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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.

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February 10, 1999, Biweekly Supplement

[Previous Supplement dated 1/27/99]

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

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PART I
DEPARTMENT STRUCTURE AND PROCEDURES

CHAPTER 1
ORGANIZATION

261—1.1(15) Mission. The department of economic development was created by 1986 Iowa Acts, chapter 1245, effective July 1, 1986. The authority delegated to the department had previously been delegated to the Iowa development commission and the office for planning and programming. The mission of the Iowa department of economic development is to enhance the economic development of the state and provide for job creation and increased prosperity and opportunities for the citizens of the state by providing direct financial and technical assistance and training to businesses and individuals and by coordinating other state, local and federal economic development programs. The department's primary responsibilities are in the areas of finance, marketing, local government and service coordination, exporting, tourism, job training and entrepreneurial assistance, and small business.

261—1.2(15) Definitions. As used in these rules, unless the context otherwise requires:

"Board" or *"IDED board"* means the Iowa economic development board created by Iowa Code chapter 15.

"Department" or *"IDED"* means the Iowa department of economic development authorized by Iowa Code chapter 15.

"Director" means the director of the department of economic development or the director's designee.

261—1.3(15) Department of economic development board.

1.3(1) *Composition.* The board consists of 11 voting members appointed by the governor and 7 ex officio nonvoting members. The ex officio nonvoting members are 4 legislative members, one president, or the president's designee, of the University of Northern Iowa, University of Iowa, or Iowa State University of Science and Technology designated by the state board of regents on a rotating basis, and one president, or the president's designee, of a private college or university appointed by the Iowa association of independent colleges and universities, and one superintendent, or the superintendent's designee, of a merged area school, appointed by the Iowa association of community college presidents.

1.3(2) *Meetings.* The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. The chairperson and the vice chairperson shall not be from the same political party. The board shall meet at the call of the chairperson or when any six members of the board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

1.3(3) *Duties.* The board shall perform the duties as outlined in Iowa Code section 15.104, and other functions as necessary and proper to carry out its responsibilities.

261—1.4(15) Department structure.

1.4(1) *General.* The department's organizational structure consists of the director, deputy director, and five administrative divisions.

1.4(2) *Director.* The department of economic development is administered by a director appointed by the governor, who serves at the pleasure of the governor, and is subject to confirmation by the senate. The director is the chief administrative officer of the department and in that capacity administers the programs and services of the department in compliance with applicable federal and state laws and regulations. The duties of the director include preparing a budget subject to board approval, establishing an internal administrative structure and employing personnel, reviewing and submitting to the board legislative proposals, recommending rules to the board, reporting to the board on grants and contracts awarded by the department, and other actions to administer and direct the programs of the department.

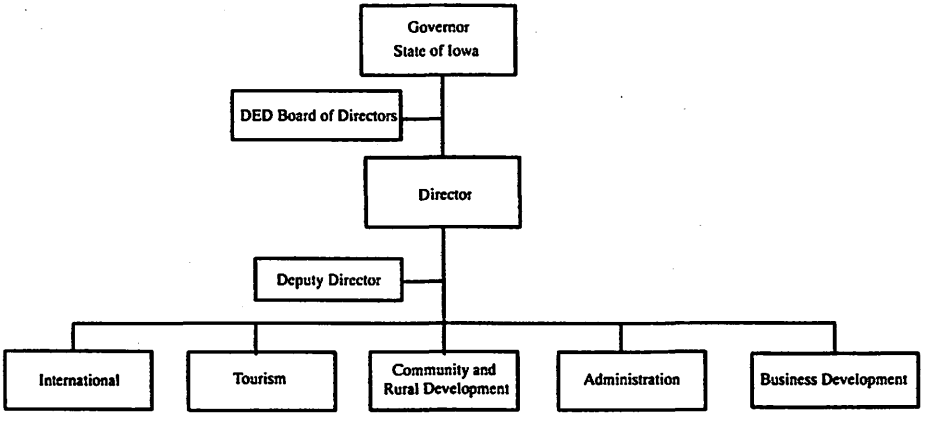
The administrators of the five divisions and the deputy director report to the director.

1.4(3) *Deputy director.* The deputy director, appointed by the director, directs and administers the department in the director's absence. The deputy director also serves as the division administrator for the division of administration.

1.4(4) *Divisions.* The director has established the following administrative divisions within the department in order to most efficiently and effectively carry out the department's responsibilities:

1. Division of administration;
2. Division of business development;
3. Division for community and rural development;
4. Division of tourism; and
5. International division.

1.4(5) *Table of organization.*



1.4(6) *Attachment for administrative purposes.* The following entities are attached to the Iowa department of economic development for organizational and administrative purposes only: Iowa finance authority and the city development board. These organizations possess rule-making authority independent of the Iowa department of economic development and their administrative rules are located elsewhere in the Iowa Administrative Code.

261—1.5(15) Information. The general public may obtain information about the department of economic development by contacting the Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; (515)242-4700.

These rules are intended to implement Iowa Code chapter 15 and section 17A.3.

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CHAPTER 2
PETITION FOR RULE MAKING

Renumbered 261—Ch 102, IAB 7/19/95

CHAPTER 3
PETITION FOR DECLARATORY RULING

Renumbered 261—Ch 103, IAB 7/19/95

PART II

CHAPTER 4
WORKFORCE DEVELOPMENT ACCOUNTABILITY SYSTEM

261—4.1(15) Purpose. The department of economic development, in conjunction with the department of education, has the responsibility under Iowa Code section 84A.5 to report information concerning the use of any state or federal training or retraining funds which are part of the workforce development system. The information reported shall be in a form that will permit the accountability system, which is a part of the workforce development system, to evaluate all of the following:

4.1(1) The impact of services on wages earned by individuals.

4.1(2) The effectiveness of training service providers in raising the skills of the Iowa workforce.

4.1(3) The impact of placement and training services on Iowa's families, communities and economy.

261—4.2(15) Compilation of information. The department of economic development, in conjunction with the community colleges, shall develop a mechanism and timetable for compiling relevant information which shall include the social security numbers of individuals trained, in order to access wages earned by those individuals, project identifier codes, and information needed to evaluate the effectiveness of training in raising the skills of trainees. When developing procedures for compiling this information, the community colleges and the department will incorporate procedures to safeguard confidentiality of social security numbers.

These rules are intended to implement Iowa Code section 84A.5.

[Filed 1/22/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]

PART III
DIVISION OF COMMUNITY AND RURAL DEVELOPMENT

CHAPTER 21
DIVISION RESPONSIBILITIES

261—21.1(15) Purpose. The purpose of the division of community and rural development is to provide technical assistance, training and financial resources to assist communities in responding to change, capitalizing on opportunities and building organizational/physical infrastructure relating to community and economic development.

261—21.2(15) Structure. The division consists of two bureaus:

21.2(1) *Bureau of community facilities and services.* The bureau of community facilities and services is responsible for the following federal programs: Community Development Block Grant Nonentitlement Program (CDBG); Home Investment Partnership Program (HOME); the housing component of the enterprise zone program; and Emergency Shelter Grants Program (ESGP) as well as the state-funded Homeless Shelter Operating Grants (HSOG) and the Local Housing Assistance Program (LHAP). The bureau administers available federal funds for housing through the housing fund and is also responsible for developing a consolidated state plan for infrastructure and housing.

21.2(2) *Bureau of community planning and development.* The bureau assists communities and businesses through training, grants and technical assistance to address industrial, commercial, work force and other community development issues. The programs include community outreach, the Iowa community betterment program, the manufacturing extension partnership and main street. The city development board and the Iowa rural development council are also staffed by this bureau.

This bureau also provides direct technical and financial assistance for comprehensive community and rural development, including but not limited to: local capacity building for business development, leadership and volunteer development, and growth management activities, including community planning and technical assistance for infrastructure investments.

These rules are intended to implement Iowa Code chapters 15 and 17A.

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CHAPTER 22
COMMUNITY ECONOMIC BETTERMENT PROGRAM

Renumbered as 261—Ch 53, IAB 7/19/95

CHAPTER 23
IOWA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

261—23.1(15) Purpose. The primary purpose of the community development block grant program is the development of viable communities by providing decent housing and suitable living environments and expanding economic opportunities, primarily for persons of low and moderate income.

261—23.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific activities, projects or programs assisted with CDBG funds.

"Career link" means a program providing training and enhanced employment opportunities to the working poor and underemployed Iowans.

"CDBG" means community development block grant.

"EDSA" means economic development set-aside.

"HUD" means the U.S. Department of Housing and Urban Development.

"IDED" means the Iowa department of economic development.

"LMI" means low and moderate income. Households earning 80 percent or less of the area median income are LMI households.

"PFSA" means public facilities set-aside.

"Program income" means gross income a recipient receives that is directly generated by the use of CDBG funds, including funds generated by the use of program income.

"Program year" means the annual period beginning January 1 and ending December 31.

"Quality jobs program" means a job training program formerly funded with CDBG funds that is no longer operational.

"Recipient" means a local government entity awarded CDBG funds under any CDBG program.

"Working poor" means an employed person with an annual household income between 25 and 50 percent of the area median family income.

261—23.3(15) Eligible applicants. All incorporated cities and all counties in the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development, are eligible to apply for and receive funds under this program.

23.3(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

23.3(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

23.3(3) Applicants shall not apply on behalf of eligible applicants other than themselves.

261—23.4(15) Allocation of funds. IDED shall distribute CDBG funds as follows:

23.4(1) *Administration.* Two percent of total program funds including program income plus $100,000 shall be used for state administration.

23.4(2) *Technical assistance.* One percent of the funds shall be used for the provision of substantive technical assistance to recipients.

23.4(3) *Housing fund.* Twenty-five percent of the funds shall be reserved for a housing fund to be used to improve the supply of affordable housing for LMI persons.

23.4(4) *Job creation, retention and enhancement fund.* Twenty percent of the funds shall be reserved for a job creation, retention and enhancement fund to be for workforce development and to expand economic opportunities and job training for LMI persons. Job creation, retention and enhancement funds are awarded through three programs: the economic development set-aside (EDSA), the public facilities set-aside (PFSA) and career link.

23.4(5) *Imminent threat contingency fund.* Up to $500,000 shall be reserved to fund projects that address an imminent threat to public health, safety or welfare that necessitates immediate corrective action.

23.4(6) *Competitive program.* The remaining funds shall be available on a competitive basis through the water and sewer fund and community facilities and services fund. Of this remaining amount, 70 percent shall be reserved for the water and sewer fund, 15 percent shall be reserved for the community facilities and services fund and 15 percent shall be allocated to either the water and sewer fund or community facilities and services fund at the discretion of the director, based on requests for funds.

a. Funding from the water and sewer fund shall be divided into two award cycles.

b. Up to 85 percent of the funds shall be awarded in the first award cycle.

23.4(7) *Reallocation.* Any reserved funds not used for their specified purpose within the program year shall be reallocated to the competitive program for use through the water and sewer fund and community facilities and services fund according to the percentages set forth in subrule 23.4(6).

23.4(8) *Recaptured funds.* Recaptured funds from all programs except the former quality jobs program shall be returned to the competitive program for use through the water and sewer fund and community facilities and services fund according to the percentages set forth in subrule 23.4(6). Funds recaptured from the former quality jobs program shall revert to the job creation, retention and enhancement fund. Recaptured funds shall be committed to open contracts. Preference for reimbursement shall be given to those contracts funded in prior years, with priority given to those from the earliest year not yet closed out. Reimbursement will then proceed on a first-in, first-out basis.

261—23.5(15) Common requirements for funding. Applications for funds under any of the CDBG programs shall meet the following minimum criteria:

23.5(1) Proposed activities shall be eligible, as authorized by Title I, Section 105 of the Housing and Community Development Act of 1974 and as further defined in 24 CFR 570, as revised April 1, 1997.

23.5(2) Proposed activities shall address at least one of the following three objectives:

1. Primarily benefit low- and moderate-income persons. To address this objective, 51 percent or more persons benefiting from a proposed activity must have incomes at or below 80 percent of the area median income.

2. Aid in the prevention or elimination of slums and blight. To address this objective, the application must document the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community and illustrating that the proposed activity will alleviate or eliminate the conditions causing the deterioration.

3. Meet an urgent community development need. To address this objective, the applicant must certify that the proposed activity is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community and that are recent in origin or that recently became urgent; that the applicant is unable to finance the activity without CDBG assistance and that other sources of funding are not available. A condition shall be considered recent if it developed or became urgent within 18 months prior to submission of the application for CDBG funds.

23.5(3) Applicants shall demonstrate capacity for grant administration. Administrative capacity shall be evidenced by previous satisfactory grant administration, availability of qualified personnel or plans to contract for administrative services. Funds used for administration shall not exceed 10 percent of the CDBG award amount or 10 percent of the total contract amount, except for awards made under the career link program, for which funds used for administration shall not exceed 5 percent of the CDBG award amount.

e. IDED shall provide by mail full application forms and instructions to the selected applicants with the invitation to apply.

f. Full applications shall be submitted by a deadline established by IDED, which shall be no earlier than 50 days after IDED issues the invitation to apply. Applicants shall submit the original and two copies of completed applications with required attachments to IDED at the address provided in paragraph *"a"* above.

g. Applicants shall submit preliminary engineering reports with their full applications.

h. IDED staff may consult on proposed activities with other state agencies responsible for water- and sewer-related activities and may conduct site evaluations of proposed activities.

i. Applications selected to receive awards shall be notified by letter from the IDED director by a date determined by IDED, which shall be no later than 90 days after the application due date.

23.6(4) *Community facilities and services fund application procedure.* Each year, IDED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDED.

a. Application forms shall be available upon request from IDED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4825.

b. Applicants shall submit a preapplication for review by IDED staff by a deadline established by IDED, which shall be no earlier than 60 days after the announcement of availability of funds.

c. Applicants whose preapplications best meet the following application review criteria shall be invited to submit full applications for funds:

(1) Magnitude of need for the project.

(2) Impact of the activity on standard of living or quality of life of proposed beneficiaries.

(3) Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion.

(4) Degree to which community facilities and services fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount possible of local financial support for the activity.

(5) Capacity to operate and maintain the proposed activity.

(6) Capacity for continued viability of the activity after CDBG assistance.

(7) Scope of project benefit relative to the amount of CDBG funds invested.

d. IDED shall provide by mail full application forms and instructions to the selected applicants with the invitation to apply.

e. Full applications shall be submitted by a deadline established by IDED, which shall be no earlier than 50 days after IDED issues the invitation to apply. Applicants shall submit the original and two copies of completed applications with required attachments to IDED at the address provided in paragraph *"a"* above.

f. IDED staff may consult on proposed activities with other state agencies responsible for community facilities and services-related activities and may conduct site evaluations of proposed activities.

g. Applications selected to receive awards shall be notified by letter from the IDED director by a date determined by IDED, which shall be no later than 90 days after the application due date.

23.6(5) *Contingent funding.* IDED may make awards contingent upon receipt of funding from other sources.

23.6(6) *Negotiation of awards.* IDED reserves the right to negotiate award amounts and terms.

261—23.7(15) Requirements for the economic development set-aside fund.

23.7(1) *Restrictions on applicants.*

a. Applicants shall apply only for direct loans or forgivable loans to make to private businesses for the creation of new jobs or the retention of existing jobs that would otherwise be lost.

b. The maximum grant award for individual business assistance applications from any city or county is $500,000 per application.

c. The average starting wage of jobs to be created or retained by a proposed project shall meet or exceed the greater of 75 percent of the average county wage scale or $7 an hour.

d. At least 51 percent of the permanent jobs created or retained by the proposed project shall be taken by or made available through first consideration activities to persons from low- and moderate-income families.

e. Projects must maintain a minimum ratio of one permanent job created or retained for every $10,000 in CDBG funds awarded.

f. Terms of conventional loans proposed for the project must be consistent with terms generally accepted by conventional financial institutions.

g. Applications must provide evidence of adequate private equity.

h. Applications must provide evidence that the EDSA funds requested are necessary to make the proposed project feasible and that the business requesting assistance can continue as a going concern in the foreseeable future if assistance is provided.

i. IDED shall not consider applications proposing business relocation from within the state unless evidence exists of unusual circumstances that make the relocation necessary for the business' viability.

j. No significant negative land use or environmental impacts shall occur as a result of the project.

23.7(2) *Application procedure.* Application forms and instructions shall be available upon request from IDED, Bureau of Business Financing, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4825. An original and two copies of completed applications with required attachments shall be submitted to the same address. IDED shall accept EDSA applications at any time and shall review applications on a continuous basis. IDED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

23.7(3) *Review criteria.* IDED shall review applications and make funding decisions based on the following criteria:

1. Impact of the project on the community.
2. Appropriateness of the jobs to be created or retained by the proposed project.
3. Appropriateness of the proposed wage and benefit package available to employees in jobs created or retained by the proposed project.
4. Degree to which EDSA funding would be leveraged by private investment.
5. Degree of demonstrated business need.

In evaluating applications, IDED shall give supplementary credit to applicants who have executed a good neighbor agreement with the business to be assisted.

IDED may conduct site evaluations of proposed projects.

23.14(4) *Program income.* If a recipient receives program income before the contract end date, it must be expended before requesting additional funds. If a recipient receives program income on or after the contract end date, the recipient may reuse the program income according to an IDED-approved reuse plan, or the recipient may return the program income to IDED. If a recipient receives less than $25,000 of program income cumulative of all CDBG grants in a program year, it shall be considered miscellaneous revenue and may be used for any purpose.

23.14(5) *Record keeping and retention.* All records related to the project, including the original grant application, reports, financial records and documentation of compliance with state and federal requirements, shall be retained for five years after contract closeout. Representatives of HUD, the Inspector General, the General Accounting Office, the state auditor's office and IDED shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of CDBG funds.

23.14(6) *Performance reports and reviews.* Recipients shall submit recipient performance reports to IDED as prescribed in the CDBG management guide. IDED shall perform project reviews and site inspections deemed necessary to ensure program compliance. When noncompliance is indicated, IDED may require remedial actions to be taken.

23.14(7) *Contract amendments.* Any substantive change to a funded CDBG project, including time extensions, budget revisions and significant alteration to proposed activities, shall be considered a contract amendment. The recipient shall request the amendment in writing. No amendment shall be valid until approved in writing by IDED. IDED shall not approve the addition of a new activity unrelated to the original contract activities, unless all original activities shall also be completed per the contract. In such cases, IDED may allow up to $10,000 of the original CDBG award to be used for a new activity. For projects funded under the economic development set-aside, IDED shall not approve amendments involving the replacement of one activity with another.

23.14(8) *Contract closeout and audit.* Upon completion of project activities and contract expiration, IDED shall initiate closeout procedures. Contracts may be subject to audit before closeout of the contract can be completed. Recipients of federal funds of $300,000 or more within one year must have these funds audited. The audit shall be performed in a manner consistent with the provisions set forth in the Single Audit Act, as revised in 1996, and described in the CDBG management guide.

23.14(9) *Contractors and subrecipients limitation.* CDBG funds shall not be used directly or indirectly to employ, award contracts to, otherwise engage the services of or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status by HUD under the provisions of 24 CFR 24, as revised April 1, 1997.

23.14(10) *Compliance with federal and state laws and regulations.* Recipients shall comply with all applicable provisions of the Housing and Community Development Act of 1974 and these administrative rules. Recipients shall also comply with any provisions of the Iowa Code governing activities performed under this program.

23.14(11) *Noncompliance.* At any time before project closeout, IDED may, for cause, find that a recipient is not in compliance with requirements under this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Findings of noncompliance may include the use of CDBG funds for activities not described in the application, failure to complete approved activities in a timely manner, failure to comply with any applicable state or federal rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

23.14(12) *Appeals process for findings of noncompliance.* Appeals shall be entertained in instances where it is alleged that IDED staff participated in a decision that was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals shall be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director shall make the final decision on all appeals.

These rules are intended to implement Iowa Code section 15.108(1)*"a."*

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*See IAB Economic Development Department.

PART IV
DIVISION OF BUSINESS DEVELOPMENT

CHAPTER 50
DIVISION RESPONSIBILITIES

261—50.1(15) Mission. The division's mission is to enhance the state's economy by providing site location and expansion assistance, financial assistance, and entrepreneurial assistance to businesses that will lead to the diversification of the economy and the creation of quality jobs for Iowans.

261—50.2(15) Structure. The division is divided into three segments: the marketing and business expansion bureau, bureau of business finance, and the small business resource office.

50.2(1) *Marketing and business expansion bureau.* The bureau has two sections: marketing and promotion and business expansion.

a. The marketing and promotion section is responsible for promoting Iowa as a location for business site expansion. The section is responsible for implementation of the bureau's five-year marketing plan which includes marketing strategies for advertising, public relations, direct mail, trade shows, conference/seminars, and other programs aimed at recruiting new businesses and encouraging existing businesses to expand in the state.

b. The business expansion section works one-on-one with business expansion clients to identify sites, buildings and communities which meet the client's location or expansion criteria. Once communities have been identified, IDED's site location managers work with the communities to prepare customized proposals for the client.

50.2(2) *Bureau of business finance.* The bureau provides financial assistance to businesses expanding in the state of Iowa, as well as to new business start-ups and business relocations to the state. The bureau administers the community economic betterment account (CEBA) which provides financial assistance to businesses and industries that require assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Other financial assistance programs administered by the bureau include the economic development set-aside (EDSA) program which is designed to encourage economic growth by providing financial assistance to businesses in communities of less than 50,000 in population and is aimed at providing employment opportunities for individuals from low- and moderate-income households; the value-added agricultural products and processes financial assistance program (VAAPFAP); the physical infrastructure assistance program (PIAP); the entrepreneurs with disabilities program (EWD); the entrepreneurial ventures assistance program (EVA); the self-employment loan program (SELP) which is designed to encourage self-employment for disadvantaged individuals; and the targeted small business financial assistance program (TSBFAP) which fosters the entrepreneurial spirit of women and minority owners by assisting with start-ups or expansions.

