gains from the sales of cattle or horses held for two years and used for certain purposes. Net capital gains from the sales of certain cattle or horses held for 24 months or more before the sale and which were owned by taxpayers who received more than one-half of their gross incomes in the tax year from farming or ranching operations are excluded from taxation. The cattle or horses must have been held the required two-year period for breeding, dairy, or sporting purposes in order for the capital gain from the sale of the horses and cattle to qualify for exclusion. These are the same sales of horses and cattle that are eligible for capital gain treatment for federal income tax purposes under Section 1231 of the Internal Revenue Code.

In situations where the qualifying cattle or horses are sold by the taxpayer to a lineal descendant of the taxpayer, the taxpayer does not need to have had more than 50 percent of gross income in the tax year from farming or ranching activities in order for the capital gain to be excluded.

Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the individual owners for federal income tax purposes are eligible for the exclusion only in situations in which the individual owners have more than 50 percent of their gross incomes in the tax year from farming or ranching activities, or where the sale of the qualifying cattle or horses was to lineal descendants of the owners reporting the capital gains from the sales of the qualifying cattle or horses.

However, capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain exclusion.

Information about whether cattle or horses were held for draft, breeding, dairy, or sporting purposes is described in detail in subrule 40.38(2). The same subrule includes criteria for determining if more than 50 percent of a taxpayer's gross income in a tax year was from farming or ranching. Note that this standard for determining a taxpayer's qualification for the capital gain deduction or exclusion is if the taxpayer's gross income from farming or ranching, not net income from those activities, is greater than 50 percent of the taxpayer's total gross income and not total net income.

EXAMPLE. Bob Deen had a cattle operation that held black angus cattle in the operation for breeding purposes. In 1998, Mr. Deen sold 40 head of cattle that had been held for breeding purposes for two years. Mr. Deen's total gross income from farming was $125,000, but he had a $10,000 loss from his farming operation. Mr. Deen also had wages of $25,000 from a job at a local farming cooperative. Because Mr. Deen had more than 50 percent of his gross income in 1998 from farming operations, he could exclude the capital gain from the sale of the breeding cattle. Although Mr. Deen had a loss from his farming activities, he still had more than 50 percent of his gross income in the tax year from those activities.

40.38(10) Net capital gains from sales of certain livestock other than horses and cattle. Net capital gains from sale of breeding livestock, other than cattle or horses held 12 or more months by taxpayers who have more than 50 percent of their gross incomes in the tax year from farming or ranching operations, are excluded from taxation. These are the same sales of breeding livestock other than cattle or horses that are eligible for capital gain treatment for federal income tax purposes under Section 1231 of the Internal Revenue Code. In an instance in which a taxpayer sells breeding livestock other than cattle or horses which have been held 12 or more months, and the sale of the livestock is to a lineal descendant of the taxpayer, the taxpayer does not need to have more than 50 percent of the gross income in the tax year from farming or ranching operations to be eligible for the capital gain exclusion.

Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the exclusion to the extent the owners receiving the capital gains meet the qualifications for the exclusion on the basis of having more than 50 percent of the gross income in the tax year from farming or ranching activities.

Capital gains from the sale of qualifying livestock other than cattle or horses by a C corporation are not eligible for the exclusion.

Animals that are considered livestock other than cattle or horses for purposes of this rule are listed in subrule 40.38(3). Criteria for determining whether more than 50 percent of a taxpayer's gross income in the tax year is from farming or ranching are defined in subrule 40.38(2).

40.38(11) Capital gains from the sales of timber held by the taxpayer more than one year. These sales of timber are sales that would qualify for capital gain treatment for federal income tax purposes under Section 1231 of the Internal Revenue Code. Thus, if the sale of timber products meets the criteria for capital gain treatment for federal income tax purposes, the capital gain will qualify for exclusion on the Iowa income tax return.

Subrule 40.38(4) includes information on which tree products are considered to be timber for purposes of this rule as well as which sales of timber qualify for the capital gain exclusion. Additional information about gains and losses from the sale of timber products is found in Treasury Regulations §1.631-1 and §1.631-2.