50.2(3) *Small business resource office (SBRO).* The SBRO's mission is to facilitate the growth of emerging small businesses in the state by providing entrepreneurial assistance, networking opportunities, and education programs. The SBRO is also responsible for identifying federal procurement opportunities for Iowa businesses. The SBRO's activities focus on the following three issues of concern to small business: procurement and marketing development, regulatory assistance, and entrepreneurial services. The SBRO is organized as follows:

a. Procurement and marketing development team. The procurement and marketing development team includes the Iowa procurement outreach center and the targeted small business marketing programs.

b. Regulatory assistance team. The regulatory assistance team focuses on providing key business, licensing and regulatory information for the management of small businesses.

c. Entrepreneurial services team. The entrepreneurial services team includes small business case management and the operation of the venture network of Iowa.

These rules are intended to implement Iowa Code chapters 15 and 17A.

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CHAPTER 51
SELF-EMPLOYMENT LOAN PROGRAM

[Prior to 7/19/95, see 261—Ch 8]
[Former Ch 51, "Speculative Building Loans," rescinded IAB 7/19/95, effective 8/23/95]

261—51.1(15) Purpose. The department of economic development administers the self-employment loan program (SELP) in coordination with the job training partnership program (261—Chapter 19) and the entrepreneurship training program administered under Iowa Code section 15.108, subsection 6, paragraph *"c."* The purpose of the SELP is to provide loans to low-income persons and persons with a disability to establish or expand small business ventures.

261—51.2(15) Definitions. As used in this chapter, unless the context otherwise requires:

"Applicant" means an individual proprietorship, partnership, limited liability company or corporation engaged in a single business, or related businesses wherein overlapping ownership interests exceed 50 percent.

"Department" or *"IDED"* means the Iowa department of economic development.

"Family income (annualized)" means all income actually received from all sources by all household members of the family during the six months immediately prior to application multiplied by two. When computing family income, income of a spouse and other family members shall be counted for the portion of the income determination period that the person was actually a part of the family unit of the applicant.

"Fixed assets" means those items used to manufacture a product, provide a service, or to sell, store or deliver merchandise. These items will not be sold in the normal course of business, but will be used and worn out or consumed over time, usually longer than a year, as the business is conducted.

"Initial working capital" means those items that are required as part of the base of the business and includes, but is not limited to, deposits for utilities, rent, down payments for insurance and lease purchases, purchase of office supplies and incidentals and petty cash.

"Local sponsor" means a representative from a local organization willing to offer assistance and guidance to applicants. Appropriate local sponsors will be identified in the application materials provided by the IDED and may include the SBDC, JTPA, local chamber of commerce, or other organizations approved by IDED.

"Low income" means an individual with an annualized household income that is equal to or less than 125 percent of the most current poverty income guidelines as published on an annual basis by the Department of Health and Human Services (DHHS).

"Persons with a disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality.
2. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
3. Compulsive gambling, kleptomania, or pyromania.
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs.

"Major life activity" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, breathing, learning, or working.

261—51.3(15) Eligibility requirements.

51.3(1) *Residence.* An applicant must be a resident of Iowa to be eligible to apply for a loan.

51.3(2) *Age.* An applicant must be 18 years of age or older at the time of application.

51.3(3) *Income.* To qualify to apply for a loan an applicant must have annualized household family income that is equal to or less than 125 percent of the most current poverty guidelines as published on an annual basis by the Department of Health and Human Services (DHHS). For purposes of calculating family income, exclusions are:

a. Food stamps

b. Compensation received in the form of food or housing

c. Other noncash income

d. Public assistance payment

e. Federal, state, local, or private unemployment benefits

f. Payment, other than on-the-job training wages, made to participants while enrolled in employment and training programs

g. Capital gains and losses

h. Scholarship and fellowship grants

i. Accident, health, and casualty insurance proceeds

j. Disability and death insurance payments

k. Awards and gifts

l. Inheritances

m. Workers' compensation

n. Terminal leave

o. Pay or allowances previously received by any veteran while serving on active duty in the U.S. armed forces

p. Educational assistance and compensation payments to veterans and other eligible persons under the following chapters of Title 38 of the U.S. Code:

Chapter 11—Compensation for service-connected disability or death
Chapter 13—Dependency and indemnity compensation for service-connected deaths
Chapter 31—Training and rehabilitation for veterans with service-connected disabilities
Chapter 32—Post-Vietnam era veterans' educational assistance
Chapter 34—Veterans' educational assistance
Chapter 35—Survivors' and dependents' educational assistance
Chapter 36—Administration of educational benefits

q. Payments received under the Trade Act of 1974

r. Payments received on behalf of foster children

s. Child support payments

t. Cash payments received pursuant to a state plan approved under the Social Security Act:
Title II—disability insurance payments
Title IV—aid to families with dependent children
Title XVI—supplemental security income for the aged, blind, and disabled

u. Payments received under the Black Lung Benefits Reform Act of 1977 (Public Law 95-239)

v. Assets drawn down as withdrawals from a bank

w. Proceeds from the sale of property, a house, or car

x. Tax refunds

y. Other one-time and limited unearned income.

51.3(4) Reserved.

51.3(5) *Local sponsor.* Each applicant must secure participation from a local sponsor.

51.3(6) *Automatic eligibility.* Cash welfare recipients (AFDC, general assistance, refugee assistance, etc.), applicants who are JTPA-eligible or applicants who are certified as having a disability under the standards promulgated by the Iowa department of education, division of vocational rehabilitation, are automatically eligible to apply for a SELP loan.

51.3(7) *Experience.* An applicant must have successfully completed a business training program including, but not limited to, programs such as SEID, WEDGE, Drake's Minority Business Venture, and Kirkwood Community College's Rural Development Center; or be able to demonstrate a basic knowledge of business strategy and planning documented by previous successful business management or ownership; or be willing to enroll in a business training program; or agree in writing to accept and utilize ongoing technical assistance.

51.3(8) *Loan limitations.*

a. Maximum amount. The maximum loan amount available to any one applicant is $10,000.

b. Use of loan funds. Rescinded IAB 2/10/99, effective 3/17/99.

c. Follow-on funding. The department may accept applications for additional funding from current or former SELP loan recipients. No applicant may receive cumulatively more than $10,000 under the program. For example, a loan recipient who was awarded $5,000 in prior years may request an additional $5,000 for the business. In determining whether to fund a request for follow-on funding, the department will consider, in addition to the evaluation criteria in subrule 51.4(3), factors including, but not limited to, the applicant's credit history with the department in repayment of the prior SELP loan; the solvency of the business; and the business's need for funding. Any application for follow-on funding will be subject to the restrictions outlined in paragraph 51.3(8)*"b."*

d. Drawdowns. The department reserves the right to restrict the timing of the drawdown of funds. As a general rule, the initial drawdown of funds may not include more than $1,500 of initial working capital.

e. SELP—comprehensive management assistance.

(1) *Eligibility.* Comprehensive management assistance is limited to eligible applicants or recipients of the SELP program.

(2) *Use of funds.* Assistance is available only in the form of technical or professional services provided by department-contracted providers. Assistance may include, but shall not be limited to: consulting, training, apprenticeship, and professional services; assistance in furnishing information about available financial or technical assistance; evaluating small business venture proposals; assistance in the completion of viable start-up or expansion plans; and assistance in the completion of applications for financial or technical assistance under programs administered by the department.

(3) *Disbursement.* Each eligible business may receive up to $2,500 for management assistance per year. All funds under the comprehensive management assistance program will be paid directly to the service provider. No funds will be given directly to the business.

261—51.4(15) Application procedure. Application materials are available from the IDED division of marketing and business development.

51.4(1) *Submittal.* Completed applications shall be submitted to: SELP, Division of Marketing and Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

51.4(2) *Review.* Applications will initially be reviewed by the IDED staff. IDED staff may request additional information from the applicant prior to committee review. A review committee will score each application. The scores will be averaged and the applications receiving an average score of 10 points or more out of a total of 19 will be considered by the committee for recommendation for funding. The committee's recommendation for funding will include the amount of the loan (not to exceed $10,000), the interest rate to be charged (not to exceed 5 percent), and other terms and conditions. The IDED director will review the recommendation and make a final decision based on various factors including geographical distribution, economic impact, etc.

51.4(3) *Evaluation factors.* Applications will be reviewed and evaluated using a 19-point system, based upon the following criteria:

a. Background of applicant 0-5 points

Does the applicant have education or work experience that is relevant to the proposed business? Does the application document previous business training or management experience?

b. Business plan—financial 0-5 points

Does the application contain a comprehensive two-year cash flow projection? Has the applicant provided sufficient documentation to support/justify the cash flow assumptions (i.e., third-party documentation regarding market size, annual sales, and competition)?

c. Business plan—marketing 0-5 points

Does the application contain sufficient information to ascertain that the applicant fully understands who their customers will be and how to reach them?

d. Need of applicant 0-3 points

Consideration will be given to an applicant's: inability to secure a loan from conventional sources (e.g., bank, savings and loan, credit union, etc.) for the business venture; personal debt level; and lack of personal financial resources to adequately fund the business venture.

e. Creditworthiness 0-1 point

Does the applicant have outstanding debt to the state? Can the business, as proposed, provide enough income to meet the applicant's minimum monthly income requirement, including service for outstanding debt?

261—51.5(15) Loan agreement. Upon award of a loan the IDED staff will prepare a loan agreement which will include loan conditions, a repayment schedule, and default provisions.

261—51.6(15) Monitoring and reporting.

51.6(1) *Monitoring.* The IDED reserves the right to monitor the recipient's records to ensure compliance with the terms of the loan. IDED staff will contact the loan recipient within 90 days of the award and as frequently as conditions may warrant during the life of the loan.

51.6(2) *Reporting.* Loan recipients shall submit to the IDED reports in the format requested by the department. The department retains the authority to request information on the condition of the business on a more frequent basis at any time during the life of the loan.

261—51.7(15) Default procedures.

51.7(1) Delinquency on a loan begins on the tenth day after the due date of the first missed payment not later made. A loan is in default when a borrower exceeds 90 days of delinquency.

51.7(2) If a payment is not made in a timely manner, the department will send written notices of delinquency or collection letters to the last-known address of the borrower. The notice will notify the borrower of the amount past due and request prompt payment of that amount.

51.7(3) If there is no response to written notices of delinquency or collection letters or if payment is not made, the department will send a Notice to Cure to the borrower. The Notice to Cure identifies the terms and conditions necessary to cure the delinquency and allows 20 days for the account to be resolved. The notice will notify the borrower that if the delinquency is not cured and results in default, the department may report the default to a credit reporting bureau and may bring suit against the borrower to compel repayment of the loan.

51.7(4) In the event the borrower does not comply with the Notice to Cure, a Final Demand letter will be sent to the borrower and a separate Final Demand letter will be sent to the cosigner.

51.7(5) Once a loan is in default and an account remains unresolved after the time period stated in the Final Demand letter, the department will refer the matter to the Iowa attorney general's office for appropriate action.

These rules are intended to implement Iowa Code sections 15.102 and 15.241.

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CHAPTER 53
COMMUNITY ECONOMIC BETTERMENT PROGRAM

[Prior to 1/14/87, Iowa Development Commission[520] Ch 8]
[Prior to 7/19/95, see 261—Ch 22]
[Former Ch 53, "Economic and Research and Development Grants," rescinded IAB 7/19/95, effective 8/23/95]

261—53.1(15) Purpose. The purpose of the community economic betterment program is to assist communities and rural areas of the state with their economic development efforts and to increase employment opportunities for Iowans by increasing the level of economic activity and development within the state. The program structure provides financial assistance to businesses and industries which require assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Also, the program may provide comprehensive management assistance to businesses involved with the CEBA program. Assistance may be provided to encourage:

1. New business start-ups in Iowa;
2. Expansion of existing businesses in Iowa; or
3. The recruitment of out-of-state businesses into Iowa.

261—53.2(15) Definitions.

"Agreement expiration date" means the date the CEBA agreement expires.

"Applicant" means a city, county, or merged area school which requests state financial assistance on behalf of a business or a local development organization.

"Average county wage" means the average the department calculates using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Average regional wage" means the wage calculated by the department using a methodology in which each particular county is considered to be a geographic center of a larger economic region. The wage threshold for the central county is calculated using the average wage of that county, plus each adjoining Iowa county, so that the resulting figure reflects a regional average that is representative of the true labor market area. In performing the calculation, the greatest importance is given to the central county by "weighting" it by a factor of four, compared to a weighting of one for each of the other adjoining counties. The central county is given the greatest importance in the calculation because most of the employees in that central county will come from the same county, as compared to commuters from other adjoining counties.

"Base economic activities" means those business activities which result in a net increase in the production of goods or services within the state. This would occur if a majority of the company's products or services were new, were sold outside the state, or were sold within the state in place of items previously purchased outside the state.

"Board" means the department of economic development board established under Iowa Code section 15.103.

"Business" means a sole proprietorship, partnership or corporation organized for profit or not-for-profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

"Business start-up" means a business which has not been in operation for more than two years prior to the date of the CEBA application.

"Buydown" means participation by the state in a conventional loan to an assisted business by lowering either the effective principal or interest of the loan.

"CEBA" refers to the community economic betterment account funded by Iowa Code section 15.32(2).

"Committee" means the community economic betterment review committee described in rule 53.3(15).

"Community base employment" means the total number of full-time equivalent jobs the business employs at the time of application for CEBA funds less any jobs retained as a direct result of the CEBA project.

"Comprehensive community and economic development plan" means a plan that meets the requirements of 261—Chapter 80.

"Comprehensive management assistance" means provision of technical business assistance through the use of department staff or professional business services provided by a public or private organization.

"Department" means the Iowa department of economic development created by Iowa Code section 15.105.

"Direct job" means a job created or retained by the business receiving CEBA funds and reflected on its employment payroll records.

"Director" means the director of the Iowa department of economic development.

"Entrepreneurial development" means the promotion of small business ownership through the provision of technical management expertise.

"Equity-like investment" means the provision of assistance in such a manner that the potential return on investment to the provider varies according to the profitability of the company assisted. This includes but is not limited to: royalty arrangements; warrant arrangements; or other similar forms of investments.

"Float loan" means a short-term loan (maximum of 30 months) from obligated but unexpended CEBA funds.

"Full-time equivalent job" means the equivalent of employment of one person for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year.

"Grant" means an award of assistance with the expectation that, with the fulfillment of the conditions of the award, repayment of funds is not required.

"Job attainment goal" means the total number of jobs created and job retention pledged by the recipient in addition to the business's community base employment.

"Job creation" means new permanent full-time equivalent (FTE) positions added to a business's normal operations, over and above the number of FTE positions the business had at the time of application for CEBA funds.

"Job retention" means existing full-time equivalent permanent positions, at the time of application, kept in continuous employment by the business as a direct result of CEBA assistance.

"Loan" means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A deferred loan is one for which the payment for principal, interest, or both, is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

"Loan guarantee" means a guarantee of all or part of a loan made by a commercial lender. Payment of all or a portion of the loan guarantee would occur if the business defaults on its repayment of the loan, provided the lender has exhausted standard legal remedies in an attempt to secure repayment from the borrower.

"New business opportunity" means an economic activity performed by a start-up or recruited business that meets the definition of subrule 53.9(1).

"New product development" means an economic activity performed by an existing Iowa business through expansion or diversification and meets the definition of subrule 53.9(1).

53.7(3) *Relating to business activity*:

a. The size of the business receiving assistance. The department shall award more points to small businesses as defined by the U.S. Small Business Administration.

b. The potential for future growth in the industry represented by the business being considered for assistance.

c. The impact of the proposed project on competitors of the business.

d. The capacity of the proposed project to create products by adding value to agricultural commodities.

e. The degree to which the proposed project relies upon agricultural or value-added research conducted at a college or university, including a regents institution, community college, or a private university or college.

261—53.8(15) Small business gap financing.

53.8(1) *Additional criteria.* Applications under this component shall be for businesses that meet the SBA definition of a small business. All geographic locations of the business will be used to determine the total number of employees. The criteria in rule 53.7(15) will be used for evaluating applications under this component.

53.8(2) *Application form.* Applicants applying for assistance under this component shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

a. The new business opportunities or new product development components of CEBA;

b. EDSA (economic development set-aside program);

c. BDFC (business development finance corporation program); or

d. PFSA (public facilities set-aside program).

53.8(3) *Scoring.* The criteria noted in rule 53.7(15) are incorporated into the scoring system as follows:

a. Local effort compared with local resources. Maximum — 20 points. This includes assistance from the city, county, community college, chambers of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. The form of local assistance compared to the form of CEBA assistance requested will be considered (e.g., in-kind, grant, loan, forgivable loan, job training, tax abatement, tax increment financing). The dollar amount of local effort and the timing of the local effort participation as compared to the dollar amount and timing of the requested CEBA participation will also be considered. Conventional financing, inadequately documented in-kind financing, and local infrastructure projects not specifically directed at the business are not considered local effort.

b. Community need. Maximum — 10 points. This includes considerations such as unemployment rates, per capita income, major closings and layoffs, declining tax base, etc.

c. Private contribution compared with CEBA request. Maximum — 30 points. The greater the contribution by the assisted business, the higher the score. Conventional financing will be considered a private contribution. Contribution in the form of "new cash equity" by the business owner will result in a higher score.

d. Comprehensive community and economic development plan. Maximum — 10 points. A community submitting a comprehensive community and economic development plan meeting the requirements of 261—Chapter 80 will receive 10 points.

e. Extra points if small business, as defined by SBA. Maximum — 10 points.

f. Project impact on the state and local economy.

(1) Cost/benefit analysis. Maximum — 40 points. This factor compares the amount requested to the number of jobs to be created or retained as defined in paragraph 53.7(2)*"a"* and the projected increase in state and local tax revenues. Also considered here is the form of assistance (e.g., a forgivable loan will receive a lower score than a loan).

(2) Quality of jobs to be created. Maximum — 40 points. Higher points to be awarded for:

Higher wage rates;

Lower turnover rates;

Full-time, career-type positions;

Relative safety of the new jobs;

Health insurance benefits;

Fringe benefits;

Other related factors.

(3) Economic impact. Maximum — 40 points. Higher points to be awarded for base economic activities, e.g.:

Greater percentage of sales out of state, or import substitution;

Higher proportion of in-state suppliers;

Greater diversification of state economy;

Fewer in-state competitors;

Potential for future growth of industry;

Consistency with the state strategic plan for economic development prepared in compliance with Iowa Code section 15.104(2);

Increased value to agricultural commodities;

Degree of utilization of agricultural or value-added technology research from an Iowa educational institution;

A project which is not a retail operation.

Maximum preliminary points for project impact — 120 points.

(4) Final impact score. Maximum — 120 points. Equal to preliminary impact score multiplied by a reliability factor (as a percent).

(NOTE OF EXPLANATION — Rating factors in 53.8(3)*"f"*(1) to (3) attempt to measure the expected impact of the project, if all predictions and projections in the application turn out to be accurate. Up to that point in the rating system, no attempt has been made to judge the feasibility of the business venture, the reliability of the job creation and financial estimates, the likelihood of success, the creditworthiness of the business, and whether the project would occur without state assistance. An attempt to analyze projects against these factors is also important. In order to incorporate this judgment into the rating system, the Preliminary Impact Score (Maximum of 120 points) is multiplied by a "reliability and feasibility factor" to obtain a final impact score, 53.8(3)*"f"*(4). This factor will range from 0 to 100 percent, depending upon the department's judgment as to the likelihood of the projections turning out as planned. If, in the department's judgment, the project would proceed whether it was funded or not, it will be assigned a zero percent on the reliability and feasibility factor and the final impact score will be zero. This is consistent with the intent of the program to use funds only where state assistance will make a difference.)

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.8(15) will not be recommended for funding by the staff to the committee.

53.8(4) *Project period.* Projects funded under rule 53.8(15) are considered to have a project period of three years for meeting job attainment goal and other related performance goals.

The recipient shall maintain the pledged jobs for 90 days beyond the project expiration date or will be subject to penalties as provided for in rule 53.13(15).

261—53.9(15) New business opportunities, new product development, and venture project components.

53.9(1) *Additional criteria and targeting for new business opportunities and new product development components.* The criteria in rule 53.7(15) will be used for evaluating applications under these components. Applications for these components must be for businesses that show the following characteristics:

a. The industry is one targeted within the state's strategic plan; or

b. The resulting economic activity is underrepresented in the state's overall economic mix; and

c. The project offers a quality economic opportunity to Iowans.

53.9(2) *Additional criteria for venture projects.* The criteria in rule 53.7(15) will be used for evaluating applications under this component. Applications for this component shall also meet the following criteria:

a. The business requesting CEBA assistance must be a start-up or early-stage company; and

b. The business must accept the assistance as an equity-like investment; and

c. The CEBA assistance is limited to $100,000.

53.9(3) *Applications.* Applicants applying for assistance under these components shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

a. Small business gap financing component of CEBA;

b. EDSA (economic development set-aside program);

c. BDFC (business development finance corporation program); or

d. PFSA (public facilities set-aside program).

53.9(4) *Rating system.* The rating system for proposed projects will be as follows:

a. Local effort (as defined in 53.8(3)*"a"*). Maximum — 20 points;

b. Private contributions as compared to CEBA request (as defined in 53.8(3)*"c"*). Maximum — 20 points;

c. Comprehensive community and economic development plan (as defined in 53.8(3)*"d"*). Maximum — 10 points;

d. Extra points if small business, as defined by the SBA. Maximum — 10 points;

e. Project impact, as defined in 53.8(3)*"f"* and 53.8(4). Maximum — 120 points;

f. Potential for future expansion of the industry in general. Maximum — 20 points. This factor awards additional points for those projects that tend to show a greater potential for expansion of that industry within Iowa.