Capital gains from the sale of qualifying timber by an S corporation, partnership, or limited liability company, which flow to the owners of the respective business entity for federal individual income tax purposes, are eligible for the capital gain exclusion.

Capital gains from the sale of timber by a C corporation do not qualify for the capital gain exclusion.

40.38(12) Capital gains from the liquidation of assets of corporations which are recognized as sales of assets for federal income tax purposes. Capital gains realized from liquidations of corporations which are recognized as sales of assets for federal income tax purposes under Section 331 of the Internal Revenue Code may be eligible for the capital gain exclusion. To the extent the capital gains are reported by the shareholders of the corporations for federal income tax purposes and the shareholders are individuals, the shareholders are eligible for the capital gain deduction if the shareholders meet the qualifications for time of ownership and time of material participation in the corporation being liquidated. The burden of proof is on the shareholders to show they meet these time of ownership and material participation requirements.

40.38(13) Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes. Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had owned an interest in the target corporation and had materially participated in the corporation or were employed in the corporation for ten years prior to the date of the sale of the corporation. Note that the burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

40.38(14) Net capital gain deduction or exclusion not allowed for purposes of computation of a net operating loss or for computation of income for a tax year to which a net operating loss is carried. Although the net capital gain deduction or exclusion in this rule is allowed for the purposes of computation of a taxpayer's net income for a tax year, the deduction or exclusion is not allowed for the purposes of the computation of a net operating loss in the tax year. In addition, if a net operating loss for a tax year beginning on or after January 1, 1998, is carried forward to a subsequent tax year or is carried back to a prior tax year, the net capital gain deduction or exclusion is not allowed for the purposes of computing the income for the tax year to which the net operating loss was carried.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, chapter 1177.

701—40.39(422) Exemption of interest from bonds or notes issued to fund the E911 emergency telephone system. Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the E911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

701—40.40(422) Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield. For tax years ending on or after August 2, 1990, military pay received by persons in the national guard and persons in the armed forces military reserve is exempt from state income tax to the extent the military pay is not otherwise excluded from taxation and the military pay is for active-duty military service on or after August 2, 1990, pursuant to military orders related to Operation Desert Shield. The exemption applies to individuals called to active duty in Iowa to replace other persons who were in military units who were called to serve on active duty outside Iowa provided the military orders specify that the active duty assignment in Iowa pertains to Operation Desert Shield.

Persons filing original returns or amended returns on Form IA 1040X for tax years where the exempt income was received should print the notation, "Operation Desert Shield" at the top of the original return form or amended return form. A copy of the military orders showing the person was called to active duty and was called in support of Operation Desert Shield should be attached to the original return form or amended return form to support the exemption of the active duty military pay.

This rule is intended to implement Iowa Code section 422.7.

701—40.41(422) Disallowance of private club expenses.

40.41(1) Expenses incurred on or after July 1, 1991, through December 31, 1993, with respect to expenditures made at, or payments to, a club which restricts membership or the use of its services or facilities on the basis of age, sex, marital status, race, religion, color, ancestry, or national origin are disallowed as a deduction and, therefore, must be added to federal adjusted gross income. For the purposes of this rule, restricting membership or use of services or facilities due to a legal age requirement is not considered to be discrimination.

40.41(2) Definitions for the purposes of this rule.

a. The term *"expenses"* means those expenses otherwise deductible under Section 162(a) of the Internal Revenue Code and includes, but is not limited to, club membership dues and assessments, food and beverage expenses, expenses for services furnished by the club, and reimbursements or salary adjustments to officers or employees for any of the preceding expenses.

[Filed 12/12/74]
[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]
[Filed 10/14/77, Notice 9/7/77—published 11/2/77, effective 12/7/77]
[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 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]
[Filed 12/3/82, Notice 10/27/82—published 12/22/82, effective 1/26/83]
[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 8/10/84, Notice 7/4/84—published 8/29/84, effective 10/3/84]
[Filed 1/25/85, Notice 12/19/84—published 2/13/85, effective 3/20/85]
[Filed 5/3/85, Notice 3/27/85—published 5/22/85, effective 6/26/85]
[Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]
[Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 10/3/86, Notice 8/27/86—published 10/22/86, effective 11/26/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed emergency 12/23/87—published 1/13/88, effective 12/23/87]
[Filed 1/7/88, Notice 12/2/87—published 1/27/88, effective 3/2/88]
[Filed 2/19/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]
[Filed 9/18/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]
[Filed 1/4/89, Notice 11/30/88—published 1/25/89, effective 3/1/89]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
[Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]◊
[Filed 1/17/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]◊
[Filed emergency 5/8/92—published 5/27/92, effective 5/8/92]
[Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]
[Filed 10/9/92, Notice 9/2/92—published 10/28/92, effective 12/2/92]
[Filed 6/4/93, Notice 2/17/93—published 6/23/93, effective 7/28/93]
[Filed emergency 7/15/93—published 8/4/93, effective 7/15/93]
[Filed 9/10/93, Notice 8/4/93—published 9/29/93, effective 11/3/93]
[Filed emergency 10/22/93—published 11/10/93, effective 10/22/93]
[Filed 12/17/93, Notice 11/10/93—published 1/5/94, effective 2/9/94]
[Filed 5/20/94, Notice 4/13/94—published 6/8/94, effective 7/13/94]
[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 7/14/95, Notice 6/7/95—published 8/2/95, effective 9/6/95]

◊Two ARCs

[Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]
[Filed 7/25/96, Notice 6/19/96—published 8/14/96, effective 9/19/96]
[Filed 8/23/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]
[Filed 5/30/97, Notice 4/23/97—published 6/18/97, effective 7/23/97]
[Filed 9/19/97, Notice 8/13/97—published 10/8/97, effective 11/12/97]◊
[Filed 2/20/98, Notice 1/14/98—published 3/11/98, effective 4/15/98]◊
[Filed 5/15/98, Notice 4/8/98—published 6/3/98, effective 7/8/98]
[Filed 10/2/98, Notice 8/26/98—published 10/21/98, effective 11/25/98]
[Filed emergency 1/8/99 after Notice 12/2/98—published 1/27/99, effective 1/8/99]

◊Two ARCs

63 Fed. Reg. 1269 (January 8, 1998)

63 Fed. Reg. 13339 (March 19, 1998)

63 Fed. Reg. 17093 (April 8, 1998)

63 Fed. Reg. 20098 (April 23, 1998)

63 Fed. Reg. 33467 (June 18, 1998)

63 Fed. Reg. 50729 (September 22, 1998)

This rule is intended to implement Iowa Code sections 84A.1, 84A.2, 88.2 and 88.5.