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.9(15) will not be recommended for funding by the staff to the committee.

53.9(5) *Project period.* Projects funded under rule 53.9(15) are considered to have up to a maximum five-year project period.

The recipient shall maintain the pledged jobs for 90 days beyond the project expiration date or will be subject to penalties as provided for in rule 53.13(15).

261—53.10(15) Comprehensive management assistance and entrepreneurial development.

53.10(1) *Eligible applicants.* Application for comprehensive management assistance is limited to:

a. Businesses that have either previously received a CEBA award or have a CEBA application under current review by the department; or

b. Businesses requesting assistance in meeting the regulatory requirements of other government agencies.

53.10(2) *Use of funds.* Assistance is available only in the form of technical or professional assistance. This may be accomplished by use of department staff or department-contracted professional services in assisting the business to develop:

a. Entrepreneurial management skills;

b. Employment hiring, recruiting, or personnel assistance;

c. Inventory controls;

d. Financial controls;

e. Marketing plans; or

f. Other related business assistance.

53.10(3) *Determination of assistance.* The administrator for the department's division of financial assistance shall have the authority to approve contracts for management assistance for up to $25,000. Board approval shall be required to approve any contract(s) for assistance which exceeds $25,000 for any one business in any fiscal year.

261—53.11(15) Award process. Every applicant will be notified in writing of the disposition of their application within two weeks of final department action on it. Successful applicants will be required to sign an agreement, along with the recipient, with the department which clarifies the applicant's responsibility to provide funds to the recipient in return for the jobs created by the recipient. Applicants may be requested to obtain mortgages, liens, or other security from the recipient in return for the provision of funds. The agreement will also define the applicant's responsibilities for oversight of the project, reporting to the department, and other responsibilities. Certain other activities may be required of applicants or recipients before funds may be obtained from the department. Requirements will be specified in the agreement between the department, applicant, and recipient.

Prior to the release of funds by the department all known required environmental permits must be granted and regulations met. Also, if the recipient has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, the recipient shall make a good faith effort to hire the workers of the merged or acquired company.

The applicant and the recipient must execute the CEBA agreement within 180 days from the date of award. If the agreement is not signed by that date the department may recommend to the board that the award be rescinded and the funds deobligated, unless the applicant or recipient has received prior written permission from the department to exceed the time frame for an agreed upon time period.

53.13(5) Determination of appropriate repayment plan. Upon determination that the recipient has not met the job attainment goals, the department will notify the recipient of the amount to be repaid to the department. If the enforcement of such penalties would endanger the viability of the recipient, the department may extend the term of the loan to ensure payback, stability, and survival of the recipient. The committee will be notified of penalties imposed in either of these manners.

In certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, committee review and approval is necessary before the department may finalize the repayment plan.

261—53.14(15) Standards for negotiated settlements or discontinuance of collection efforts.

53.14(1) The committee may approve negotiated settlements or the discontinuance of collection efforts by IDED if it determines that any of the following conditions exist:

a. The cost of collection would exceed the amount that would be recovered.

b. The claim is not legally feasible, e.g., the claim cannot be substantiated by the evidence, a statute of limitations has run, there is little likelihood of prevailing in a legal proceeding, the claim has been discharged in bankruptcy.

c. The claim has been referred to the Iowa attorney general's office for disposition.

d. Other conditions exist that would not allow the recovery of funds.

53.14(2) Board notification. Before collection efforts may be discontinued or a negotiated settlement accepted, the department will first report to the committee the reasons for recommending the acceptance of a negotiated settlement or the discontinuance of collection efforts. The committee will report periodically to the board those projects for which it has approved negotiated settlements or has determined that collection efforts should be suspended or ceased.

261—53.15(15) Miscellaneous.

53.15(1) *Amendments.* Any substantive change to a funded CEBA program will be considered a contract amendment. Changes could include contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries. The amendment must be requested in writing. No amendment will be valid until approved by the department.

53.15(2) *Annual report.* The department shall submit to the governor and the general assembly an annual report setting forth the details of the operation of the program. The report shall cover the operations of the program on a fiscal year basis, from July 1 through June 30.

53.15(3) *Appeals.* Appeals will be accepted in instances where it is alleged that either staff or board members participated in a decision which was unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency. Appeals should be addressed to the board chairperson, either directly or through the department.

53.15(4) *Extension requests for project expiration date.* Extension requests may be approved only when the following conditions apply:

a. The delay in achievement of proposed job attainment goal was caused by events over which the recipient had no control and could not have reasonably predicted; and

b. If the extension is approved, there is a reasonable probability that the originally proposed job attainment goal can be achieved;

c. Projects which do not fit under the above two conditions, and where special consideration can be obtained from the recipient which appear appropriate to the department, may be brought to the committee for disposition.

d. In no case would the accumulative extensions approved on any project exceed 12 months.

53.15(5) *Extensions based on actual performance.* If the recipient achieves the job attainment goal within 90 days after the project expiration date, the department may consider providing up to a 90-day extension to the project expiration date without committee approval.

53.15(6) *Forms.* The following forms will be used by the department in the administration of the CEBA program:

1. Application for business financial assistance;
2. Application for comprehensive management assistance;
3. Loan agreement;
4. Loan subsidy (buydown) agreement;
5. Loan guarantee agreement;
6. Equity-like agreement;
7. Forgivable loan agreement;
8. Comprehensive management assistance agreement;
9. Applicant program budget and schedule;
10. Applicant semiannual performance report;
11. Applicant request for release of funds; and
12. Applicant final expenditure report.

These rules are intended to implement Iowa Code sections 15.315 to 15.320.

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◊ Two ARCs

CHAPTER 60
ENTREPRENEURIAL VENTURES ASSISTANCE PROGRAM

261—60.1(15) Purpose. The department of economic development administers the entrepreneurial ventures assistance (EVA) program. The purpose of the entrepreneurial ventures assistance program is to encourage the development of entrepreneurial venture planning and managerial skills in conjunction with the delivery of a financial assistance program for business start-ups and expansions.

261—60.2(15) Definitions. As used in this chapter, unless the context otherwise requires:

"Department" or *"IDED"* means the Iowa department of economic development.

"Early-stage industry company" or *"early-stage company"* means a company with three years or less of experience in a particular industry.

"Eligible applicant" means an individual who is participating in or has successfully completed a recognized entrepreneurial venture development curriculum, or a business whose principal participants have successfully completed a recognized entrepreneurial venture development program.

"EVA" means the entrepreneurial ventures assistance program, authorized by Iowa Code sections 15.338 and 15.339.

"Recognized entrepreneurial venture development curriculum" means programs developed by a John Pappajohn Entrepreneurial Center (JPEC), or a holistic training program recognized by the IDED which generally encompasses the following areas: entrepreneurial training, management team development, intellectual property management, market research and analysis, sales and distribution development, financial planning and management, and strategic planning.

261—60.3(15) Eligibility requirements.

60.3(1) In order to be eligible for assistance, the business, or proposed business, must be located in the state of Iowa.

60.3(2) If the business is a sole proprietorship or a partnership, all applicable business owners must apply. If the business is a limited liability company, a limited liability partnership, or a corporation, the application must be submitted and signed by an individual who has been authorized by the business to do so.

60.3(3) In order to be eligible for assistance, the business owner or owners (or appropriate individual(s) in a limited liability company, limited liability partnership or corporation) must provide evidence that they are currently participating in, or have successfully completed, a recognized entrepreneurial venture development curriculum. In order to satisfy this requirement, the individuals can provide evidence of substantial progress or completion of the curriculum of study at one of the JPEC centers, or its equivalent.

60.3(4) In order to be eligible for assistance, the individual or business must have a business plan which details the business's growth strategy, management team (if applicable), production/management plan, marketing plan, financial plan, and other standard elements of a business plan.

261—60.4(15) Financial assistance. Applicants may apply to IDED for financial assistance to assist with their business start-up or early-stage growth. The applicant may request up to $50,000 to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, software, or for working capital needs, or other business expenses deemed reasonable and appropriate by IDED.

261—60.5(15) Technical assistance. Applicants may also apply for assistance in paying for consulting, or technical assistance, either in conjunction with the request for financial assistance, or after a period of time that the business has been in operation. Assistance of this nature is limited to no more than $10,000 per applicant.

261—60.6(15) Application process. Applications must be submitted on forms as prescribed by the department. Applications, the business plan, and related material shall be submitted to Entrepreneurial Ventures Assistance Program, Division of Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

261—60.7(15) Review process.

60.7(1) Applications will first be reviewed for completeness. If additional information is required, the program staff shall send the applicant notice to submit the additional needed information. The applicant shall submit the requested information within a reasonable time period in order to ensure further action on the request.

60.7(2) The applications will then be reviewed for content of the business plan, and an evaluation of the business's potential viability and potential for growth. The department may consult with the JPEC centers, or other knowledgeable agencies or individuals, as a part of the review process.

60.7(3) The following items will be reviewed and evaluated:

a. Type of business.

(1) Highest priority will be given to businesses in sectors of the Iowa economy with the greatest start-up and growth potential for Iowa, including but not limited to:

1. Biotechnology (including drugs and pharmaceuticals and value-added agricultural products);
2. Recyclable materials;
3. Software development and computer-related products;
4. Advanced materials;
5. Advanced manufacturing; and
6. Medical and surgical instruments.

(2) Assistance may be provided to industries other than those listed in "1" through "6" above; however, the applicant will have to provide a strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by department staff to determine eligibility as a targeted industry. Items that will be considered in determining an industry's benefit to Iowa's economic base will include:

1. The majority of the products or services produced by the industry are exported out of Iowa;
2. The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers;
3. The goods or services produced by this industry diversify Iowa's economy;
4. The goods or services provided by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States;
5. The industry shows potential for future growth;
6. The functions of the industry do not produce harmful effects for Iowa's natural environment; and
7. Whether the average wages of the majority of the occupations in the industry are above the statewide average wage.

Businesses engaged in retail sales, the provision of health care or other professional services, and distributors of products or services will not be considered targeted industries and are not eligible for this program.

b. Management team and management expertise. Factors considered here would be whether the applicant(s) has a background (including education, training, work experience, and other factors) which will be helpful and useful in the business in question. Also considered would be the degree to which the applicant's background is fully documented.

c. Business capitalization. Factors considered here would be the original sources of financing for the business. Although all projects must have at least 50 percent of their financing from sources other than the EVA program, preference would be given to those applications where the other sources of financing were even higher than 50 percent.

d. Strength of business plan. Factors considered here would be the quality of the business plan and how well it addresses all elements of the business, such as a description of the company and the overall industry, the product and production plan, the market, competition, and the marketing strategy, the management team and business operations, patent issues (if applicable), critical risks and problems, and financial information and plan. The strength of the business plan will be the most important factor in the evaluation and rating of applications. Rating factors in paragraphs *"a," "b,"* and *"c"* above will be evaluated as either satisfactory or not satisfactory. However, the business plan will be rated on an actual numerical or comparative scale. Those applications which are satisfactory on factors in paragraphs *"a," "b,"* and *"c"* above and which rate highest on strength of business plan will be funded first.

261—60.8(15) Negotiation, decision, and award process.

60.8(1) *Negotiations.* The department reserves the right to negotiate the amount, term, payback amount, and other conditions of an award with the applicant.

60.8(2) *Decision.* The director of the department will make the final decision on all awards under the EVA program. The department will make a final decision on an application within one month of receipt of complete information relating to that application. Within a reasonable period after the decision has been made, the department will transmit to the applicant a letter which either provides the basic reasons for denial, or states the amount of an award and the accompanying terms and conditions to the award.

60.8(3) *Contract.* Following notification of an award, the department shall prepare a contract for execution between the department and the business. After execution of the contract by both parties, the business owner may request disbursement of funds on the form prescribed by IDED. The time frame between final award date and disbursement of funds will generally be one to two months.

261—60.9(15) Monitoring, reporting, and follow-up.

60.9(1) *Monitoring.* The IDED reserves the right to monitor the recipient's records to ensure compliance with the terms of the award. IDED staff will contact the recipient to arrange such visits at a mutually agreeable time.

60.9(2) *Reporting.* Recipients shall submit to the IDED reports in the form and on a schedule as required by the department. The department retains the authority to request information on the condition of the business on a more frequent basis at any time during the period of the project.

60.9(3) *Misuse of funds.* Any person receiving funds under the EVA program is subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made a false statement to procure economic development assistance from the state.

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CHAPTER 75
WORKFORCE DEVELOPMENT FUND

261—75.1(15,76GA,ch1180) Purpose. The purpose of the workforce development fund is to provide revenue for programs which address the workforce development needs of the state. Moneys are appropriated to the fund from the workforce development fund account and are to be used for the following programs and purposes: training and retraining programs for targeted industries, projects under Iowa Code chapter 260F, apprenticeship programs under Iowa Code section 260C.44 (including new or statewide building trades apprenticeship programs) and innovative skill development activities.

261—75.2(15,76GA,ch1180) Definitions.

"Agreement" means an informal agreement between the department and a grantee that authorizes expenditure of a workforce development fund award.

"Board" means the Iowa Department of Economic Development board.

"Contract" means a formal agreement executed by the department and a grantee for purposes of operating a program under the workforce development fund.

"Department" or *"IDED"* means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"Grantee" means any entity receiving a workforce development fund award from the Iowa department of economic development.

261—75.3(15,76GA,ch1180) Workforce development fund account. A workforce development fund account is established in the office of the treasurer of state under control of the department. Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E, including a certificate of participation repaid in whole or in part by the supplemental new jobs credit from withholding under Iowa Code section 15A.7, the community college providing the job training program shall notify the department of the amount paid by the employer or business to the community college to retire the certificate during the last 12 months of withholding collections. The department shall notify the department of revenue and finance of that amount. The department of revenue and finance shall then credit to the workforce development fund account, established in Iowa Code section 15.342A, 25 percent of that amount each quarter for a period of ten years. If the amount of withholding from the business or employer is insufficient, the department shall prorate the quarterly amount credited to the workforce development fund account. The maximum amount from all employers which shall be transferred to the workforce development fund account in any year is $10,000,000. The legislature will make an annual appropriation from the workforce development fund account to the workforce development fund.

261—75.4(15,76GA,ch1180) Workforce development fund allocation. The director shall submit, not later than January 1 of each year, at a regular or special meeting, for approval by the IDED board, the proposed allocation of funds from the workforce development fund to be made for the next fiscal year for the programs and purposes intended. The director shall also submit a copy of the proposed allocation to the chairpersons of the joint economic development appropriations subcommittee of the general assembly. Notwithstanding Iowa Code section 8.39, the plan may provide for increased or decreased allocations if the demand for a program indicates that the need is greater or lesser than the allocation for that program. Workforce development funds are received quarterly. The sequence in which the funds are allocated to the various programs under the workforce development fund will be determined by the department based upon the demand for the respective programs.

261—75.5(15,76GA,ch1180) Workforce development fund reporting. The director shall report on a quarterly basis to the IDED board on the status of the funds and may present proposed revisions for approval by the IDED board in January and April of each year. The director shall also provide quarterly reports to the legislative fiscal bureau on the status of the funds. Unobligated and unencumbered moneys remaining in the workforce development fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

261—75.6(15,76GA,ch1180) Training and retraining programs for targeted industries.

75.6(1) *Program purpose and targeted industries.* The purpose of this program is to provide training and retraining to develop the skills of employees employed in targeted businesses or industries or to address a workforce development need of a targeted industry. Targeted industries have been identified as industries engaged in the business or manufacture of:

a. Value-added agricultural products.
b. Insurance and financial services.
c. Plastics.
d. Metals.
e. Printing paper or packaging products.
f. Drugs and pharmaceuticals.
g. Software development.
h. Instruments and measuring devices and medical instruments.
i. Recycling.

75.6(2) *Other industries.* Training may be provided to industries other than those listed in 75.6(1); however, the applicant will have to provide a strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by department staff to determine eligibility as a targeted industry. Items that will be considered in determining an industry's benefit to Iowa's economic base will include:

a. The majority of the products or services produced by the industry are exported out of Iowa.
b. The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers.
c. The goods or services produced by this industry diversify Iowa's economy.
d. The goods or services provided by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States.
e. The industry shows potential for future growth.
f. The functions of the industry do not produce harmful effects for Iowa's natural environment.
g. It is established that the average wages of the majority of the occupations in the industry are above the statewide average wage.

Businesses engaged in retail sales or the provision of health care or other professional services will not be considered targeted industries and are not eligible for this program.

75.6(3) *Eligible applicants.* Applicants must be an individual business, consortium of businesses, trade association or labor organization that represents one of the identified targeted industries in order to be eligible for funding.

75.6(4) *Length of projects and maximum grant awards.* The department will establish the desired project length and maximum grant awards based upon the amount of workforce development funds allocated to the program in a fiscal year and upon the training needs of the targeted industries. These limitations will be published in the application packet. Grantees may request extensions to the length of a project.

75.6(5) *Allowable activities.* Allowable activities include vocational and skill assessment testing; adult basic education; job-related training; cost of a company, college, or contracted trainer or training services; training-related materials, equipment, software and supplies; curriculum development; lease and rental of training facilities and equipment; training-related travel and meals; and contracted or professional services. Costs associated with the administration of the project (i.e., fiscal and reporting activities, project supervision and coordination) are allowable but are limited to 15 percent of the total program budget.

75.6(6) *Application procedure.* Application packets will be made available by the department. Application packets will outline eligibility criteria, the required application inclusions and points established for evaluation. Applications must be submitted to the Iowa Department of Economic Development, Workforce Development Coordinator, 200 East Grand Avenue, Des Moines, Iowa 50309. Only the applications of eligible applicants will be considered. Applications may be submitted at any time during the year but must be submitted at least 15 days prior to the start date of activities for which reimbursement through this program is being requested. Applications will be reviewed in the order in which they are received.

75.6(7) *Required proposal inclusions.* Required contents of an application will be described in the application. Applications must address all information requested in the application packet to be considered for award. If all requested information is not provided, applications will not be considered for funding. Applicants who have been denied funding may reapply. Reapplications will be treated as new applications.

75.6(8) *Evaluation and rating criteria.* The criteria used for scoring the application will include the following:

a. The training proposed in the project is needed to address industry demands, up to 10 points.

b. This project is for industry-specific training that is not currently available, up to 5 points.

c. The scope of the project is such that there is benefit for several businesses within the industry, up to 5 points.

d. It is proposed that the training will be provided to several businesses within the industry, up to 5 points.

e. The training is for an industry where there is anticipated job growth, up to 10 points.

f. Training is also made available to job seekers wishing to enter the industry, up to 5 points.

g. The training is required in order for the employee to retain employment or the training will improve the employee's opportunities for enhanced pay or benefits or for promotional opportunities within the industry, up to 10 points.

h. The project is feasible in terms of the reasonableness of the budget in comparison to the expected outcomes, other comparable training, and the demands of the industry, up to 15 points.

i. The expected outcomes enhance the competitiveness of the industry and the economy of the state, up to 15 points.

j. The previous experience of the training provider is sufficient to ensure quality training, up to 10 points.

k. Match contributed to the project evidences commitment to the project on behalf of the proposer, up to 10 points.

Proposals will be reviewed by two department staff. As a part of this review, staff will ascertain which community college district(s) the project corresponds to and notify the appropriate community college president from that district of the proposal for purposes of review and comment. Points will be assigned for each evaluation criteria by each of the respective staff and totaled. The two scores will then be averaged. Proposals receiving an average score of at least 70 out of a possible 100 points will be presented to the director for a final funding decision. The director will base a final funding decision upon available funding.

75.6(9) *Award process.* Upon approval by the director, the applicant will receive an award letter which will state the amount and conditions of the award. Awards will be made in the form of grants.

75.6(10) *Contract.* Following notification of award, a contract will be prepared for execution between the applicant and IDED. The final project application will become part of the contract. In addition, there will be other contract assurances which will include, but are not limited to, the provisions of these rules and applicable state and federal laws. After execution of the contract the grantee may request disbursement of funds on the form(s) prescribed by IDED.

261—75.7(15,76GA,ch1180) Projects under Iowa Code chapter 260F. The 260F program is funded in part through the workforce development fund. Administrative rules for this program can be found in 261—Chapter 7.

261—75.8(15,76GA,chs1180,1219) Apprenticeship programs under Iowa Code section 260C.44 (including new or statewide building trades apprenticeship programs). The apprenticeship program under Iowa Code section 260C.44 is funded by an allocation to the workforce development fund. Administrative rules for this program can be found in 261—Chapter 17.

261—75.9(15,76GA,chs1180,1219) Innovative skill development activities.

75.9(1) *Program purpose.* To develop and provide creative training programs that will enhance the skill development of Iowa employees or address a workforce development need. Projects should concentrate on developing skills in new or emerging businesses or industries or address technological skills needed for current or future workers to become or remain competitive in the current labor market in existing businesses. The department will establish priority innovative skill areas for project solicitation annually, prior to the beginning of each fiscal year. These priorities will be established based upon the workforce and economic development needs of the state. These priority areas will be reflected in the request for proposal.

75.9(2) *Eligible applicants.* Eligible applicants include individual businesses, consortia of businesses, trade associations, labor organizations which represent a majority of the employees to be trained, educational institutions, and other public or private not-for-profit organizations which represent a majority of the individuals or businesses that will benefit from the training.