[Filed 7/13/72; amended 8/29/72, 12/1/72, 8/16/73, 10/11/73, 3/18/74, 6/12/74, 12/3/74, 3/13/75]
[Filed 2/20/76, Notice 12/29/75—published 3/8/76, effective 4/15/76]
[Filed 6/21/76, Notice 5/17/76—published 7/12/76, effective 8/20/76]
[Filed 4/13/77, Notice 3/9/77—published 5/4/77, effective 6/9/77]
[Filed emergency 10/13/77—published 11/2/77, effective 10/13/77]
[Filed 11/3/78, Notice 9/20/78—published 11/29/78, effective 1/10/79]
[Filed emergency 2/2/79—published 2/21/79, effective 2/2/79]
[Filed 8/1/80, Notice 6/25/80—published 8/20/80, effective 9/25/80]
[Filed emergency 6/15/81—published 7/8/81, effective 6/15/81]
[Filed 8/12/81, Notice 7/8/81—published 9/2/81, effective 10/9/81]
[Filed 4/22/83, Notice 3/16/83—published 5/11/83, effective 6/15/83]
[Filed 5/20/83, Notice 4/13/83—published 6/8/83, effective 7/15/83]
[Filed emergency after Notice 7/1/83, Notice 3/16/83—published 7/20/83, effective 7/1/83]
[Filed 7/12/84, Notice 3/14/84—published 8/1/84, effective 9/5/84]
[Filed emergency 5/8/85—published 6/5/85, effective 5/8/85]
[Filed 9/5/85, Notice 5/8/85—published 9/25/85, effective 10/30/85]
[Filed 12/30/85, Notice 10/23/85—published 1/15/86, effective 2/19/86]
[Filed 3/21/86, Notice 12/18/85—published 4/9/86, effective 5/25/86]
[Filed emergency 6/27/86—published 7/16/86, effective 7/21/86]
[Filed 6/27/86, Notice 3/26/86—published 7/16/86, effective 8/20/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 10/1/86—published 10/22/86, effective 10/1/86]
[Filed 10/1/86, Notice 7/16/86—published 10/22/86, effective 11/26/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed emergency 5/1/87—published 5/20/87, effective 5/1/87]
[Filed emergency 5/14/87—published 6/3/87, effective 5/14/87]
[Filed 5/12/87, Notice 10/22/86—published 6/3/87, effective 7/8/87]
[Filed emergency 6/15/87—published 7/1/87, effective 6/15/87]
[Filed 8/6/87, Notice 5/6/87—published 8/26/87, effective 9/30/87]
[Filed 8/6/87, Notice 5/20/87—published 8/26/87, effective 9/30/87]
[Filed 8/6/87, Notice 6/3/87—published 8/26/87, effective 9/30/87]
[Filed 8/6/87, Notice 7/1/87—published 8/26/87, effective 9/30/87]
[Filed 4/25/88, Notice 12/16/87—published 5/18/88, effective 6/22/88]
[Filed 7/8/88, Notice 5/18/88—published 7/27/88, effective 9/1/88]
[Filed 8/30/88, Notice 6/15/88—published 9/21/88, effective 11/1/88]
[Filed 3/17/89, Notices 9/21/88, 10/5/88, 10/19/88—published 4/5/89, effective 5/10/89]