75.9(3) *Length of projects and maximum grant awards.* The department will establish the desired project length and maximum grant awards based upon the amount of workforce development funds allocated to the program in a fiscal year and upon the annual priorities set for this program by the board. These limitations will be published in the application packet. Grantees may request extensions to the length of a project.

75.9(4) *Allowable activities.* Allowable program activities include purchase or development of training curricula and materials; purchase or provision of technological equipment and related materials needed for the delivery of training; activities needed to support a training program including, but not limited to, assessment, recruitment, outreach and applications; training site development; activities needed to develop a training program including, but not limited to, travel, research and development, focus group activities and legal fees; activities designed to creatively address a workforce development need identified by a community that, if successful, can be easily replicated in other communities; tuition and fee reimbursements for students; tutorial and remedial education services; counseling services; coordination services; vocational and skill assessment testing; adult basic education; job-related training; cost of a company, college, or contracted trainer or training services; training-related materials, equipment, software, and supplies; lease and rental of training facilities and equipment; training-related travel and meals; and contracted or professional services. Costs associated with the administration of the project (i.e., fiscal and reporting activities, project supervision, and coordination) are allowable but are limited to 15 percent of the total program budget.

75.9(5) *Application procedure.* Application packets will be made available by the department. Application packets will outline eligibility criteria, the required application inclusions, and points established for evaluation. Applications must be submitted to the Iowa Department of Economic Development, Workforce Development Coordinator, 200 East Grand Avenue, Des Moines, Iowa 50309. Only the applications of eligible applicants will be considered. Applications may be submitted at any time during the year but must be submitted at least 15 days prior to the start date of activities for which reimbursement through this program is being requested. Applications will be reviewed in the order in which they are received.

75.9(6) *Required proposal inclusions.* Required contents of an application will be described in the application. Applications must address all information requested in the application packet to be considered for award. If all requested information is not provided, applications will not be considered for funding. Applicants who are denied funding may reapply. Reapplications will be treated as new applications.

75.9(7) *Evaluation and rating criteria.* The criteria used for scoring the application will include the following:

a. Sufficient need for the project has been established by participating groups, up to 10 points.

b. The project will enhance the skill development of Iowa's current and potential employees or will address a skill development need, up to 10 points.

c. The scope of the project is such that there is benefit and the potential for replicability for several businesses, industries, communities, or individuals, up to 10 points.

d. The project represents a coordinated, collaborative approach to addressing the need or problem identified and involves appropriate organizations, up to 10 points.

e. The project is for a new or emerging industry that will benefit from the activities under this project or it addresses technological skills enhancements that will be realized as a result of this project, up to 10 points.

f. Individuals, industries, businesses or communities will benefit from this project from a workforce development perspective, up to 10 points.

g. The project is feasible in terms of the reasonableness of the budget in comparison to the expected outcomes, other comparable training, and the demands of the individuals, businesses, industries, or communities it will serve, up to 15 points.

h. The expected outcomes will assist the current labor market to become or remain competitive and will foster growth in the local and state economy. This may be evidenced by expected increases in wages or career opportunities of trainees, or by expected competitive advantages to be realized by companies or industries, or by projected enhancement of employment opportunities for communities, up to 10 points.

i. The previous experience of the project operator or service provider is sufficient to ensure quality programming, up to 5 points.

j. Match contributed to the project evidences commitment to the project on behalf of the proposer, up to 10 points.

Proposals will be reviewed by two department staff members. As a part of this review, staff will ascertain which community college district(s) the project corresponds to and notify the appropriate community college president from that district of the proposal for purposes of review and comment. Points will be assigned for each evaluation criteria by each of the respective staff and totaled. The two scores will then be averaged. Proposals receiving an average score of at least 70 out of a possible 100 points will be presented to the IDED board for a final funding decision. The IDED board will base a final funding decision upon the project's ability to address the annual priorities previously established by the IDED and board and upon availability of funding.

75.9(8) *Award process.* Upon approval of the IDED board, the applicant will receive an award letter which will state the amount and conditions of the award. Awards will be made in the form of grants.

75.9(9) *Contract.* Following notification of award, a contract will be prepared for execution between the applicant and IDED. The final project application will become part of the contract. In addition, there will be other contract assurances which will include, but are not limited to, the provisions of these rules and applicable state and federal laws. After execution of the contract the grantee may request disbursement of funds on the form(s) prescribed by IDED.

261—75.10(15,76GA,ch1180) Negotiation and award. The department reserves the right to negotiate the amount, terms or other conditions of the grants or forgivable loans prior to the award.

261—75.11(15,76GA,ch1180) Administration.

75.11(1) *Access to records.* The department or its designees, at all reasonable times, may enter the grantee's establishment during the course of or following the completion of the projects for any purpose arising from the performance of the contracted project or agreement.

75.11(2) *Waiver.* The department may waive particular provisions of the program requirements outlined in this chapter, provided the waiver does not conflict with applicable state laws. Waivers will be provided only in extreme circumstances when chapter requirements are hindering the ability of a specific project to carry out the intent of the applicable program.

75.11(3) *Record keeping and retention.* Grantees shall maintain all records required for compliance with applicable law, regulation and project contracts until the end of the fiscal year following the year the project was closed out.

75.11(4) *Data collection and reporting.* Grantees shall collect, maintain, and report to IDED information pertaining to the characteristics of the participants, activity and service levels, program outcomes, and expenditures as required for program analysis.

75.11(5) *Monitoring.* Each grantee must make available all of its records pertaining to all matters related to the program being operated. They shall also permit the department to utilize, monitor, examine or make excerpts of transcripts from such records, contracts, invoices, personnel records, conditions of employment, and other data and records related to all other matters covered by this program.

75.11(6) *Compliance problems.* When problems of compliance with law, regulation, or contract or agreement stipulations are noted or when it is discovered a grantee has made false or misleading representations in the program application, contract, or agreement, the department may require corrective action to be taken. Failure to respond to corrective action requests may result in the establishment of a debt on the part of the grantee.

75.11(7) *Remedies for noncompliance.* At any time before project closeout, the department may, for cause, find that a grantee is not in compliance with the requirements of a program under the workforce development fund. At the department's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious sanction.

b. Condition a future grant or agreement.

c. Direct the grantee to stop incurring costs under the project.

d. Require that some or all of the grant amounts be remitted to the state.

e. Reduce the level of funds that the grantee would otherwise be entitled to receive.

f. Elect not to provide future workforce development fund moneys to the grantee until the appropriate actions are taken to ensure compliance.

75.11(8) *Compliance with applicable labor laws.* Grantees shall operate all projects in compliance with state and federal health, safety, equal opportunity, and other applicable labor laws.

261—75.12(15,76GA,ch1180) Training materials and equipment. Training materials and equipment that are needed to carry out the deliverables described within a project may be purchased by the grantee, unless specified otherwise in the program-specific requirements of these rules. For the purposes of this chapter, equipment means property with a purchase price of $1000 or more and an anticipated useful life in excess of one year. Equipment purchased with workforce development funds shall not be used by any entity for the purposes of generating a profit to the entity, unless the equipment purchase was prorated based upon anticipated usage between grant or forgivable loan funds and cash provided by the purchasing entity. Equipment with any remaining useful life may be disposed of at fair market value, with any funds realized from that sale being repaid to the department either in whole or on a prorated basis. Equipment that no longer has a useful life or that has no remaining value may be disposed of by the grantee with the permission of IDED.

261—75.13(15,76GA,ch1180) Redistribution of funds. The department reserves the right to recapture and redistribute funds based upon projected expenditures, if it appears that funds will not be expended in accordance with the proposed budget for a project.

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[Filed 10/18/96, Notice 9/11/96—published 11/6/96, effective 12/11/96]

CHAPTERS 76 to 79
Reserved

CHAPTER 80
ADDITIONAL PROGRAM REQUIREMENTS

DIVISION I
COMPREHENSIVE COMMUNITY AND ECONOMIC DEVELOPMENT PLANS

261—80.1(15) Supplementary credit. The department shall award supplementary credit to applications submitted by cities, counties, local and regional government organizations, and local and regional economic development organizations that have developed a comprehensive community and economic development plan.

261—80.2(15) Technical assistance. Subject to the availability of funds for this purpose, the department may provide financial assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations for the purpose of developing comprehensive community and economic development plans.

These rules are intended to implement Iowa Code chapter 15.

261—80.3 to **80.85** Reserved.

DIVISION II
ENVIRONMENTAL CRITERIA

261—80.86(15A) Environmental report. Any individual or business applying for assistance through the department of economic development shall report on the application for assistance any cited violation of federal or state environmental statutes, regulations or rules within the past five years and detail the circumstances of the violation(s). If the individual or business fails to report violations and the department discovers such violations, the application for assistance shall be declared ineligible to receive assistance until such time as the report is submitted.

261—80.87(15A) Ineligibility for assistance. Any individual or business which has been referred by the department of natural resources to the attorney general for environmental violations shall be ineligible to receive assistance from the department until such time as the violations have been determined to be corrected.

261—80.88(15A) In-house audit. If the individual or business generates solid or hazardous waste, that individual or business shall be required to conduct an in-house audit and have management plans to reduce the amount of waste and to safely dispose of the waste.

80.88(1) If the individual or business has conducted an in-house audit and developed a management plan within the last three years, submission of a copy of the audit and management plan will fulfill this requirement.

80.88(2) If the individual or business has not conducted an audit within the past three years, the individual or business must initiate the audit prior to the disbursement of financial assistance and submit a copy of the completed audit within 90 days of disbursement of the financial assistance.

261—80.89(15A) External audit. In lieu of an in-house audit, the individual or business may elect to authorize the department of natural resources or the Iowa waste reduction center established under Iowa Code section 268.4 to conduct the audit. A copy of the authorization for the department of natural resources or the Iowa waste reduction center to conduct the audit shall be submitted to the department prior to the disbursement of financial assistance.

261—80.90(15A) Submission of audit. The individual or business must submit a copy of the completed audit conducted by the department of natural resources or the Iowa waste reduction center within 30 days of receipt.

261—80.91(15A) Annual report. Individuals or businesses receiving assistance from the department shall be required to report annually, according to individual program reporting requirements, progress on energy efficiency and waste reduction, until all conditions of the financial assistance have been satisfied.

These rules are intended to implement Iowa Code section 15A.1(3).

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[Filed 1/22/99, Notice 9/9/98—published 2/10/99, effective 3/17/99]

JOB SERVICE DIVISION[345]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345] under the "umbrella" of Department of Employment Services by 1986 Iowa Acts, chapter 1245]

CHAPTER 1
ADMINISTRATION
Rescinded IAB 2/10/99, effective 3/17/99.

CHAPTER 2
EMPLOYER RECORDS AND REPORTS
Transferred to 871—Chapter 22, IAC 3/12/97, effective 4/16/97.

CHAPTER 3
EMPLOYER'S CONTRIBUTION AND CHARGES
Transferred to 871—Chapter 23, IAC 3/12/97, effective 4/16/97.

CHAPTER 4
CLAIMS AND BENEFITS
Transferred to 871—Chapter 24, IAC 3/12/97, effective 4/16/97.

CHAPTER 5
BENEFIT PAYMENT CONTROL
Transferred to 871—Chapter 25, IAC 3/12/97, effective 4/16/97.

CHAPTER 6
CONTESTED CASE PROCEEDINGS
Transferred to 871—Chapter 26, IAC 3/12/97, effective 4/16/97.

CHAPTER 7
PLACEMENT
Rescinded IAB 3/12/97, effective 4/16/97; see 877—Chapter 8.

CHAPTER 8
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 5/21/97, effective 6/25/97; see 877—Chapter 25.

CHAPTER 9
PETITIONS
Transferred to 877—Chapter 26, IAC 5/21/97, effective 6/25/97.

CHAPTER 10
FORMS AND INFORMATIONAL MATERIALS
Transferred to 877—Chapter 28, IAC 5/21/97, effective 6/25/97.

CHAPTER 11
LABOR-MANAGEMENT COOPERATION PROGRAM
Transferred to 877—Chapter 9, IAC 3/12/97, effective 4/16/97.

CHAPTER 12
YOUTH AFFAIRS
Rescinded IAB 3/12/97, effective 4/16/97; see 877—Chapter 10.

CHAPTER 13
WORK FORCE INVESTMENT PROGRAM
Rescinded IAB 3/12/97, effective 4/16/97; see 877—Chapter 11.

CHAPTER 14
IOWA JOB TRAINING PARTNERSHIP PROGRAM
Rescinded IAB 2/25/98, effective 4/1/98; see 877—Chapter 12.

CHAPTER 15
MENTOR ADVISORY BOARD
[Prior to 7/17/96, see Status of Women Division, 435—Chapter 6]
Transferred to 877—Chapter 13, IAB 3/12/97, effective 4/16/97.

Upon a state agency's determination of the necessity for an additional photocopier or a change in an existing photocopier, the agency's request for a photocopier should be sent to the office of records management and a duplicate sent to the superintendent of printing. The office of records management, in consultation with the state agency, shall submit to the superintendent of printing a proposal stating the type of copying, the number of copies per month, and any special copy needs. Using the material submitted by records management, a recommendation shall be made by the superintendent of printing as to the proper equipment that will best fill the needs of the requesting agency. This recommendation will be submitted to the records management commission for final approval.

401—5.17(18) Legal publications. One copy of each legal publication is distributed free of charge to all principal state agencies and each major subdivision thereof, except in specific instances where the number of copies distributed is specified or limited by legislation, following the guidelines as prescribed in Iowa Code section 18.97.

5.17(1) *Ordering legal publications.* The "Requisition for State Printing" form is used by state agencies to request additional copies of legal documents. Upon approval from the superintendent of printing, the additional copies will be supplied to state agencies free of charge.

To order by mail, publications for sale through the printing division office must be prepaid at the time of the order. Check or money order is to be made payable to: Iowa State Printing Division, and sent to the Iowa State Printing Division, Grimes State Office Building, Des Moines, Iowa 50319.

To eliminate shipping delay, publications may be purchased and picked up in the printing division office in person. Checks, money orders or cash is acceptable in the office.

All publications are priced to include distribution costs. Prices are derived by taking the total price of printing the items, dividing by the number of items ordered, and adding the distribution costs. Prices of publications and ordering instructions are available upon request from the printing division office.

5.17(2) *"Iowa Administrative Code" subscription renewal.* Subscribers to the "Iowa Administrative Code" supplements which are available by subscription will be notified by the printing division prior to expiration. Renewal prices and instructions will be mailed to each subscriber. All subscriptions will begin on July 1 and end June 30 of the following year. Any subscribers subscribing after July 1 will receive all back issues. Annual subscriptions to the "Iowa Administrative Code" and its supplements are cancellable but nonrefundable.

5.17(3) *Outdated Codes.* Upon the issuance of a new "Code of Iowa," the previous Code is distributed at the superintendent of printing's discretion, gratuitously to persons requesting same. Quantities will be restricted to one set per person. If it is requested that the outdated Code be mailed, a charge will be made to cover postage. Exact price will be available from the printing division office at the time of ordering.

401—5.18(17,18) Iowa Official Register. The "Iowa Official Register" is distributed by the printing division. It is available to the general public free of charge and mailed upon request. If requesting multiple copies of the "Official Register," the books must be picked up at the printing division warehouse. Prior approval from the superintendent of printing or the superintendent's designee must be obtained if requesting more than five copies.

This rule is intended to implement Iowa Code section 7A.20.

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401—5.20(18,49) Cost of publication—sample ballot. The charges for the publication of a sample ballot shall not be more than the usual or customary display advertising rate that the newspaper charges its regular advertisers. In a city in which no newspaper is published and with a population of 2000 or less, a maximum cost has been established. The maximum cost for a quarter-page sample ballot must not exceed $250 and maximum cost for a half-page sample ballot must not exceed $350.

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CHAPTER 53
RENT SUBSIDY PROGRAM

PREAMBLE

This chapter defines and structures the rent subsidy program for persons who participate in a home- and community-based service (HCBS) waiver program and who were:

1. Discharged from a medical institution in which they have resided,
2. At risk of institutional placement, or
3. Able to leave a medical institution by use of services provided under an HCBS waiver upon turning 18 years of age during the last year of their institutional stay.

This program is designed to provide rent assistance to these persons to help them live successfully in their own home and community. An eligible person may receive assistance in meeting rental expense and, in the initial two months of eligibility, in purchasing necessary household furnishings and supplies.

441—53.1(77GA,ch1218) Definitions.

"Adult" means a person aged 18 or over.

"Department" means the Iowa department of human services.

"Division" means the division of mental health and developmental disabilities of the department of human services.

"Home- and community-based waiver program" means any of the waiver programs administered by the department under the provisions set forth in 441—Chapter 83 including, but not limited to, the ill and handicapped waiver, the elderly waiver, the AIDS/HIV waiver, the mental retardation waiver, the brain injury waiver, and the physical disabilities waiver.

"Intermediate care facility for the mentally retarded (ICF/MR)" means an institution that is primarily for the diagnosis, treatment, or rehabilitation of persons who are mentally retarded and provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination and integration of health or related services to help each individual function at the greatest ability and is an approved Medicaid vendor.

"Medical institution" means an ICF/MR, nursing facility, skilled nursing facility, or hospital that is an approved Medicaid provider.

441—53.2(77GA,ch1218) Eligibility requirements. All of the following criteria shall be met.

53.2(1) *HCBS recipient.* The person shall be an adult recipient of one of the home- and community-based services waiver programs.

53.2(2) *Discharged from a medical institution.* Except as provided in subrules 53.2(4) and 53.2(5), the person shall have been discharged from a medical institution on or after July 1, 1995, and immediately prior to receiving HCBS services. For a period of 60 days after April 1, 1999, persons who were discharged from a medical institution immediately prior to entering an HCBS program between July 1, 1995, and June 30, 1996, shall receive first consideration for eligibility and participation in this program if they demonstrate a need for rental assistance. These persons shall not replace anyone who is actively participating in this program at the time of their application. During this 60-day period, applications may be submitted by anyone, although first consideration will be given to the persons described above, whose applications will be acted upon in the order they are received. At the end of the 60-day period, all applications received during that time from persons not described above shall be considered in the chronological order that they were received and, if applicable, participation in the program shall be approved retroactive to the date that would have been allowed had an application been processed immediately on receipt.

53.2(3) *Demonstrated need.* To demonstrate need, applicants must provide evidence that they are responsible for paying more than 30 percent of their income for rent and that they are not receiving and are ineligible for other rental assistance. This program may not be used to substitute for any other subsidy that a person had been receiving at the time of or prior to the time of application to this program. Persons receiving rental assistance at the time of or prior to the time of application to this program shall not be eligible.

53.2(4) *Risk of institutional placement.* Up to 100 persons who can avoid placement in a medical institution by accessing this rent subsidy program and by use of services provided under an HCBS waiver shall be eligible for rental assistance. Applicants must meet all eligibility criteria of this program, except the requirements of subrule 53.2(2), and be able to demonstrate both of the following:

a. That they have insufficient funds to pay their community housing costs and that insufficient funds will cause them to enter a medical institution.

b. That participating in an HCBS waiver will prevent them from entering a medical institution and that access to this rental subsidy program is required so that they may live in a community living arrangement permitted under a waiver.

53.2(5) *Turning 18 years of age.* In lieu of meeting the criteria in subrule 53.2(2) or 53.2(4) above, rent subsidy funds may be made available to persons who are able to leave a medical institution by use of services provided under an HCBS waiver who turn 18 years of age during the last year of their institutional stay.

53.2(6) *Ineligible for other rent subsidies.* The person shall have been determined ineligible or be on the waiting list for rent subsidy programs under the U.S. Department of Housing and Urban Development (HUD) or any other available rent subsidy programs.

53.2(7) *Responsible for rent.* The person shall be financially responsible for rent or housing costs.

441—53.3(77GA,ch1218) Application. Applications for the rent subsidy program may be obtained at any county office of the department. Applications shall be submitted to the Department of Human Services, Division of Mental Health and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319-0114.

53.3(1) *Application process.* A person who wishes to apply shall complete Form 470-3302, Application for HCBS Rent Subsidy and Household Assistance, and provide verification of the following:

a. The person's estimated monthly income for the 12 months following application, including written evidence from the income sources used to determine that income.

b. Written evidence from sources of local rental assistance available in the applicant's community that the applicant has applied for that rental assistance and that the applicant has been determined ineligible or placed on a waiting list for that rental assistance.

c. The amount of the person's rent payment.

d. The amount of assistance needed for purchase of needed household furnishings and supplies.

53.3(2) *Date of application.* The date of the application shall be the date the application, including written verification of income and written verification of application to other rental assistance programs, is received by the division of mental health and developmental disabilities. Applications received through June 30, 1999, on behalf of persons who would have met all of the qualifying criteria between July 1, 1998, and their date of application will be assessed for payment consideration retroactive to July 1, 1998, or the date between July 1, 1998, and the date of application on which the applicant would have met all eligibility criteria.

53.3(3) *Eligibility determination.* The person or the person's legal guardian shall be notified within 15 working days of the date of application of the department's eligibility determination. The notice shall state the date payments shall begin, the amount of monthly payments and, if different, the amount of the first two payments.

53.3(4) *Waiting list.* After funds appropriated for this purpose are obligated, pending applications shall be denied by the division.

a. A denial shall require a notice of decision to be mailed within 15 working days. The notice shall state that the applicant meets eligibility requirements but no funds are available and that the applicant shall be placed on the waiting list, or that the applicant does not meet eligibility requirements.

b. Applicants not awarded funding who meet the eligibility requirements shall be placed on a statewide waiting list according to the order in which the completed applications and verification were received by the division. In the event that more than one application is received at one time, the person shall be entered on the waiting list on the basis of the day of the month of the person's birthday, lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

c. When funding allows additional persons to be added to the rent subsidy program, they shall be taken from the statewide waiting list, and their eligibility shall be redetermined at that time. An application packet, which includes instructions and necessary forms for verification of continuing eligibility, shall be sent to these persons for completion and returned to the division within timelines specified by the department. If the signed application and verification of continuing eligibility are not received by the timeline specified by the department, the person's name shall be dropped from consideration for receipt of the rent subsidy payment.

441—53.4(77GA,ch1218) Amount of rent subsidy.

53.4(1) *Use of subsidy.* Except as provided in subrule 53.4(3), assistance shall be used for rental expense.

53.4(2) *Maximum monthly payment for rent.* Assistance for rent shall be equal to the rent paid, not to exceed the maximum prevailing fair market rent under guidelines of the applicable United States Department of Housing and Urban Development (HUD) low-rent housing program in the area where the person's residence is located, less 30 percent of the gross income of the individual consumer. The fair market rent used shall be that for a one bedroom or a proportionate share of rental costs in living units containing more than one bedroom.

53.4(3) *Assistance with other purchases.* Assistance may be given in the initial two months of eligibility for purchases necessary for household furnishings and supplies. The maximum available for household furnishings and supplies shall be $500. This shall be a one-time payment and shall be available only to persons leaving a medical institution immediately prior to applying to this program. The maximum amount shall be available to all eligible persons, including those who may have entered this program prior to the time this maximum amount took effect. In these cases, payments may be made retroactively to persons to reconcile the differences.

53.4(4) *Monthly payment.* Consumers approved for rent subsidy payments shall receive an ongoing monthly payment which is equal to the amount determined pursuant to subrule 53.4(2). An approved subsidy shall be payable as of the first of the month following approval. The initial payment will also include any approved payments for prior months.

441—53.5(77GA,ch1218) Redetermination of eligibility.

53.5(1) *Time of completion.* A redetermination of eligibility for rent subsidy payments shall be completed:

a. At least once every 12 months.

b. When a change in circumstances occurs that affects eligibility in accordance with rule 441—53.2(77GA,ch1218).

c. If the person moves from the residence stated on Form 470-3302.

d. When there is a change in income.

53.5(2) *Review packet.* The division shall send a review packet, which shall include instructions and necessary forms for verification of continuing eligibility, to all recipients of subsidy payments at least 60 calendar days prior to the deadline date for annual redetermination of eligibility. The completed Form 470-3302, Application for HCBS Rent Subsidy and Household Assistance, and required verification materials shall be submitted annually to the Department of Human Services, Division of Mental Health and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319-0114. If the signed application and verification of continuing eligibility are not received by the division by the thirtieth day following the date the review packet is sent, the person's subsidy shall be terminated.

441—53.6(77GA,ch1218) Termination of rent subsidy payments.

53.6(1) *Reasons for termination.* The rent subsidy shall terminate at the end of the month in which any of the following occur and a notice shall be sent which states the reason for the termination:

a. The person does not meet one or more of the eligibility criteria listed in rule 441—53.2(77GA,ch1218).

b. The person dies.

c. Completion of the required documentation is not received.

d. No further funds are available for the rent subsidy program.

53.6(2) *Reporting of changes.* The person is required to report to the division within ten working days any changes which may affect eligibility. Failure to do so may result in responsibility for repayment of funds and termination of the subsidy. (See rule 441—53.7(77GA,ch1218).)

53.6(3) *Insufficient funding.* If funds are not sufficient to cover payments for all persons on the subsidy, persons shall be terminated from the subsidy in inverse order to the dates they began receiving payments, i.e., the last person to be added to the subsidy being the first person to be removed. The person terminated shall move back to the waiting list with the person's original application date dictating the person's position on the waiting list as stated at subrule 53.3(4). The division is responsible for notifying the persons who will be removed from the subsidy for this reason.

441—53.7(77GA,ch1218) Fraudulent practices relating to the rent subsidy program. A person is guilty of a fraudulent practice if that person with the intent to gain financial assistance to which that person is not eligible, knowingly makes or causes to be made a false statement or representation or knowingly fails to report to an employee of the department any change in circumstances affecting that person's eligibility for financial assistance. In cases of found fraudulent practices, the department may require repayment of the amount that was received by the recipient while ineligible as a condition of continued participation in the rent subsidy program.

441—53.8(77GA,ch1218) Appeals. The applicant or recipient may appeal a denial of an application or termination of the subsidy payment pursuant to 441—Chapter 7.

These rules are intended to implement Iowa Code section 217.6 and 1998 Iowa Acts, chapter 1218, section 11, subsection 3.

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(2) Agencies which are licensed as meeting the hospice standards and requirements set forth in department of inspections and appeals rules 481—Chapter 53 or which are certified to meet the standards under the Medicare program for hospice programs.

(3) Agencies which are accredited under the mental health service provider standards established by the mental health and disabilities commission, set forth in 441—Chapter 24, Divisions I and IV.

(4) Home health aide providers meeting the standards set forth in subrule 77.33(3). Home health aide providers certified by Medicare shall be considered to have met these standards.

(5) Supported community living providers certified under rules 441—77.39(13).

77.39(24) *Consumer-directed attendant care service providers.* The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the consumer to provide attendant care service and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the consumer's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse of the consumer or a parent or stepparent of a consumer aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on the behalf of a consumer who receives home- and community-based services.

b. Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).

c. Home health agencies which are certified to participate in the Medicare program.

d. Chore providers subcontracting with area agencies on aging or with letters of approval from the area agencies on aging stating that the organization is qualified to provide chore services.

e. Community action agencies as designated in Iowa Code section 216A.93.

f. Providers certified under an HCBS waiver for supported community living.

g. Assisted living programs that are voluntarily accredited or certified by the department of elder affairs.

h. Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 and has submitted a detailed cost account. The cost account shall provide a methodology for determining the cost of consumer-directed attendant care.

441—77.40(249A) Lead inspection agency providers. Lead inspection agency providers are eligible to participate in the Medicaid program if they are certified pursuant to 641—subrule 70.5(4), department of public health.

This rule is intended to implement Iowa Code section 249A.4.

441—77.41(249A) HCBS physical disability waiver service providers. Consumer-directed attendant care, home and vehicle modification, personal emergency response system, specialized medical equipment, and transportation service providers shall be eligible to participate as approved physical disability waiver service providers in the Medicaid program based on the applicable subrules pertaining to the individual service. Enrolled providers shall maintain the certification listed in the applicable subrules in order to remain eligible providers.

77.41(1) *Enrollment process.* Reviews of compliance with standards for initial enrollment shall be conducted by the department's division of medical services quality assurance staff. Enrollment carries no assurance that the approved provider will receive funding.

Review of a provider may occur at any time.

The department may request any information from the prospective service provider that is pertinent to arriving at an enrollment decision. This may include, but is not limited to:

a. Current accreditations, evaluations, inspection reports, and reviews by regulatory and licensing agencies and associations.

b. Fiscal capacity of the prospective provider to initiate and operate the specified programs on an ongoing basis.

c. The prospective provider's written agreement to work cooperatively with the state and central point of coordination in the counties to be served by the provider.

77.41(2) *Consumer-directed attendant care providers.* The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the consumer to provide consumer-directed attendant care and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the consumer's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse or guardian of the consumer.

(4) Not the recipient of respite services paid through home- and community-based services on behalf of a consumer who receives home- and community-based services.

b. Home care providers that have a contract with the department of public health or have written certification from the department of public health stating that they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).

c. Home health agencies that are certified to participate in the Medicare program.

d. Chore providers subcontracting with area agencies on aging or with letters of approval from the area agencies on aging stating that the organization is qualified to provide chore services.

e. Community action agencies as designated in Iowa Code section 216A.103.

f. Providers certified under an HCBS waiver for supported community living.

g. Assisted living programs that are voluntarily accredited or certified by the department of elder affairs.

h. Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(27) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25.

77.41(3) *Home and vehicle modification providers.* A home and vehicle modification provider shall be an approved HCBS brain injury or mental retardation supported community living service provider and shall meet the following standards:

a. The provider shall obtain a binding contract with a community business to perform the work at the reimbursement provided by the department without additional charge. The contract shall include, at a minimum, cost, time frame for work completion, employer's liability coverage, and workers' compensation coverage.

b. The business shall provide physical or structural modifications to homes or vehicles according to service descriptions listed in 441—subrule 78.46(2).

c. The business, or the business's parent company or corporation, shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

77.41(4) *Personal emergency response system providers.* Personal emergency response system providers shall be agencies which meet the conditions of participation set forth in subrule 77.33(2).

77.41(5) *Specialized medical equipment providers.* The following providers may provide specialized medical equipment:

a. Medical equipment and supply dealers participating as providers in the Medicaid program.

b. Retail and wholesale businesses participating as providers in the Medicaid program which provide specialized medical equipment as defined in 441—subrule 78.46(4).

77.41(6) *Transportation service providers.* The following providers may provide transportation:

a. Area agencies on aging as designated in 321—4.4(231) or with letters of approval from the area agencies on aging stating the organization is qualified to provide transportation services.

b. Community action agencies as designated in Iowa Code section 216A.93.

c. Regional transit agencies as recognized by the Iowa department of transportation.

d. Nursing facilities licensed pursuant to Iowa Code chapter 135C.

This rule is intended to implement Iowa Code section 249A.4.

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(9) Care of medical conditions out of control which includes brittle diabetes and comfort care of terminal conditions.

(10) Postsurgical nursing care.

(11) Monitoring medications requiring close supervision because of fluctuating physical or psychological conditions, e.g., antihypertensives, digitalis preparations, mood-altering or psychotropic drugs, or narcotics.

(12) Preparing and monitoring response to therapeutic diets.

(13) Recording and reporting of changes in vital signs to the nurse or therapist.

c. A unit of service is 1 hour, or one 8- to 24-hour day provided by an individual or an agency. Each service shall be billed in whole units.

d. The consumer, parent, or guardian shall be responsible for selecting the person or agency who will provide the components of the attendant care services to be provided.

e. The consumer, parent, or guardian shall determine the components of the attendant care services to be provided with the person who is providing the services to the consumer.

f. The service activities may not include parenting or child care for or on behalf of the consumer.

g. The consumer and provider shall complete and sign Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, when consumer-directed attendant care is part of the consumer's case plan or individual comprehensive plan. A copy of the completed agreement shall be provided to the service worker or case manager prior to the initiation of services.

441—78.44(249A) Lead inspection services. Payment shall be approved for lead inspection services. This service shall be provided for children who have had two venous blood lead levels of 15 to 19 micrograms per deciliter or one venous level greater than or equal to 20 micrograms per deciliter. This service includes, but is not limited to, X-ray fluorescence analyzer (XRF) readings, visual examination of paint, preventive education of the resident and homeowner, health education about lead poisoning, and a written report to the family, homeowner, medical provider, and local childhood lead poisoning prevention program.

This rule is intended to implement Iowa Code section 249A.4.

441—78.45(249A) Teleconsultive services.

78.45(1) *Covered services.* Payment for consultations on covered services done through the electronic transfer of medical information by interactive audiovisuals is available pursuant to Medicare-funded telemedicine waiver program guidelines to those Medicaid providers participating in a federally funded telemedicine waiver program who have entered into a billing instruction and data collection agreement with the department.

78.45(2) *Expenses and associated costs.* Payment for telecommunication expenses and associated costs for teleconsultive services covered under subrule 78.45(1) is available to medical institutions participating in Medicaid and in a federally funded telemedicine waiver program who have entered into a billing instruction and data collection agreement with the department.

441—78.46(249A) Physical disability waiver service. Payment shall be approved for the following services to consumers eligible for the HCBS physical disability waiver established in 441—Chapter 83 when identified in the consumer's service plan. All services shall include the applicable and necessary instructions, supervision, assistance and support as required by the consumer in achieving the goals written specifically in the service plan and those delineated in Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. The service shall be delivered in the least restrictive environment consistent with the consumer's needs and in conformity with the consumer's service plan.

Reimbursement shall not be available under the waiver for any services that the consumer can obtain through regular Medicaid or from any other funding source.

All services shall be billed in whole units as specified in the following subrules.

78.46(1) *Consumer-directed attendant care service.* Consumer-directed attendant care services are service activities listed below performed by a person to help a consumer with self-care tasks which the consumer would typically do independently if the consumer were otherwise able. The services must be cost-effective and necessary to prevent institutionalization.

Providers must demonstrate proficiency in delivery of the services in the consumer's plan of care. Proficiency must be demonstrated through documentation of prior training or experience or a certificate of formal training. All training or experience will be detailed on Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, which must be reviewed and approved by the service worker for appropriateness of training or experience prior to the provision of services. Form 470-3372 becomes an attachment to and part of the case plan. Consumers shall give direction and training for activities which are not medical in nature to maintain independence. Licensed registered nurses and therapists must provide on-the-job training and supervision to the provider for skilled activities listed below and described on Form 470-3372. The training and experience must be sufficient to protect the health, welfare and safety of the consumer.

a. Nonskilled service activities covered are:

(1) Help with dressing.

(2) Help with bath, shampoo, hygiene, and grooming.

(3) Help with access to and from bed or a wheelchair, transferring, ambulation, and mobility in general. Certification for this is available through the area community colleges.

(4) Toilet assistance, including bowel, bladder, and catheter assistance which includes emptying the catheter bag, collecting a specimen and cleaning the external area around the catheter. Certification of training which includes demonstration of competence for catheter assistance is available through the area community colleges.

(5) Meal preparation, cooking, eating and feeding assistance but not the cost of meals themselves.

(6) Housekeeping services which are essential to the consumer's health care at home.

(7) Help with medications ordinarily self-administered including those ordered by a physician or other qualified health care provider. Certification of training in a medication aide course is available through the area community colleges.

(8) Minor wound care which does not require skilled nursing care.

(9) Assistance needed to go to, or return from, a place of employment but not assistance to the consumer while the consumer is on the job site.

(10) Cognitive assistance with tasks such as handling money and scheduling.

(11) Fostering communication through interpreting and reading services as well as assistance in use of assistive devices for communication.

(12) Assisting and accompanying a consumer in using transportation essential to the health and welfare of the consumer, but not the cost of the transportation.

b. Skilled service activities covered are the following performed under the supervision of a licensed nurse or licensed therapist working under the direction of a licensed physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall not be included in the reimbursement for consumer-directed attendant care services.

(1) Tube feedings of consumers unable to eat solid foods.

(2) Assistance with intravenous therapy which is administered by a registered nurse.

(3) Parenteral injections required more than once a week.

(4) Catheterizations, continuing care of indwelling catheters with supervision of irrigations, and changing of Foley catheters when required.

(5) Respiratory care including inhalation therapy and tracheotomy care or tracheotomy care and ventilator.

(6) Care of decubiti and other ulcerated areas, noting and reporting to the nurse or therapist.

(7) Rehabilitation services including bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activities of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation, and behavior modification.

(8) Colostomy care.

(9) Care of medical conditions such as brittle diabetes and comfort care of terminal conditions.

(10) Postsurgical nurse-delegated activities under the supervision of the registered nurse.

(11) Monitoring medication reactions requiring close supervision because of fluctuating physical or psychological conditions, e.g., antihypertensives, digitalis preparations, mood altering or psychotropic drugs or narcotics.

(12) Preparing and monitoring response to therapeutic diets.

(13) Recording and reporting of changes in vital signs to the nurse or therapist.

c. A unit of service is 1 hour for up to 7 hours per day or one 8- to 24-hour day provided by an individual or an agency. Each service shall be billed in whole units.

d. The consumer or guardian shall be responsible for selecting the person or agency who will provide the components of the attendant care services to be provided.

e. The consumer or guardian shall determine the components of the attendant care services to be provided with the person who is providing the services to the consumer.

f. The service activities may not include parenting or child care on behalf of the consumer.

g. The consumer or guardian and provider shall complete and sign Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan which is signed by the service worker prior to the initiation of services and kept in the consumer's and department's records.

h. If the consumer has a guardian, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met.

i. If the consumer has a guardian, the guardian shall sign the claim form in place of the consumer, indicating that the service has been provided as presented on the claim.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

78.46(2) *Home and vehicle modifications.* Covered home and vehicle modifications are those physical modifications to the consumer's home environment and vehicle which are necessary to provide for the health, welfare and safety of the consumer and which enable the consumer to function with greater independence in the home or vehicle.

a. Services shall be included in the consumer's service plan and shall exceed the regular Medicaid services.

b. These services may include the purchase, installation, or modification of:

(1) Kitchen counters, sink space, cabinets, special adaptations to refrigerators, stoves and ovens, grab bars and handrails.

(2) Bathtubs and toilets to accommodate wheelchair transfer, shower and bathtub seats, grab bars, special handles and hoses for shower heads, water faucet controls, wheelchair-accessible showers and sink areas, and turnaround space adaptations.

(3) Entrance ramps and rails; lifts for porches or stairs; door, hall and window widening; motion-activated and electronic devices; air filtering, heating and cooling adaptations.

(4) Vehicle floor or wall bracing, lifts, and driver-specific adaptations.

c. A unit of service is the completion of needed modifications or adaptations.

d. All modifications and adaptations shall be in accordance with applicable federal, state and local building and vehicle codes.

e. Home and vehicle modifications shall be provided by community businesses. Services shall be performed following department approval of a contract between the supported community living provider and the community business.

78.46(3) *Personal emergency response system.* The personal emergency response system allows a consumer experiencing a medical emergency at home to activate electronic components that transmit a coded signal via digital equipment over telephone lines to a central monitoring station. The service shall be identified in the consumer's service plan. A unit is a one-time installation fee or one month of service. Maximum units per state fiscal year are the initial installation and 12 months of service. The necessary components of a system are:

a. An in-home medical communications transceiver.

b. A remote, portable activator.

c. A central monitoring station with backup systems staffed by trained attendants 24 hours per day, seven days a week.

d. Current data files at the central monitoring station containing response protocols and personal, medical, and emergency information for each consumer.

78.46(4) *Specialized medical equipment.* Specialized medical equipment shall include medically necessary items for personal use by consumers with a physical disability which provide for the health and safety of the consumer that are not covered by Medicaid, are not funded by vocational rehabilitation programs, and are not provided by voluntary means. This includes, but is not limited to: electronic aids and organizers, medicine-dispensing devices, communication devices, bath aids and noncovered environmental control units. This includes repair and maintenance of items purchased through the waiver in addition to the initial costs.

a. Consumers may receive specialized medical equipment once a month until a maximum yearly usage of $6000 has been reached.

b. The need for specialized medical equipment shall be documented by a health care professional as necessary for the consumer's health and safety and shall be identified in the consumer's service plan.

78.46(5) *Transportation.* Transportation services may be provided for consumers to conduct business errands and essential shopping, to receive medical services when not reimbursed through Medicaid as medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is per mile or per trip.

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Provider category	Basis of reimbursement	Upper limit
HCBS MR waiver service providers, including:		
1. Supported community living	Retrospectively limited prospective rates. See 79.1(15)	$32 per hour, not to exceed a total per month of $72.17 times the number of days in the month. $72.17 per day. Variations to the upper limit may be granted by the division of medical services when cost-effective and in accordance with the service plan as long as the statewide average remains at or below $72.17 per day.
2. Respite care providers, including:		
Nonfacility care:	Retrospectively limited prospective rates. See 79.1(15)	$12 per hour
Facility care:		
Hospital or skilled nursing facility	Prospective reimbursement	Limit for skilled nursing facility level of care
Nursing facility or intermediate care facility for the mentally retarded	Prospective reimbursement	Limit for nursing facility level of care
Foster group care	Prospective reimbursement	P.O.S. contract rate
3. Supported employment		
a. Instructional activities to obtain a job	Fee schedule	$34.02 per day. Maximum of 80 units, 5 per week, limit 16 weeks
b. Initial instructional activities on the job	Retrospectively limited prospective rates. See 79.1(15)	$15.46 per hour. Maximum of 40 units per week, limit 16 weeks, 640 units
c. Enclave	Retrospectively limited prospective rates. See 79.1(15)	$5.67 per hour. Maximum of 40 units per week
d. Follow-along	Fee schedule See 79.1(15)	$257.75 per month. Maximum of 12 units per fiscal year or $8.45 per day for a partial month

Provider category	Basis of reimbursement	Upper limit
4. Nursing	Fee schedule as determined by Medicare	Maximum Medicare rate
5. Home health aides	Retrospective cost-related	Maximum Medicare rate in effect on 6/30/98 plus 2%
6. Personal emergency response system	Fee schedule	Initial one-time fee of $37.40. Ongoing monthly fee of $25.50
7. Home and vehicle modifications	Contractual rate. See 79.1(15)	Maximum amount of $5,000 per consumer lifetime
8. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	$18 per hour $104 per day
Individual provider	Fee agreed upon byconsumer and provider	$12 per hour $70 per day
HCBS physical disability waiver service providers, including:		
1. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	$18 per hour $104 per day
Individual provider	Fee agreed upon by consumer and provider	$12 per hour $70 per day
2. Home and vehicle modification providers	Fee schedule	$500 per month, not to exceed $6000 per year
3. Personal emergency response system	Fee schedule	Initial one-time fee of $45. Ongoing monthly fee of $35.
4. Specialized medical equipment	Fee schedule	$500 per month, not to exceed $6000 per year
5. Transportation	Fee schedule	State per mile rate for regional transit providers, or rate established by area agency on aging. Reimbursement shall be at the lowest cost service rate consistent with the consumer's needs.