[Filed 5/25/89, Notice 4/5/89—published 6/14/89, effective 7/20/89]
[Filed 8/18/89, Notice 6/14/89—published 9/6/89, effective 10/11/89]
[Filed 10/26/89, Notice 9/6/89—published 11/15/89, effective 12/20/89]
[Filed 1/19/90, Notice 11/15/89—published 2/7/90, effective 3/14/90]
[Filed 3/16/90, Notice 2/7/90—published 4/4/90, effective 5/9/90]
[Filed 6/8/90, Notice 4/4/90—published 6/27/90, effective 8/1/90]
[Filed 11/9/90, Notice 6/27/90—published 11/28/90, effective 1/2/91]
[Filed 2/15/91, Notice 11/28/90—published 3/6/91, effective 4/10/91]
[Filed 4/23/91, Notice 3/6/91—published 5/15/91, effective 6/19/91]
[Filed 6/28/91, Notice 5/15/91—published 7/24/91, effective 8/28/91]
[Filed 9/27/91, Notice 7/24/91—published 10/16/91, effective 11/20/91]
[Filed 12/20/91, Notice 10/30/91—published 1/8/92, effective 2/12/92]
[Filed emergency 2/12/92 after Notice 1/8/92—published 3/4/92, effective 3/4/92]
[Filed emergency 5/6/92 after Notice 4/1/92—published 5/27/92, effective 5/27/92]
[Filed emergency 7/17/92—published 8/5/92, effective 8/5/92]
[Filed emergency 7/29/92 after Notice 6/24/92—published 8/19/92, effective 8/19/92]
[Filed emergency 8/14/92 after Notice 7/8/92—published 9/2/92, effective 9/2/92]
[Filed emergency 9/11/92 after Notice 8/5/92—published 9/30/92, effective 9/30/92]
[Filed emergency 10/7/92 after Notice 9/2/92—published 10/28/92, effective 10/28/92]
[Filed emergency 12/4/92 after Notice 10/28/92—published 12/23/92, effective 12/23/92]
[Filed emergency 3/22/93 after Notice 2/17/93—published 4/14/93, effective 4/14/93]
[Filed emergency 6/4/93 after Notice 4/28/93—published 6/23/93, effective 6/23/93]
[Filed emergency 7/29/93 after Notice 5/26/93—published 8/18/93, effective 8/18/93]
[Filed emergency 9/22/93 after Notice 8/18/93—published 10/13/93, effective 10/13/93]
[Filed emergency 10/7/93 after Notice 9/1/93—published 10/27/93, effective 10/27/93]
[Filed emergency 4/21/94 after Notice 3/16/94—published 5/11/94, effective 5/11/94]
[Filed emergency 6/15/94 after Notice 5/11/94—published 7/6/94, effective 7/6/94]
[Filed emergency 8/26/94 after Notice 7/20/94—published 9/14/94, effective 9/14/94]
[Filed emergency 9/9/94 after Notice 8/3/94—published 9/28/94, effective 9/28/94]
[Filed emergency 9/23/94 after Notice 8/17/94—published 10/12/94, effective 10/12/94]
[Filed emergency 10/21/94 after Notice 9/14/94—published 11/9/94, effective 11/9/94]
[Filed emergency 11/2/94 after Notice 9/28/94—published 11/23/94, effective 11/23/94]
[Filed emergency 1/4/95 after Notice 11/9/94—published 2/1/95, effective 2/1/95]
[Filed emergency 4/21/95 after Notice 3/15/95—published 5/10/95, effective 5/10/95]
[Filed emergency 7/14/95 after Notice 5/10/95—published 8/2/95, effective 8/2/95]
[Filed emergency 9/22/95 after Notice 8/16/95—published 10/11/95, effective 10/11/95]
[Filed emergency 12/1/95 after Notice 10/11/95—published 12/20/95, effective 12/20/95]
[Filed emergency 1/26/96 after Notice 12/20/95—published 2/14/96, effective 2/14/96]
[Filed emergency 7/12/96 after Notice 5/22/96—published 7/31/96, effective 7/31/96]
[Filed emergency 10/3/96 after Notice 7/31/96—published 10/23/96, effective 10/23/96]
[Filed emergency 11/27/96 after Notice 10/23/96—published 12/18/96, effective 12/18/96]
[Filed emergency 2/7/97 after Notice 12/18/96—published 2/26/97, effective 2/26/97]
[Filed emergency 4/4/97 after Notice 2/26/97—published 4/23/97, effective 4/23/97]
[Filed emergency 12/11/97 after Notice 10/22/97—published 12/31/97, effective 12/31/97]
[Filed emergency 3/19/98 after Notice 2/11/98—published 4/8/98, effective 4/8/98]
[Filed emergency 9/4/98 after Notice 7/29/98—published 9/23/98, effective 9/23/98]
[Filed emergency 10/30/98 after Notice 9/23/98—published 11/18/98, effective 11/18/98]
[Filed emergency 1/8/99 after Notice 11/18/98—published 1/27/99, effective 1/27/99]

CHAPTERS 11 to 25
Reserved

EXAMPLE 1. For 7 pages of records the amount to be paid for furnishing duplicates shall not exceed $20.

EXAMPLE 2. For 28 pages of records the amount to be paid for furnishing duplicates shall not exceed $28 ($20 plus (8 times $1)).

EXAMPLE 3. For 41 pages of records the amount to be paid for furnishing duplicates shall not exceed $35.50 ($30 plus (11 times $.50)).

EXAMPLE 4. For 127 pages of records the amount to be paid for furnishing duplicates shall not exceed $71.75 ($65 plus (27 times $.25)).

EXAMPLE 5. For 210 pages of records the amount to be paid for furnishing duplicates shall not exceed $91 ($90 plus (10 times $.10)).

This rule is intended to implement Iowa Code sections 84A.2, 85.27, 85.31, 85.33 to 85.37, 85.39, 85.61, 86.8, 86.10, 86.18 and 86.39.

876—8.10(85B) Apportionment of age-related loss for occupational hearing loss claims.

8.10(1) *Effective date.* This rule is effective for claims for occupational hearing loss filed on or after July 1, 1998.

8.10(2) *Purpose.* The purposes of this rule are to adopt tables and the method for calculating age-related hearing loss and to adopt a worksheet for apportionment of age-related hearing loss for occupational hearing loss claims.