Provider category	Basis of reimbursement	Upper limit
Hearing aid dealers	Fee schedule plus product acquisition cost	Fee schedule in effect 6/30/98 plus targeted increases*
Home health agencies (Encounter services-intermittent services)	Retrospective cost-related	Maximum Medicare rate in effect on 6/30/98 plus 2%
(Private duty nursing or personal care and VCF vaccine administration for persons aged 20 and under)	Interim fee schedule with retrospective cost settling based on Medicare methodology	Retrospective cost settling according to Medicare methodology not to exceed the rate in effect on 6/30/98 plus 2%
Hospices	Fee schedule as determined by Medicare	Medicare cap (See 79.1(14)*"d"*)

(10) Early and periodic screening centers.
(11) Family or pediatric nurse practitioners.
(12) Family planning clinics.
(13) Federally qualified health centers. Federally qualified health centers shall also complete Form 470-2969, Federally Qualified Health Professionals Listing, and submit a copy of their federal grant.
(14) Genetic consultation clinics.
(15) Hearing aid dealers.
(16) Independent laboratories.
(17) Maternal health centers. Maternal health centers shall also complete Form 470-2970, Group Practice Information.
(18) Nurse midwives.
(19) Orthopedic shoe dealers.
(20) Opticians.
(21) Optometrists.
(22) Physical therapists.
(23) Physicians.
(24) Podiatrists.
(25) Providers of prescribed drugs.
(26) Psychologists. Psychologists not on the National Register of Health Service Providers shall also complete Form 470-2968, Equivalency Form.
(27) Rural health clinics.

c. Hospices, health maintenance providers (HMOs), case management providers, and enhanced service providers shall submit Form 470-2976, Medicaid Provider Application for Hospices, HMOs, and Enhanced Service Providers.

d. Certified registered nurse anesthetists shall submit Form 470-2972, Medicaid Provider Application for Certified Registered Nurse Anesthetists.

e. All HCBS waiver providers shall submit Form 470-2917, Medicaid HCBS Provider Application, at least 90 days before the planned service implementation date. Consultec shall forward the application to the department for processing.

f. and *g.* Rescinded IAB 12/3/97, effective 2/1/98.

h. Rehabilitative treatment service providers shall complete Form 470-3052, Rehabilitative Treatment and Support Services Contract.

79.14(2) Submittal of application. The provider shall submit the appropriate application forms to the fiscal agent.

79.14(3) Notification. Providers shall be notified of the decision on their application by the fiscal agent within 30 calendar days.

79.14(4) Providers not approved as the type of Medicaid provider requested shall have the right to appeal under 441—Chapter 7.

79.14(5) Effective date of approval. Applications shall be approved retroactive to the date requested by the provider or the date the provider meets the applicable participation criteria, whichever is later, not to exceed 12 months retroactive from the receipt of the application forms by the fiscal agent.

79.14(6) Providers approved for certification as a Medicaid provider shall complete Form 470-2965, Medicaid Provider Agreement.

79.14(7) No payment shall be made to a provider for care or services provided prior to the effective date of the department's approval of an application, unless the provider was enrolled and participating in the Iowa Medicaid program as of April 1, 1993.

79.14(8) Payment rates dependent on the nature of the provider or the nature of the care or services provided shall be based on information on the application form, together with information on claim forms, or on rates paid the provider prior to April 1, 1993.

79.14(9) Amendments to application forms shall be submitted to the department's fiscal agent and shall be approved or denied within 30 calendar days. Approval of an amendment shall be retroactive to the date requested by the provider or the date the provider meets all applicable criteria, whichever is later, not to exceed 30 days prior to the receipt of the amendment by the fiscal agent. Denial of an amendment may be appealed under 441—Chapter 7.

79.14(10) Providers who have not submitted claims in the last 24 months will be sent a notice asking if they wish to continue participation. Providers failing to reply to the notice within 30 calendar days of the date on the notice will be terminated as providers. Providers who do not submit any claims in 48 months will be terminated as providers without further notification.

This rule is intended to implement Iowa Code section 249A.4.

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f. There is another community resource available to provide the service or a similar service free of charge to the consumer that will meet the consumer's needs.

g. The consumer receives services from other Medicaid waiver providers.

h. The consumer or legal representative through the interdisciplinary process requests termination from the services.

83.88(2) *Reduction.* A particular service may be reduced when the department determines that the provisions of 441—subrule 130.5(3), paragraph *"a"* or *"b,"* apply.

83.88(3) *Termination.* A particular service may be terminated when the department determines that:

a. The provisions of 441—subrule 130.5(2), paragraph *"d," "g,"* or *"h,"* apply.

b. Needed services are not available or received from qualifying providers.

c. The brain injury service is not identified in the consumer's annual ICP.

d. Service needs are not met by the services provided.

e. Services needed exceed the service unit or reimbursement maximums.

f. Completion or receipt of required documents by the department or the medical facility discharge planner for the brain injury waiver service consumer has not occurred.

g. The consumer receives services from other Medicaid providers.

h. The consumer or legal representative through the interdisciplinary process requests termination from the services.

441—83.89(249A) Appeal rights. Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or consumer is entitled to have a review of the level of care determination by the Iowa Foundation for Medical Care by sending a letter requesting a review to the foundation. If dissatisfied with that decision, the consumer may file an appeal with the department.

The applicant or consumer for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to rule 441—25.21(331). If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department.

441—83.90(249A) County reimbursement. The county board of supervisors of the consumer's county of legal settlement shall reimburse the department for all the nonfederal share of the cost of brain injury waiver services to persons at the ICF/MR level of care with legal settlement in the county who are coming onto the waiver from a minimum 30-day residence in an ICF/MR facility for which the county has been financially responsible. The county shall enter into a Medicaid Home and Community Based Payment Agreement, Form MA-2171, with the department for reimbursement of the nonfederal share of the cost of services provided to HCBS brain injury waiver adults at the ICF/MR level of care who meet the criteria stated above.

The county shall enter into the agreement using the criteria in subrule 83.82(2).

441—83.91(249A) Conversion to the X-PERT system. For conversion to the X-PERT system at a time other than review, the consumer may be required to provide additional information. To obtain this information, a consumer may be required to have an interview. Failure to respond for this interview when so requested, or failure to provide requested information, shall result in cancellation.

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

441—83.92 to **83.100** Reserved.

DIVISION VI—PHYSICAL DISABILITY WAIVER SERVICES

441—83.101(249A) Definitions.

"Adaptive" means age-appropriate skills related to taking care of one's self and the ability to relate to others in daily living situations. These skills include limitations that occur in the areas of communication, self-care, home living, social skills, community use, self-direction, safety, functional academics, leisure and work.

"Adult" means a person with a physical disability aged 18 years to 64 years.

"Appropriate" means that the services or supports or activities provided or undertaken by the organization are relevant to the consumer's needs, situation, problems, or desires.

"Assessment" means the review of the consumer's current functioning in regard to the consumer's situation, needs, strengths, abilities, desires and goals.

"Behavior" means skills related to regulating one's own behavior including coping with demands from others, making choices, controlling impulses, conforming conduct to laws, and displaying appropriate sociosexual behavior.

"Client participation" means the amount of the consumer's income that the person must contribute to the cost of physical disability waiver services, exclusive of medical vendor payments, before Medicaid will provide additional reimbursement.

"Department" means the Iowa department of human services.

"Guardian" means a guardian appointed in probate court for an adult.

"Iowa Foundation for Medical Care" is the entity designated by the federal government to be the peer review organization for the state of Iowa.

"Medical institution" means a nursing facility, a skilled nursing facility, intermediate care facility for the mentally retarded, or hospital which has been approved as a Medicaid vendor.

"Physical disability" means a severe, chronic condition that is attributable to a physical impairment that results in substantial limitations of physical functioning in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

"Service plan" means a written consumer-centered, outcome-based plan of services developed using an interdisciplinary process which addresses all relevant services and supports being provided. It may involve more than one provider.

"Third-party payments" means payments from an individual, institution, corporation, or public or private provider which is liable to pay part or all of the medical costs incurred as a result of injury or disease on behalf of a consumer of medical assistance.

"Waiver year" means a 12-month period commencing on April 1 of each year.

441—83.102(249A) Eligibility. To be eligible for physical disability waiver services, a consumer must meet eligibility criteria set forth in subrule 83.102(1) and be determined to need a service allowable under the program per subrule 83.102(2).

83.102(1) *Eligibility criteria.* All of the following criteria must be met. The person must:

a. Have a physical disability.

b. Be blind or disabled as determined by the receipt of social security disability benefits or by a disability determination made through the division of medical services. Disability determinations are made according to supplemental security income guidelines as per Title XVI of the Social Security Act.

c. Be ineligible for the HCBS MR waiver.

d. Have the ability to hire, supervise, and fire the provider as determined by the service worker, and be willing to do so, or have a guardian named by probate court who will take this responsibility on behalf of the consumer.

e. Be eligible for Medicaid under 441—Chapter 75.

f. Be aged 18 years to 64 years.

g. Be a current resident of a medical institution and have been a resident for at least 30 consecutive days at the time of initial application for the physical disability waiver.

EXCEPTION: During any waiver year, up to ten persons, two per departmental region as established in 441—subrule 1.4(2), in need of the skilled nursing facility or intermediate care facility level of care who are not residents of a medical institution at the time of application may receive HCBS physical disability waiver services as provided in subrule 83.102(3).

h. Be in need of intermediate care facility for the mentally retarded (ICF/MR), skilled nursing, or intermediate care facility level of care. For those who are in need of ICF/MR level of care and who are currently residing in an ICF/MR facility, the discharge planner must contact the county of financial responsibility for the consumer to determine the county's agreement with referral to the physical disability waiver. Initial decisions on level of care shall be made for the department by the Iowa Foundation for Medical Care (IFMC) within two working days of receipt of medical information. After notice of an adverse decision by IFMC, the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by IFMC pursuant to subrule 83.109(2). On initial and reconsideration decisions, IFMC determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2). Adverse decisions by IFMC on reconsiderations may be appealed to the department pursuant to 441—Chapter 7 and rule 441—83.109(249A).

i. Choose HCBS.

j. Use a minimum of one unit of consumer-directed attendant care service or personal emergency response system service each quarter.

83.102(2) *Need for services.*

a. The consumer shall have a service plan which is developed by the consumer and a department service worker. This must be completed and approved prior to service provision and at least annually thereafter.

The service worker shall identify the need for service based on the needs of the consumer as well as the availability and appropriateness of services.

b. The total monthly cost of physical disability waiver services shall not exceed $1150 per month.

83.102(3) *State slots.* The total number of persons receiving HCBS physical disability waiver services in the state shall be limited to the number provided in the waiver approved by the Secretary of the U.S. Department of Health and Human Services. Of these, ten slots during any waiver year (two in each departmental region) shall be reserved for persons who were not residents of a medical institution at the time of initial application for the physical disability waiver as allowed by the exception under paragraph 83.102(1)*"g."* These slots shall be available on a first-come, first-served basis.

83.102(4) *County payment slots for persons requiring the ICF/MR level of care.* Waiver slots for adult persons in need of the ICF/MR level of care with legal settlement in a county must be identified in the county management plan submitted to the department pursuant to 441—Chapter 25. Each county shall inform the department regarding the number of payment slots desired by April 1 and October 1 of each year. These slots must be within the statewide total under subrule 83.102(3). The county shall have financial responsibility for the nonfederal share of the costs of services for these consumers as stated in rule 441—83.110(249A). A county may choose not to establish any payment slots under the HCBS physical disability waiver.

83.102(5) *Securing a state slot.*

a. The county department office shall contact the division of medical services for all cases to determine if a slot is available for all new applications for the HCBS physical disability waiver program.

(1) For persons not currently receiving Medicaid, the county department office shall contact the division of medical services by the end of the second working day after receipt of a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, submitted on or after April 1, 1999.

(2) For current Medicaid recipients, the county department office shall contact the division of medical services by the end of the second working day after receipt of a signed and dated Form 470-0660, Home- and Community-Based Service Report, submitted on or after April 1, 1999.

b. On the third day after the receipt of the completed Form 470-0442 or 470-0660, if no slot is available, the division of medical services shall enter persons on the HCBS physical disabilities waiver state waiting list for institutionalized persons or on a regional waiting list for the slots reserved for persons who are not institutionalized according to the following:

(1) Persons not currently eligible for Medicaid shall be entered on the basis of the date a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, is submitted on or after April 1, 1999, and date-stamped in the county department office. Consumers currently eligible for Medicaid shall be added on the basis of the date the consumer requests HCBS physical disability program services as documented by the date of the consumer's signature on Form 470-0660 submitted on or after April 1, 1999. In the event that more than one application is received on the same day, persons shall be entered on the waiting list on the basis of the day of the month of their birthday, the lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the state waiting list for institutionalized persons or on a regional waiting list for the slots reserved for persons who are not institutionalized. As slots become available, persons shall be selected from the waiting lists to maintain the number of approved persons on the program based on their order on the waiting lists.

83.102(6) *Securing a county payment slot.*

a. In addition to contacting the division of medical services for all cases pursuant to 83.102(5), the county department office shall contact the county of legal settlement for adults coming from a medical institution who are in need of the ICF/MR level of care to determine if a county payment slot is available for new applications for the HCBS physical disability waiver program.

(1) For persons not currently receiving Medicaid, the county department office shall contact the county central point of coordination by the end of the second working day after receipt of a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, submitted on or after April 1, 1999.

(2) For current Medicaid recipients, the county department office shall contact the county central point of coordination by the end of the second working day after receipt of a signed and dated Form 470-0660, Home- and Community-Based Service Report, submitted on or after April 1, 1999.

b. On the third day after the receipt of the completed Form 470-0442 or 470-0660, if no payment slot is available, persons shall be entered on a waiting list by the county central point of coordination according to the following:

(1) Persons not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, is submitted on or after April 1, 1999, and date-stamped in the county department office. Consumers currently eligible for Medicaid shall be added to the list on the basis of the date the consumer requests HCBS physical disability program services as documented by the date of the consumer's signature on Form 470-0660 submitted on or after April 1, 1999. In the event that more than one application is received on the same day, persons shall be entered on the waiting list on the basis of the day of the month of their birthday, lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the county waiting list. As slots become available, persons shall be selected from the list to maintain the number of approved persons on the program based on their order on the waiting list.

83.102(7) *HCBS physical disability waiver waiting lists.* When services are denied because the statewide limit for institutionalized persons is reached, a notice of decision denying service based on the limit and stating that the person's name shall be put on a statewide waiting list shall be sent to the person by the department.

When services are denied because the two slots per region for persons already residing in the community at the time of application are filled, a notice of decision denying service based on the limit on those slots and stating that the person's name shall be put on a waiting list by region for one of the community slots shall be sent to the person by the department.

When services are denied because the county of legal settlement has not established any slots in the county plan, a notice of decision will be issued denying service stating that the person is not eligible because the county has chosen not to participate in the HCBS physical disabilities waiver. The names of the persons who are not eligible because the county has chosen not to participate shall be placed on a waiting list by county by the department in case the county decides to participate.

When services are denied because all county of legal settlement slots are filled, a notice of decision will be issued denying service stating that the person is not eligible because all county slots are filled. The names of the persons who are not eligible because all county slots are filled shall be placed on a waiting list by county by the department in case a slot becomes available or the county decides to add additional slots.

441—83.103(249A) Application.

83.103(1) *Application for financial eligibility.* The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed. Applications for this program may only be filed on or after April 1, 1999.

83.103(2) *Approval of application for eligibility.*

a. Applications for this waiver shall be initiated on behalf of the applicant who is a resident of a medical institution with the applicant's consent or with the consent of the applicant's legal representative by the discharge planner of the medical facility where the applicant resides at the time of application. The discharge planner shall complete Form 470-3502, Physical Disability Waiver Assessment Tool, and submit it to the Iowa Foundation for Medical Care (IFMC) review coordinator. After completing the determination of the level of care needed by the applicant, the IFMC review coordinator shall inform the income maintenance worker and the discharge planner on behalf of the applicant or the applicant's guardian of its decision.

b. Applications for this waiver shall be initiated by the applicant or by the applicant's legal guardian on behalf of the applicant who is residing in the community. The applicant or the applicant's legal guardian shall complete Form 470-3502, Physical Disability Waiver Assessment Tool, and submit it to the Iowa Foundation for Medical Care (IFMC) review coordinator. After completing the determination of the level of care needed by the applicant, the IFMC review coordinator shall inform the income maintenance worker and the applicant or the applicant's legal guardian.

c. Eligibility for this waiver shall be effective as of the date when both the eligibility criteria in subrule 83.102(1) and need for services in subrule 83.102(2) have been established. Decisions shall be mailed or given to the consumer or the consumer's legal guardian on the date when each eligibility determination is completed.

d. An applicant shall be given the choice between waiver services and institutional care. The applicant shall complete and sign Form 470-0660, Home- and Community-Based Service Report, indicating the consumer's choice of caregiver.

e. The consumer or the consumer's guardian shall cooperate with the service worker in the development of the service plan, which must be approved by the department service worker prior to the start of services.

f. HCBS physical disability waiver services provided prior to both approvals of eligibility for the waiver cannot be paid.

g. HCBS physical disability waiver services are not available in conjunction with other HCBS waiver programs. The consumer may also receive in-home health-related care service if eligible for that program.

83.103(3) *Effective date of eligibility.*

a. The effective date of eligibility for the waiver for persons who are already determined eligible for Medicaid is the date on which the person is determined to meet all of the criteria set forth in rule 441—83.102(249A).

b. The effective date of eligibility for the waiver for persons who qualify for Medicaid due to eligibility for the waiver services is the date on which the person is determined to meet all of the criteria set forth in rule 441—83.102(249A) and when the eligibility factors set forth in 441—subrule 75.1(7) and, for married persons, in rule 441—75.5(249A), have been satisfied.

c. Eligibility for the waiver continues until the consumer fails to meet eligibility criteria listed in rule 441—83.102(249A). Consumers who return to inpatient status in a medical institution for more than 30 consecutive days shall be reviewed by IFMC to determine additional inpatient needs for possible termination from the physical disability waiver. The consumer shall be reviewed for eligibility under other Medicaid coverage groups in accordance with rule 441—76.11(249A). The consumer shall be notified of that decision through Form 470-0602, Notice of Decision.

If the consumer returns home before the effective date of the notice of decision and the consumer's condition has not substantially changed, the denial may be rescinded and eligibility may continue.

83.103(4) *Attribution of resources.* For the purposes of attributing resources as provided in rule 441—75.5(249A), the date on which the waiver consumer meets the institutional level of care requirement as determined by IFMC or an appeal decision shall be used as the date of entry to the medical institution. Only one attribution of resources shall be completed per person. Attributions completed for a prior institutionalization shall be applied to the waiver application.

441—83.104(249A) Client participation. Consumers who are financially eligible under 441—subrule 75.1(7) (the 300 percent group) must contribute a client participation amount to the cost of physical disability waiver services.

83.104(1) *Computation of client participation.* Client participation shall be computed by deducting a maintenance needs allowance equal to 300 percent of the maximum SSI grant for an individual from the consumer's total income. For a couple, client participation is determined as if each person were an individual.

83.104(2) *Limitation on payment.* If the sum of the third-party payment and client participation equals or exceeds the reimbursement for the specific physical disability waiver service, Medicaid shall make no payments for the waiver service. However, Medicaid shall make payments to other medical providers.

441—83.105(249A) Redetermination. A complete financial redetermination of eligibility for the physical disability waiver shall be completed at least once every 12 months. A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.102(249A). A redetermination shall contain the components listed in rule 441—83.102(249A).

441—83.106(249A) Allowable services. The services allowable under the physical disability waiver are consumer-directed attendant care, home and vehicle modification, personal emergency response system, transportation service, and specialized medical equipment as set forth in rule 441—78.46(249A).

441—83.107(249A) Individual service plan. An individualized service plan shall be prepared and used for each HCBS physical disability waiver consumer. The service plan shall be developed and approved by the consumer and the DHS service worker prior to services beginning and payment being made to the provider. The plan shall be reviewed by the consumer and the service worker annually, and the current version approved by the service worker.

83.107(1) *Information in plan.* The plan shall be in accordance with 441—subrule 24.2(2) and shall additionally include the following information to assist in evaluating the program:

a. A listing of all services received by a consumer at the time of waiver program enrollment.

b. The name of all providers responsible for providing all services.

c. All service funding sources.

d. The amount of the service to be received by the consumer.

83.107(2) *Annual assessment.* The Iowa Foundation for Medical Care shall review the consumer's need for continued care annually and recertify the consumer's need for long-term care services, pursuant to the standards and subject to the reconsideration and appeal processes at paragraph 83.102(1)*"h"* and rule 441—83.109(249A), based on the completed Form 470-3502, Physical Disability Waiver Assessment Tool, and supporting documentation as needed. Form 470-3502 is completed by the service worker at the time of recertification.

83.107(3) *Case file.* The consumer case file shall contain the following completed forms:

a. Eligibility for Medicaid Waiver, Form 470-0563.

b. Home- and Community-Based Service Report, Form 470-0660.

c. Medicaid Home- and Community-Based Payment Agreement, Form 470-0379.

d. HCBS Consumer-Directed Attendant Care Agreement, Form 470-3372, when consumer-directed attendant care services are being provided.

e. The service plan.

f. The county central point of coordination's final approval of service costs if the county is voluntarily participating at the intermediate care facility for the mentally retarded (ICF/MR) level of care.

441—83.108(249A) Adverse service actions.

83.108(1) *Denial.* An application for services shall be denied when it is determined by the department that:

a. All of the medically necessary service needs cannot be met in a home- or community-based setting.

b. Service needs exceed the reimbursement maximums.

c. Service needs are not met by the services provided.

d. Needed services are not available or received from qualifying providers.

e. The physical disability waiver service is not identified in the consumer's service plan.

f. There is another community resource available to provide the service or a similar service free of charge to the consumer that will meet the consumer's needs.

g. The consumer receives services from other Medicaid waiver providers.

h. The consumer or legal representative requests termination from the services.