8.10(3) *Table.* In 1972 the National Institute for Occupational Safety and Health (NIOSH) published the Criteria for a Recommended Standard: Occupational Exposure to Noise (NIOSH Publication No.73-11001). Table B-1, page I-16, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Males and Table B-2, page I-17, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Females. These NIOSH tables are used to calculate the correction value for age for males and females for 500, 1000, 2000 and 3000 hertz.

For example, the age correction for a male 21 years of age is 10 decibels at 500 hertz, 5 decibels at 1000 hertz, 3 decibels at 2000 hertz and 4 decibels at 3000 hertz. The correction for age is 5.50 decibels (the sum of 10+5+3+4 divided by 4).

The following table is to be used to determine an employee's age-related change in hearing level during the period of employment. To determine the age-related change in hearing level in decibels during the period of employment, subtract the value shown in the table for the employee's age at the beginning of employment from the value shown in the table for the employee's age on the date of injury.

NOTE: This table should not be used to compute standard threshold shift as required by rules of the Occupational Safety and Health Administration or Iowa occupational safety and health administration.

Age in Years	Correction in dB	
	Males	Females
20 or younger	5.50	7.25
21	5.50	7.75
22	5.50	7.75
23	5.50	8.00
24	5.75	8.00
25	6.00	8.25
26	6.25	8.50
27	6.50	8.75
28	6.75	8.75
29	6.75	8.75
30	6.75	9.00
31	7.25	9.25
32	7.50	9.50
33	7.50	9.75
34	7.75	9.75
35	8.00	10.00
36	8.25	10.25
37	8.75	10.25
38	8.75	10.50
39	9.00	11.00
40	9.00	11.00
41	9.25	11.25
42	10.00	11.50
43	10.25	11.75
44	10.25	12.00
45	10.50	12.25
46	10.75	12.50
47	11.00	12.50
48	11.50	13.00
49	12.00	13.25
50	12.25	13.50
51	12.25	13.75
52	12.75	13.75
53	13.25	14.25
54	13.50	14.50
55	14.00	15.00
56	14.25	15.00
57	14.50	15.25
58	15.25	15.75
59	15.50	16.00
60 or older	16.00	16.25

8.10(4) *Apportionment.* The apportionment of age-related hearing loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to Iowa Code section 85B.9(3) by the same percentage as the decibels of age-related change in hearing level occurring during the period of employment bears to the total decibel hearing level in each ear.

Age-related hearing loss is apportioned using the results of the audiogram determined to be the proper audiogram for measurement of the employee's hearing loss on the date of injury by using the following steps:

1. Separately for each ear, compute the average of the employee's decibel hearing levels at 500, 1000, 2000, and 3000 hertz for that ear.
2. Separately for each ear, compute the percentage loss for each ear.
3. Compute the employee's age-related change in hearing level in decibels during the period of employment using the table in subrule 8.10(3).
4. Separately for each ear, divide the result of step 3 by the result of step 1 to compute the age-correction factor for that ear.
5. Separately for each ear, multiply the total percentage hearing loss in that ear calculated pursuant to Iowa Code section 85B.9 by the age-correction factor for that ear.
6. Separately for each ear, subtract the result obtained in step 5 from the total percentage hearing loss in that ear to obtain the age-corrected hearing loss for that ear.
7. Multiply the age-corrected hearing loss in the better ear as calculated in step 6 by 5 and add the percentage hearing loss in the worse ear.
8. Divide the result obtained in step 7 by 6 to obtain the age-corrected binaural percentage hearing loss.

8.10(5) *Worksheet.* The following worksheet is used to calculate the percentage of age-corrected binaural hearing loss.