83.108(2) *Reduction.* A particular service may be reduced when the department determines that the provisions of 441—subrule 130.5(3), paragraph *"a"* or *"b,"* apply.

83.108(3) *Termination.* A particular service may be terminated when the department determines that:

a. The provisions of 441—subrule 130.5(2), paragraph *"d," "g,"* or *"h,"* apply.

b. Needed services are not available or received from qualifying providers.

c. The physical disability waiver service is not identified in the consumer's annual service plan.

d. Service needs are not met by the services provided.

e. Services needed exceed the service unit or reimbursement maximums.

f. Completion or receipt of required documents by the consumer for the physical disability waiver service has not occurred.

g. The consumer receives services from other Medicaid providers.

h. The consumer or legal representative requests termination from the services.

441—83.109(249A) Appeal rights. Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).

83.109(1) *Appeal to county.* The applicant or consumer for whom a county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to rule 441—25.21(331). If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department.

83.109(2) *Reconsideration request to Iowa Foundation for Medical Care (IFMC).* After notice of an adverse decision by IFMC on the level of care requirement pursuant to paragraph 83.102(1)*"h,"* the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by IFMC by sending a letter requesting a review to IFMC not more than 60 days after the date of the notice of adverse decision. Adverse decisions by IFMC on reconsiderations may be appealed to the department pursuant to 441—Chapter 7.

a. If a timely request for reconsideration of an initial denial determination is made, IFMC shall complete the reconsideration determination and send written notice including appeal rights to the Medicaid applicant or recipient and the applicant's or recipient's representative within ten working days after IFMC receives the request for reconsideration and a copy of the medical record.

b. If a copy of the medical record is not submitted with the reconsideration request, IFMC will request a copy from the facility within two working days.

c. The notice to parties. Written notice of the IFMC reconsidered determination will contain the following:

(1) The basis for the reconsidered determination.

(2) A detailed rationale for the reconsidered determination.

(3) A statement explaining the Medicaid payment consequences of the reconsidered determination.

(4) A statement informing the parties of their appeal rights, including the information that must be included in the request for hearing, the locations for submitting a request for an administrative hearing, and the time period for filing a request.

d. If the request for reconsideration is mailed or delivered to IFMC within ten days of the date of the initial determination, any medical assistance payments previously approved will not be terminated until the decision on reconsideration. If the initial decision is upheld on reconsideration, medical assistance benefits continued pursuant to this rule will be treated as an overpayment to be paid back to the department.

441—83.110(249A) County reimbursement. The consumer's county of legal settlement must agree to reimburse the department for all of the nonfederal share of the cost of physical disability waiver services to persons at the ICF/MR level of care with legal settlement in the county if the county chooses to participate in the physical disability waiver. The county shall enter into a Medicaid Home- and Community-Based Payment Agreement, Form 470-0379, with the department for reimbursement of the nonfederal share of the cost of services provided to HCBS physical disability waiver adults at the ICF/MR level of care.

The county shall enter into the agreement using the criteria in subrule 83.102(2).

441—83.111(249A) Conversion to the X-PERT system. For conversion to the X-PERT system at a time other than review, the consumer may be required to provide additional information. To obtain this information, a consumer may be required to have an interview. Failure to respond for this interview when so requested, or failure to provide requested information, shall result in cancellation.

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

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441—185.25 to **185.40** Reserved.

DIVISION III
FAMILY PRESERVATION PROGRAM

PREAMBLE

The family preservation program provides highly intensive and time-limited service interventions that are developed to prevent out-of-home placement of children. Services are designed to meet the needs of the family in crisis, with children that are in imminent or high risk of placement outside the home. The program is defined by:

- A brief service duration averaging 45 calendar days and not exceeding 60 calendar days.
- Small caseloads with an average staff-to-client ratio of 1 to 3.5 and not to exceed 1 to 4.
- A greater intensity and frequency of services provided to children and families in family preservation than the intensity of services provided to children and families participating in family-centered services.

The goals of the family preservation program are to defuse the current crisis, evaluate its nature and intervene to reduce the likelihood of its recurrence, ensure linkage to needed community services and resources, improve the ability of parents to care for their children, and prevent out-of-home placements.

The family preservation program is designed to complement an existing array of family-centered services and is distinguished from family-centered services by the capacity to intervene immediately in a crisis situation by having:

- Availability to referral workers and families 24 hours a day, 7 days a week.
- Face-to-face contact within 24 hours of referral for children at high risk of placement.
- Immediate voice contact with face-to-face contact within three hours of referral for children at immediate risk of placement.

Family preservation services are to be provided with family preservation supportive services as defined in rule 441—181.1(234).

441—185.41(234) Component services. Component services for family preservation services shall include:

1. Skill development services (one or more of the following: restorative living skills, family skills, and social skills).
2. Therapy and counseling services.
3. Psychosocial evaluation.

441—185.42(234) Core services. Component services shall be provided in one core set of services which includes skill development services (one or more of the following: family skills, restorative living skills, and social skills), therapy and counseling services, and psychosocial evaluation. Services shall be provided as follows:

185.42(1) *Method of provision.* These services shall:

a. Occur on a face-to-face basis.

b. Be directed toward the child and shall include family members.

c. Be delivered in whatever locations the referral worker's social casework findings indicate are appropriate to ensure that reasonable efforts are being made to meet the family's needs.

185.42(2) *Unit of service.* The unit of service for the family preservation program shall be the family.

***185.42(3)** *Reimbursement methodology.* Payment for treatment services for family preservation clients shall be based on either 10 or fewer days of service, or more than 10 days of service that has a duration limited to 60 calendar days but is expected to last an average of 45 calendar days. Services shall not be provided while driving a motor vehicle.

*Effective date delayed 70 days from 8/1/95 by the Administrative Rules Review Committee at its meeting held July 11, 1995.

441—185.43(234) Duration of services. Family preservation services are to be of brief service duration, averaging 45 calendar days, not to exceed 60 calendar days.

441—185.44(234) Desired outcomes of family preservation. Desired outcomes include achieving of or movement toward the goals identified in the permanency plan, treatment plan or court order, continuing involvement in an active school program or employment (if age appropriate), eliminating risk of abuse or neglect of the child by the family, ensuring family remains intact, and eliminating risk of delinquency of the child.

441—185.45(234) Provision of services to children placed out of home. Family preservation services may be provided to a family with one or more children placed out of the home when the services are initiated within 30 calendar days after the date the child has been placed out of home in a setting other than a psychiatric medical institution for children, group care, or family foster care with rehabilitative treatment services and when the child can be returned home within 5 calendar days of service initiation.

These rules are intended to implement Iowa Code section 234.6.

441—185.46 to **185.60** Reserved.

DIVISION IV
FAMILY FOSTER CARE TREATMENT SERVICES

PREAMBLE

Family foster care rehabilitative treatment services are a coherent, integrated constellation of services designed to provide treatment to a child in a foster home setting and to the child's family when the child and family have needs related to emotional or behavioral disturbances and other dysfunctional behaviors. Treatment is the coordinated provision of services designed to produce a planned outcome in a child's and family's behavior, attitude or general condition based on a thorough assessment of the child and environment.

The goals of family foster care treatment services are to alleviate negative effects the child has suffered as a result of separation from the family, damage to self-worth through placement, and other events in the child's past, develop a plan and provide and coordinate therapeutic activities consistent with this plan to address the child's treatment needs related to mental, physical or emotional disabilities, and provide services to the family to enable parents to meet their children's physical and emotional needs, and assist in the reunification process.

Other services which may be provided in conjunction with family foster care rehabilitative treatment services include, but are not limited to, family foster care supervision and family-centered services.

185.109(5) *Maintenance of fiscal records.* Subrules 185.102(1) to 185.102(3), rule 441—185.104(234), subrules 185.105(11) and 185.106(1), paragraph 185.106(3)*"d,"* and subrule 185.106(4) shall be used as the basis for maintenance of fiscal records.

185.109(6) *Certified audits.* Certified audits shall be conducted and the reports submitted to the department as set forth in subrule 185.102(4).

185.109(7) *Billing.* For billing purposes, subrule 185.106(4) remains in effect.

185.109(8) *Rates for services provided on or after July 1, 1998.* In absence of an alternative rate-setting methodology effective July 1, 1997, rules 441—185.102(234) to 441—185.107(234) shall be the basis of establishing rates to be effective for services provided on or after July 1, 1998.

a. In absence of a fixed fee schedule pursuant to rule 441—185.108(234) or other new rate-setting methodology set forth in rule, all providers, regardless of when their fiscal year ends, shall submit a Financial and Statistical Report, Form 470-3049, for the time period July 1, 1997, to December 31, 1997, based on the cost principles set forth in rule 441—185.101(234) to 441—185.107(234). This report shall be submitted no later than March 31, 1998. Rates based on reports submitted pursuant to this paragraph shall be effective no earlier than July 1, 1998, and no later than August 1, 1998, when the report is sufficient for the establishment of rates. However, if a provider with a contract in effect as of June 30, 1996, has a fiscal year which ends at the end of January, February, or March 1998, the provider shall submit the financial and statistical report for the time period July 1, 1997, through the end of the provider's fiscal year, 1998. The report shall be submitted no later than three months after the close of the provider's established 1998 fiscal year. Rates shall be effective no later than the first day of the second full month after receipt by the project manager of a complete financial and statistical report.

b. Failure by providers to submit the report within the established time frames without written approval from the chief of the bureau of purchased services or the chief's designee shall be cause to reduce the payment to 75 percent of the rate in effect June 30, 1998, or the weighted average rate as of July 1, 1997, whichever is less. Approval for an extension for the submission shall be granted only when the provider can demonstrate that there have been catastrophic circumstances prohibiting timely submission.

c. If an extension is granted, the rate in effect as of June 30, 1998, shall be continued until the new rate is established. If a new rate is not established by the date set forth by the chief of the bureau of purchased services or the chief's designee in the notice of approval of the request to extend the time frame for submission of the Financial and Statistical Report, Form 470-3049, the provider's rate in effect as of June 30, 1998, shall be reduced to 75 percent of the rate in effect June 30, 1998, or the weighted average rate as of July 1, 1997, whichever is less, until such time as the new rate can be established.

d. If a provider has submitted the report on time, but a rate cannot be established within four months of the original due date due to incomplete or erroneous information, payment shall be reduced to 75 percent of the rate in effect June 30, 1998, or the weighted average rate as of July 1, 1997, whichever is less, until such time as the new rate can be established.

e. All subsequent financial and statistical reports shall be submitted within the time frames established pursuant to subrule 185.103(1).

f. Rates for individual providers shall be established pursuant to subrule 185.103(7) with the exception of rates to be in effect July 1, 1998. Individual providers shall submit to the department the information required by subrule 185.103(7) no later than March 31, 1998, to establish rates to be effective July 1, 1998. Rates shall be recalculated annually on the anniversary of the effective date of the contract from that point forward.

185.109(9) *Audit adjustments.* If the department or its authorized representatives conduct an audit and the audit findings result in exceptions to costs and adjustment to the rate in effect June 30, 1996, and the June 30, 1996, rate was the basis of the rate established effective July 1, 1996, the July 1, 1996, rate shall be adjusted in accordance with the audit findings.

185.109(10) *Liability for payment.* The department shall not be liable for payment for any programs or services prior to the contract effective date or the effective date for the rate for the program or service.

441—185.110(234) Providers under an exception to policy for establishing rates. When a provider has been granted an exception to rules 441—185.102(234) to 441—185.107(234) by the director prior to June 30, 1996, and the rate was established based on that exception by June 30, 1996, the exception shall continue in effect as written.

The rate in effect June 30, 1996, shall be frozen. The rate to be effective July 1, 1996, shall be the frozen rate plus a 2 percent index factor. If the rate based on the exception to policy was not established by June 30, 1996, the rate in effect as of June 30, 1996, shall be frozen and the rate to be effective July 1, 1996, shall be the frozen rate plus a 2 percent index factor. If the provider has a zero rate or no rate has been established for the service, the rate shall be established pursuant to subrule 185.109(1). However, for out-of-state providers with an exception to policy to establish rates based on the rates established by the state in which the provider is located, rates shall continue to be established in accordance with the existing exception to policy.

441—185.111(234) Data. The data to be used in calculating the fiscal impact of any proposed rules for a cost–based rate–setting methodology to become effective July 1, 1997, and to be used for the establishment of rates to be effective July 1, 1998, shall be the data from financial and statistical reports on which rates were established as of June 30, 1996.

These rules are intended to implement Iowa Code sections 234.6 and 234.38.

441—185.112(234) Interim determination of rates. Rules 441—185.102(234) to 441—185.107(234), 185.109(234) and 185.110(234) shall be held in abeyance for purposes of establishing rates effective during the time period beginning January 1, 1998, to June 30, 2000, unless otherwise provided for in these rules. Rates for a service to be effective on or after February 1, 1998, shall be established based on the payment rate negotiated between the provider and the department. This negotiated rate shall be based upon the historical and future reasonable and necessary cost of providing that service, other payment-related factors and availability of funding. A rate in effect as of December 31, 1997, shall continue in effect until a negotiated rate is established in accordance with the requirements of subrules 185.112(1) to 185.112(3), subrule 185.112(6), or subrule 185.112(12) or until the service is terminated in accordance with subrule 185.112(4).

185.112(1) *Negotiation of rates.* Rates for services to be made effective on or after February 1, 1998, must be established in accordance with this subrule except as provided for at subrule 185.112(12).

a. On or after January 1, 1998, the department shall begin negotiating payment rates with providers of rehabilitative treatment and supportive services to be effective for services provided on or after February 1, 1998, through June 30, 2000.

b. Except as provided in paragraph *"a"* above, when a new provider assumes the delivery of a program from another provider, all rates for the services previously provided by either provider shall need to be reviewed and may be renegotiated at the request of either party.

c. If a provider ceases to contract for and provide a service or program on or after July 1, 1996, and prior to establishing a negotiated rate in accordance with subrule 185.112(1), decides to again contract for and provide that program or service, the nonzero rate in effect when the contract ceased shall be used as a starting point in negotiating a new rate in accordance with subrule 185.112(1) for that service.

d. If an existing provider ceases to contract for and provide a service or program for which a zero rate has been established, and decides to again contract for and provide that program or service and has a contract for that service in effect prior to June 30, 2000, the rate shall be established in accordance with subrule 185.112(2) and the starting point for negotiations shall be the weighted average rate.

e. If a provider ceases to contract for and provide a service or program after a rate has been established in accordance with subrule 185.112(1) and prior to December 31, 1999, decides to again contract for and provide that program or service, the rate shall be established at the rate in effect when service was interrupted.

f. Rates for services interrupted prior to July 1, 1996, shall be treated as a new service in accordance with subrule 185.112(2).

185.112(7) *Maintenance of fiscal records.* Subrules 185.102(1) to 185.102(3), rule 441—185.104(234), subrules 185.105(11) and 185.106(1), paragraph 185.106(3)*"d,"* and subrule 185.106(4) shall be used as the basis for maintenance of fiscal records.

185.112(8) *Certified audits.* Certified audits shall be conducted and the reports submitted to the department as set forth in subrule 185.102(4).

185.112(9) *Billing.* Subrule 185.106(4) remains in effect for billing purposes.

185.112(10) *Rates for services provided on or after July 1, 2000.* In absence of an alternative rate-setting methodology effective July 1, 1999, rules 441—185.102(234) to 441—185.107(234) shall be the basis of establishing rates to be effective for services provided on or after July 1, 2000.

a. In absence of a new rate-setting methodology set forth in rule, all providers, regardless of when their fiscal year ends, shall submit a Financial and Statistical Report, Form 470-3049, for the time period July 1, 1999, to December 31, 1999, based on the cost principles set forth in rules 441—185.101(234) to 441—185.107(234). This report shall be submitted no later than March 31, 2000. Rates based on reports submitted pursuant to this paragraph shall be effective no earlier than July 1, 2000, and no later than August 1, 2000, when the report is sufficient for the establishment of rates. However, if a provider with a contract in effect as of June 30, 1996, has a fiscal year which ends at the end of January, February, or March 2000, the provider shall submit the financial and statistical report for the time period July 1, 1999, through the end of the provider's fiscal year, 2000. The report shall be submitted no later than three months after the close of the provider's established 2000 fiscal year. Rates shall be effective no later than the first day of the second full month after receipt by the project manager of a complete financial and statistical report.

b. Failure by providers to submit the report within the established time frames without written approval from the chief of the bureau of purchased services or the chief's designee shall be cause to reduce the payment to 75 percent of the rate in effect June 30, 2000, or the weighted average rate as of July 1, 1997, whichever is less. Approval for an extension for the submission shall be granted only when the provider can demonstrate that there have been catastrophic circumstances prohibiting timely submission.

c. If an extension is granted, the rate in effect as of June 30, 2000, shall be continued until the new rate is established. If a new rate is not established by the date set forth by the chief of the bureau of purchased services or the chief's designee in the notice of approval of the request to extend the time frame for submission of the Financial and Statistical Report, Form 470-3049, the provider's rate in effect as of June 30, 2000, shall be reduced to 75 percent of the rate in effect June 30, 2000, or the weighted average rate as of July 1, 1997, whichever is less, until such time as the new rate can be established.

d. If a provider has submitted the report on time, but a rate cannot be established within four months of the original due date due to incomplete or erroneous information, payment shall be reduced to 75 percent of the rate in effect June 30, 2000, or the weighted average rate as of July 1, 1997, whichever is less, until the new rate can be established.

e. All subsequent financial and statistical reports shall be submitted within the time frames established pursuant to subrule 185.103(1).

f. Rates for individual providers shall be established pursuant to subrule 185.103(7) with the exception of rates to be in effect July 1, 2000. Individual providers shall submit the information required by subrule 185.103(7) to the department no later than March 31, 2000, to establish rates to be effective July 1, 2000. Rates shall be recalculated annually on the anniversary of the effective date of the contract from that point forward.

185.112(11) *Liability for payment.* The department shall not be liable for payment for any programs or services prior to the contract effective date or the effective date for the rate for the program or service.

185.112(12) *Providers under an exception to policy for establishing rates.* When a provider has been granted an exception to rules 441—185.102(234) to 441—185.107(234) or 441—185.109(234) by the director of the department prior to January 1, 1998, the exception shall continue in effect as written for any provider not located in the state of Iowa and for which the exception was based upon another state's requirement that providers be paid the same rate they are paid for clients from the provider's home state. The exceptions for all other providers shall terminate and the conditions leading to the exceptions being approved shall be considered in the rate establishment negotiations.

185.112(13) *Review of rate negotiations.* Rate negotiations are considered rate determinations and shall be handled in accordance with the provisions for rate determinations at rule 441—152.3(234). Requests for review of rate determinations shall be granted only if the rate resolution process as defined at subrule 185.112(3) has been used.

441—185.113 to 185.120 Reserved.

DIVISION VII
BILLING AND PAYMENT PROCEDURES

441—185.121(234) Billing procedures. At the end of each month the provider agency shall prepare Form AA–2241–0, Purchase of Service Provider Invoice, for contractual services provided by the agency during the month.

Separate invoices shall be prepared for each county from which clients were referred and each program. Complete invoices shall be sent to the department county office responsible for the client for approval and forwarding for payment.

Providers shall never bill for more than one month of service. A separate invoice is required for each separate month of service, even if the service span overlaps one month.

185.121(1) *Time limit for submitting invoices.* The time limit for submission of original invoices shall be 90 days from the date of service, except at the end of the state fiscal year when claims for services through June 30 are to be submitted by August 10.

185.121(2) *Resubmittals of rejected claims.* Valid claims which were originally submitted within the time limit specified in 185.121(1) but were rejected because of an error shall be resubmitted as soon as corrections can be made.

185.121(3) *Payment.* Within 60 days of the date of receipt of a valid invoice, the department shall make payment in full of all invoices concerning rehabilitative treatment and supportive services rendered to clients, provided the invoices shall be subject to audit and adjustment by the department.

441—185.122(234) Recoupment procedures. Public agencies that are reimbursed more than their actual costs are required to refund any excess to the department within four months of the end of their fiscal year. No provision for profit or other increment above cost is intended in OMB Circular A–87 for public agencies. Those public providers subject to this provision who fail to comply with this requirement shall be considered to be in violation of 185.12(1)"*r*" and subject to sanctions. Providers who do not refund any excess payments within six months of the end of their fiscal year shall be given notice in accordance with 185.12(6) and have any and all payments suspended or withheld in accordance with 185.12(7).

These rules are intended to implement Iowa Code sections 234.6 and 234.38.

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**Effective date of 185.22(1)"*d*, "(2)"*d*, " and (3)"*d*, " 185.42(3), 185.62(1)"*d*, "(2)"*d*, " and (3)"*d*, " and 441—185.82(234) delayed 70 days by the Administrative Rules Review Committee at its meeting held July 11, 1995.

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INSPECTIONS DIVISION

CHAPTER 30
FOOD AND CONSUMER SAFETY

481—30.1(10A) Inspections division's food and consumer safety bureau. The inspections division's food and consumer safety bureau inspects egg handlers, food establishments (retail), food processing establishments (wholesale), food and beverage vending machines, hotels, and food service operations in schools, correctional and penal institutions.

481—30.2(10A) Definitions.

"Baked goods" means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

"Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home, but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

"Bed and breakfast inn" means a hotel which has nine or fewer guest rooms.

"Boarder" means a person who rents a room, rooms or apartment for at least a week. A boarder is considered permanent and is not a transient guest.

"Boarding house" means a house in which lodging is rented and meals are served to permanent guests. A boarding house is not a food service establishment or hotel unless it rents or caters to transient guests.

"Commissary" means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment's own outlets.

"Contractor" means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C, 137D or 137F.