APPORTIONMENT OF PERCENT HEARING LOSS FOR AGE

	Left Ear Hearing Level	Frequency in Hertz	Right Ear Hearing Level
1.	_____	500	_____
2.	_____	1000	_____
3.	_____	2000	_____
4.	_____	3000	_____
5.	_____	total of lines 1 through 4	_____
	divide by 4	(divide the "total" by 4)	divide by 4
6.	_____	equals average equals	_____
	minus 25	subtract "low fence"	minus 25
7.	_____	equals "Excess"	_____
	multiply by 1.5	multiply % factor	multiply by 1.5
8.	_____	equals % loss each ear	_____
	(% loss left ear)		(% loss right ear)
9.	Age on date of injury	____	
10.	Age at beginning of employment	____	

11. ____ correction for age on date of injury in dB from table

minus

12. ____ correction for age at beginning of employment in dB from table

equals

13. ____ age-related change in hearing level during employment in dB

LEFT EAR		RIGHT EAR

Divide age-related change in hearing level from line 13 by average hearing level from line 6

To obtain

14. _____	age correction factor	_____

multiply % loss from line 8 by age-correction factor from line 14

To obtain

15. _____	deduction for age-correction	_____

subtract line 15 from line 8

To obtain

16. _____	age-corrected percent hearing loss	_____

BINAURAL PERCENTAGE LOSS

17. _____ % loss better ear (smaller amount) from line 16, multiplied by 5

plus

18. _____ % loss worse ear (larger amount) from line 16

19. _____ equals

divided by 6

equals

20. _____ % age-corrected binaural hearing loss

This rule is intended to implement 1998 Iowa Acts, chapter 1160, section 7, and Iowa Code section 86.8.

[Filed emergency 6/25/76—published 7/12/76, effective 7/1/76]
[Filed 8/3/77, Notice 6/29/77—published 8/24/77, effective 9/28/77]
[Filed 9/26/80, Notice 8/20/80—published 10/15/80, effective 11/19/80]
[Filed emergency 6/18/82—published 7/7/82, effective 7/1/82]

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed emergency 6/22/84—published 7/18/84, effective 7/1/84]
[Filed emergency 5/31/85—published 6/19/85, effective 7/1/85]
[Filed 9/4/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]
[Filed emergency 6/13/86—published 7/2/86, effective 7/1/86]
[Editorially transferred from [500] to [343] IAC Supp. 9/24/86]
[Filed emergency 5/22/87—published 6/17/87, effective 7/1/87]
[Filed emergency 5/31/88—published 6/29/88, effective 7/1/88]
[Filed emergency 5/12/89—published 5/31/89, effective 7/1/89]
[Filed emergency 5/31/90—published 6/27/90, effective 7/1/90]
[Filed emergency 7/1/91—published 7/24/91, effective 7/1/91]
[Filed emergency 6/5/92—published 6/24/92, effective 7/1/92]
[Filed 8/13/92, Notice 6/24/92—published 9/2/92, effective 10/7/92]
[Filed 8/13/92, Notice 7/8/92—published 9/2/92, effective 10/7/92]
[Filed emergency 5/21/93—published 6/9/93, effective 7/1/93]
[Filed emergency 6/3/94—published 6/22/94, effective 7/1/94]
[Filed 1/13/95, Notice 12/7/94—published 2/1/95, effective 3/8/95*]
[Filed emergency 5/10/95—published 6/7/95, effective 5/17/95]
[Filed emergency 7/7/95—published 8/2/95, effective 7/7/95]
[Filed 4/3/96, Notice 2/14/96—published 4/24/96, effective 7/1/96]
[Filed emergency 6/11/96—published 7/3/96, effective 7/1/96]
[Filed 1/10/97, Notice 12/4/96—published 1/29/97, effective 3/5/97]
[Filed emergency 6/17/97—published 7/16/97, effective 7/1/97]
[Filed 5/1/98, Notice 3/25/98—published 5/20/98, effective 6/24/98]
[Filed emergency 6/23/98—published 7/15/98, effective 7/1/98]
[Filed emergency 6/30/98—published 7/29/98, effective 7/1/98]
[Filed emergency 7/1/98—published 7/29/98, effective 7/1/98]
[Filed 1/5/99, Notice 7/29/98—published 1/27/99, effective 3/3/99]

*Effective date of 343—8.9(85,86), second unnumbered paragraph, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 13, 1995; delay lifted by this Committee May 9, 1995.

INSURANCE (cont'd)
Life