"Criminal offense" means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

"Department" means the department of inspections and appeals.

"Egg handler" or *"handler"* means any person who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food. An egg handler does not include a food establishment or home food establishment if either establishment obtains eggs from a licensed egg handler or supplier which meets standards referred to in rule 481—31.2(137F). Producers who sell eggs produced exclusively from their own flocks directly to egg handlers or to consumer customers are exempt from regulation as egg handlers.

"Farmers market" means a marketplace which operates seasonally as a common market for fresh fruits and vegetables on a retail basis for consumption elsewhere.

The following products may be sold at a farmers market without being licensed under Iowa Code section 137F.4 at the market location:

1. Baked goods except the following: soft pies and bakery products with custard or cream fillings, as well as other potentially hazardous items. These products must be labeled in accordance with rule 481—34.3(137D).
2. Wholesome, fresh eggs.
3. Honey which is labeled per rule 481—34.3(137D).

4. Prepackaged, nonhazardous food products prepared in an establishment licensed under Iowa Code section 137F.4 as a food establishment or a food processing establishment.

5. Fresh fruits and vegetables.

"Food establishment" means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school or the Iowa juvenile home. "Food establishment" does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are nonpotentially hazardous.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market.
6. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. "Nonpotentially hazardous food" means only the following:

- Baked goods, except the following: soft pies, bakery products with custard or cream fillings, or any other potentially hazardous goods.
- Wholesome, fresh eggs that are kept at a temperature of 45 degrees Fahrenheit or 7 degrees Celsius or less.
- Honey which is labeled with additional information as provided by departmental rule.

7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home that receives catered or home-delivered food.
9. Child day care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.
10. Supply vehicles, vending machine locations or boarding houses for permanent guests.
11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.
12. Premises covered by a current Class "A" beer permit as provided in Iowa Code chapter 123.
13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.
14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler's license.

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include premises covered by a Class "A" beer permit as provided in Iowa Code chapter 123.

"Food service establishment" means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or subject to Iowa sales tax as provided in Iowa Code section 422.45.

"Home food establishment" means a business on the premises of a residence where potentially hazardous bakery goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed $20,000. This term does not include a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments. Home food establishments with annual gross sales of $1,000 or less in sales of potentially hazardous bakery products are exempt from licensing under Iowa Code section 137D.2, if the food is labeled and the label states that the food comes from a kitchen not under state inspection or licensure and that labeling complies with rule 481—34.3(137D).

"Hotel" means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.

"License holder" means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C, 137D or 137F.

"Mobile food unit" means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

"Panned candies" are those with a fine hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

"Pushcart" means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

"Retail food establishment" means a food establishment that sells food or food products to consumer customers intended for preparation or consumption off the premises.

"Revoke" means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C, 137D or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

"Salvage food" means food from truck wrecks, fires, tornadoes or other disasters which involve food products.

"Suspend" means to render a license issued under Iowa Code chapter 137C, 137D, 137F or 196 invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

"Transient guest" means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

"Vending machine" means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged, nonpotentially hazardous foods, panned candies, gumballs or nuts are exempt from licensing, but may be inspected by the department upon receipt of a written complaint.

481—30.3(137C,137D,137F,196) Licensing. A license to operate any of the above must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; location of buildings; or other data relative to the license requested. Applications are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

30.3(1) A license is not transferable. Licenses are not refundable unless the license is surrendered to the department prior to the effective date of the license.

30.3(2) A license is renewable and expires after one year.

30.3(3) A valid license shall be posted no higher than eye level where the public can see it. Vending machines shall bear a tag to affirm the license.

30.3(4) Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license.

Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

30.3(5) The regulatory authority may require documentation from a license holder of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing establishment. The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. Documentation shall include at least one of the following:

a. A copy of the firm's business tax return;

b. Quarterly sales tax data;

c. A letter from an independent tax preparer;

d. Other appropriate records.

This rule is intended to implement Iowa Code sections 10A.502(2), 137C.8, 137D.2 and 137F.4 to 137F.6.

481—30.4(137C,137D,196) License fees. The license fee is the same for an initial license and a renewal license. Licenses expire one year from the date of issuance, except for temporary food establishments. Applications for licenses are available from the Department of Inspections and Appeals, Inspections Division, Lucas State Office Building, Des Moines, Iowa 50319-0083; or from a contracting local health department. License fees are set by the Iowa Code sections listed below and charged as follows:

30.4(1) Retail food establishments are based on annual gross sales of food or food products to consumer customers intended for preparation or consumption off the premises (Iowa Code section 137F.6) as follows:

a. For annual gross sales of less than $10,000—$30;

b. For annual gross sales of $10,000 to $250,000—$75;

c. For annual gross sales of $250,000 to $500,000—$115;

d. For annual gross sales of $500,000 to $750,000—$150;

e. For annual gross sales of $750,000 or more—$225.

30.4(2) Food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6) or subject to Iowa sales tax as provided in Iowa Code section 422.45 as follows:

a. For annual gross sales of less than $50,000—$50;

b. For annual gross sales of $50,000 to $100,000—$85;

c. For annual gross sales of $100,000 to $250,000—$175;

d. For annual gross sales of $250,000 to $500,000—$200;

e. For annual gross sales of $500,000 or more—$225.

30.4(3) Food and beverage vending machines, $20 for the first machine and $5 for each additional machine (Iowa Code section 137F.6).

30.4(4) Home food establishments, $25 (Iowa Code section 137D.2(1)).

30.4(5) Hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

a. For 1 to 15 guest rooms—$20;

b. For 16 to 30 guest rooms—$30;

c. For 31 to 75 guest rooms—$40;

d. For 76 to 149 guest rooms—$50;

e. For 150 or more guest rooms—$75.

30.4(6) Mobile food unit or pushcart, $20 (Iowa Code section 137F.6).

30.4(7) Temporary food service establishments issued for up to 14 consecutive days in conjunction with a single event or celebration, $25 (Iowa Code section 137F.6).

30.4(8) For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or warehouse (Iowa Code section 137F.6) as follows:

a. Annual gross sales of less than $50,000—$50;

b. Annual gross sales of $50,000 to $250,000—$100;

c. Annual gross sales of $250,000 to $500,000—$150;

d. Annual gross sales of $500,000 or more—$250.

30.4(9) Egg handlers are based on the total number of cases of eggs purchased or handled during the month of April (Iowa Code section 196.3) as follows:

a. For less than 125 cases—$15;

b. For 125 to 249 cases—$35;

c. For 250 to 999 cases—$50;

d. For 1,000 to 4,999 cases—$100;

e. For 5,000 to 9,999 cases—$175;

f. For 10,000 or more cases—$250.

For the purpose of determining fees, each case shall be 30 dozen eggs.

481—30.5(137F) Penalty and delinquent fees.

30.5(1) Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month.

30.5(2) A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

30.5(3) A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of $100 for each violation. Prior to the assessment of any civil penalties, a hearing conducted by the appeals division in the department of inspections and appeals must be provided as required in rule 481—30.13(10A).

This rule is intended to implement Iowa Code sections 137F.4, 137F.9 and 137F.17.

481—30.6(137C,137D,137F,196) Returned checks. If a check intended to pay for any license provided for under Iowa Code chapters 137C, 137D, 137F or 196, is not honored for payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of $25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license.

481—30.7(137F) Double licenses.

30.7(1) Any establishment which holds a food service establishment license and has gross sales over $20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license.

The license holder shall keep a record of these food sales and make it available to the department upon request.

30.7(2) A retail food establishment and a food service establishment which occupy the same premises must be licensed separately and the applicable fees paid. The license fee for each is based on only the annual gross sales of food and drink covered under the scope of that particular type of license.

30.7(3) A food establishment that is licensed both with a food service establishment license and a retail food establishment license shall pay 75 percent of the license fees required in subrules 30.4(1) and 30.4(2).

30.7(4) Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

30.7(5) A temporary food establishment license is not required when the temporary food establishment is owned and operated on the premises of a licensed food establishment.

30.7(6) The dominant form of business in annual gross sales shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and a food processing plant. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. Food establishments that process low-acid food in hermetically sealed containers or process acidified foods are required to have a food processing plant license.

This rule is intended to implement Iowa Code sections 10A.502 and 137F.6.

481—30.8(137C,137D,137F) Inspection frequency.

30.8(1) Food establishments shall be inspected at an interval specified in Section 8-401.10 of the Food Code Recommendations of the Food and Drug Administration. Food service operations in schools, summer camps, assisted living facilities, residential service substance abuse treatment facilities, halfway house substance abuse treatment facilities, correctional facilities operated by the department of corrections, the state training school, and the Iowa juvenile home shall be inspected at least once annually.

30.8(2) Food processing plants shall be inspected at least annually.

30.8(3) Hotels shall be inspected at least once biennially.

30.8(4) Home food establishments and vending machine license holders shall be inspected at least once annually.

30.8(5) Egg handlers shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, 137F.2 and 196.2.

481—30.9(137D,137F,196) Disposal standards. Standards in the 1984 edition of the "Model Food Salvage Code" are used to regulate the disposal of salvaged or distressed merchandise. A copy is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—30.10(137C,137D,137F) Local contracts. The department may contract with municipal corporations to inspect and collect license fees from any establishment covered by these rules. Inspections shall be pursuant to 481—Chapters 30, 31 and 37. A list of contracts is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

This rule is intended to implement Iowa Code section 137F.3.

481—30.11(22) Examination of records. Information collected by the inspections division is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director.

481—30.12(137C,137D,137F,196) Denial, suspension or revocation of a license to operate. Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

481—30.13(10A) Formal hearing. All decisions of the bureau may be contested by an adversely affected party. Request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, "Contested Case Hearings."

30.13(1) The proposed decision of the administrative law judge becomes final 30 days after it is mailed.

30.13(2) Any request for administrative review of a proposed decision must:

a. Be made in writing;

b. Be filed with the director of the department of inspections and appeals within 30 days after the proposed decision was mailed to the aggrieved party (date of receipt by personal service or the postmarked date is time of filing);

c. State the reason(s) for the request.

30.13(3) The decision of the director shall be based upon the record and becomes final agency action upon mailing.

481—30.14(137D,137F,196) False label or defacement. No person shall use any label required by Iowa Code chapter 137C, 137F or 196 which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by these chapters.

This rule is intended to implement Iowa Code section 137F.3.

These rules are intended to implement Iowa Code sections 10A.104, 10A.502 and 22.11 and Iowa Code chapters 137C, 137D, 137F and 196.

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CHAPTER 31
FOOD ESTABLISHMENT AND FOOD PROCESSING PLANT INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Chs 21 and 22]

481—31.1(137F) Inspection standards. Standards in the 1997 edition of the Food Code Recommendations of the Food and Drug Administration are used to inspect all food establishments. Exceptions to the Code are as follows:

31.1(1) Subparagraph 1-201.10(B)(31) and Section 3-403.10 are deleted.

31.1(2) Food prepared in a home food establishment, licensed under Iowa Code section 137D.2 or a premises as provided in Iowa Code section 137F.1(8)*"f,"* can be offered for sale.

31.1(3) Paragraph 3-301.11(b) is changed to read:

a. Except when washing fruits and vegetables, food employees should, to the extent practicable, avoid contact with exposed, ready-to-eat food with their bare hands. Where food is routinely handled by employees, employers should adopt reasonable sanitary procedures to reduce the risk of the transmission of pathogenic organisms.

b. In seeking to minimize employee's physical contact with ready-to-eat foods, no single method or device is universally practical or necessarily the most effective method to prevent the transmission of pathogenic organisms in all situations. As such, each public food service establishment shall review its operations to identify procedures where ready-to-eat food must be routinely handled by its employees and adopt one or more of the following sanitary alternatives, to be used alone or in combination, to prevent the transmission of pathogenic organisms:

(1) The use of suitable food handling materials including, but not limited to, deli tissues, appropriate utensils, or dispensing equipment. Such materials must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(2) Single-use gloves, for the purpose of preparing or handling ready-to-eat foods, shall be discarded when damaged or soiled or when the process of food preparation or handling is interrupted. Single-use gloves must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(3) The use, pursuant to the manufacturer's instructions, of anti-microbial soaps, with the additional optional use of anti-bacterial protective skin lotions or anti-microbial hand sanitizers, rinses or dips. All such soaps, lotions, sanitizers, rinses and dips must contain active topical anti-microbial or anti-bacterial ingredients, registered by the United States Environmental Protection Agency, cleared by the United States Food and Drug Administration, and approved by the United States Department of Agriculture.

(4) The use of such other practices, devices, or products that are found by the division to achieve a comparable level of protection to one or more of the sanitary alternatives in subparagraphs (1) through (3).

c. Regardless of the sanitary alternatives in use, each public food service establishment shall establish:

(1) Systematic focused education and training of all food service employees involved in the identified procedures regarding the potential for transmission of pathogenic organisms from contact with ready-to-eat food. The importance of proper hand washing and hygiene in preventing the transmission of illness, and the effective use of the sanitary alternatives and monitoring system utilized by the public food service establishment, shall be reinforced. The content and duration of this training shall be determined by the manager of the public food service establishment.

(2) A monitoring system used to demonstrate the proper and effective use of sanitary alternatives utilized by the public food service establishment.

31.1(4) Section 3-501.16 shall be amended by adding the following: "Shell eggs shall be received and held at an ambient temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius."

31.1(5) Paragraph 3-502.12(A) shall be amended by adding the following: "Packaging of raw meat and raw poultry using an oxygen packaging method, with a 30-day 'sell by' date from the date it was packaged, shall be exempt from having a HACCP Plan that contains the information required in this section and Section 8-201.14."

31.1(6) Section 3-603.11 shall be amended by adding the following: "The following standardized language shall be used on the required consumer advisory: 'Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.'"

31.1(7) Section 5-203.15 shall be amended so that a carbonating device in a food establishment shall have a dual check valve which shall be installed so that it is upstream from the carbonating device and downstream from any copper in the water supply line.

31.1(8) Section 2-301.15 shall be amended by adding the following: "Establishments originally licensed prior to the effective date of this law, January 1, 1999, where a combination sink was approved by the department of inspections and appeals for both hand washing and use as a service sink can use this combination sink for both hand washing and as a service sink for the disposal of mop water as long as the establishment is not remodeled."

31.1(9) Section 5-203.13 is amended so that food service establishment license holders for establishments built prior to January 1, 1979, are not required to have a service or utility sink for the disposal of mop water unless the establishment is remodeled.

31.1(10) Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments.

31.1(11) Section 5-203.14 is amended by adding the following: "Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve."

31.1(12) Paragraph 5-402.11(C) is amended by adding the following: "A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air gap of not less than one inch between the outlet and the rim of the floor sink or receptor."

481—31.2(137F) Food processing plant standards.

1. Standards used to inspect establishments where wholesale food is manufactured, processed, packaged or stored are found in the Code of Federal Regulations in 21 CFR, Part 110, April 1, 1998, publication, "Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding Human Food."

2. Standards used to inspect establishments where bakery products, flour, cereals, food dressings and flavorings are manufactured on a wholesale basis are found in the Code of Federal Regulations, in 21 CFR, Parts 136, 137 and 169, April 1, 1998, publication.

3. Standards used to inspect establishments which process low-acid food in hermetically sealed containers are found in 21 CFR, Part 113, April 1, 1998, "Thermally Processed Low-Acid Food Packaged in Hermetically Sealed Containers."

4. Standards used to inspect establishments which process acidified foods are found in 21 CFR, Part 114, April 1, 1998, "Acidified Foods."

5. Standards used to inspect establishments which process bottled drinking water are found in the Code of Federal Regulations in 21 CFR, Parts 129 and 165, April 1, 1998, publication, "Processing and Bottling of Bottled Drinking Water" and "Beverages."

6. In addition to compliance with 31.2"1," manufacturers of packaged ice must comply with the following:

- Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which includes the use of sanitizers to eliminate micro-organisms must be developed and used.
- Packaged ice must be tested every 120 days for the presence of bacteria.
- Plants that use a non-public water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination.

Copies of these regulations are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—31.3(137F) Trichinae control for pork products prepared at retail. Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 1998, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of "certified pork" as authorized by the department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service shall meet the requirements of this rule.

481—31.4(137F) Demonstration of knowledge. Section 2-102.11 shall be amended by adding the following: "Completion of a certified food protection program by the person in charge who has shown proficiency of the required information through passing a test that is part of an approved program. Course content, teaching materials, testing criteria, test administration and security, and qualification of instructors must be approved by the department. A list of approved food certification course(s) will be maintained by the department and is available upon request."

481—31.5(137F) Labeling. The following labeling standards are required in addition to those in the Food Code. Labels on or with packaged foods shall be in legible English and state:

1. The true name, brand or trademark of the article;
2. The names of all ingredients in the food, beginning with the one present in the largest proportion and in descending order of predominance;
3. The quantity of the contents in terms of weight, measure or numerical count;
4. The name and address of the manufacturer, packer, importer, distributor or dealer.

Foods and food products labeled in conformance with the labeling requirements of the government of the United States as listed in the Code of Federal Regulations in 21 CFR, April 1, 1998, publication, Parts 101 and 102, are considered in compliance with the Iowa labeling law.

481—31.6(137F) Adulterated food and disposal. No one may produce, distribute, offer for sale or sell adulterated food. "Adulterated" is defined in the federal Food, Drug and Cosmetic Act, Section 402.

Adulterated food shall be disposed of in a reasonable manner as determined by the department. The destruction of adulterated food shall be watched by a person approved by the department.

481—31.7(137F) Mobile food units/pushcarts. In addition to the Food Code provisions outlined in the FDA Food Code Mobile Food Establishment Matrix, mobile food units/pushcarts must comply with the following:

31.7(1) All mobile food units/pushcarts must be licensed by the department. Applications for licenses are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. The unit shall be inspected by a representative of the department and determined to be in compliance with the rules and regulations of the department prior to the granting of the license.

31.7(2) All equipment and utensils, including the interior of cabinet units or storage compartments, shall be smooth, nonabsorbent and easily cleanable.

31.7(3) During operation, food shall not be displayed, stored or served from any place other than the unit or other licensed facility.

31.7(4) Food condiments shall be in prepackaged, individual servings or dispensed from department-approved containers.

31.7(5) Potentially hazardous foods shall be maintained at 41°F or below, or 140°F or above. Frozen foods shall be kept frozen.

31.7(6) Mobile food units/pushcarts which handle unpackaged food are required to meet the following conditions, in addition to those listed in subrules 31.7(1) to 31.7(5):

a. A hand-washing sink, equipped with pressurized hot and cold running water, shall be installed in all mobile food units/pushcarts.

b. The mobile/pushcart unit shall contain a fresh water supply tank and a permanently installed waste retention tank with a capacity at least 15 percent larger than the water supply tank.

c. The unit shall contain hand cleanser and sanitary towels.

d. All units shall either contain a three-compartment sink or shall have access, at least daily, to a three-compartment sink located at another licensed establishment, where utensils and equipment can be washed, rinsed and sanitized.

e. A sanitizing solution shall be provided on the location of the mobile/pushcart so the unit and utensils can be kept cleaned and sanitized.

481—31.8(137F) Enforcement. A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of $100 for each violation. Prior to the assessment of any civil penalties, a hearing conducted by the appeals division in the department of inspections and appeals must be provided as required in rule 481—30.13(10A). Additionally, the department may employ various other remedies if violations are discovered:

1. A license may be revoked or suspended.
2. An injunction may be sought.
3. A case may be referred to a county or city attorney for criminal prosecution.

481—31.9(137F) Toilets and lavatories.

31.9(1) Retail food establishment license holders. Toilets and lavatories shall be well lighted and available to employees and patrons at all times. Retail food establishments built or remodeled after July 1, 1986, shall be electrically vented to the outside of the building.

31.9(2) Food service establishment license holders.

a. Toilets and lavatories shall be well lighted and available to employees and patrons at all times. Establishments built or remodeled after January 1, 1979, shall be electrically vented to the outside of the building. On-site restrooms are not required in the licensed premises when the licensed premises does not have on-site seating, and restrooms in the mall or shopping center are convenient and available to patrons and employees at all times.

b. Separate toilet facilities for men and women shall be provided in:

(1) Places built or remodeled after January 1, 1979, which seat 50 or more people, or

(2) All places built or remodeled after January 1, 1979, which serve beer or alcoholic beverages.

481—31.10(137F) Warewashing sinks in establishments serving alcoholic beverages. When alcoholic beverages are served in a food service establishment, a sink with not fewer than three compartments shall be used in the bar area for manual washing, rinsing and sanitizing of bar utensils and glasses. When food is served in a bar, a separate three-compartment sink for washing, rinsing and sanitizing food-related dishes shall be used in the kitchen area, unless a dishwasher is used to wash utensils.

481—31.11(137F) Criminal offense—conviction of license holder.

31.11(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed food establishment; and

b. Is convicted of a felony as a result.

31.11(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed food establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

31.11(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

31.11(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

These rules are intended to implement Iowa Code section 137F.7.

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CHAPTER 32
FOOD SERVICE ESTABLISHMENT INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Ch 23]

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CHAPTER 33
FOOD AND BEVERAGE VENDING MACHINES INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Ch 24]

Rescinded IAB 2/10/99, effective 3/17/99

*NOTE: Rules 30—33.1(159) to 30—33.4(159) and 30—34.1(159) to 30—34.4(159) transferred to Inspections and Appeals Department[481] and rescinded.

CHAPTER 34
HOME FOOD ESTABLISHMENTS

481—34.1(137D) Inspection standards.

34.1(1) All ingredients must come from a licensed or approved source except for fresh fruits and vegetables, nonhazardous baked goods and honey or eggs. The use of food in hermetically sealed containers not prepared in a licensed food processing plant is prohibited.

34.1(2) All food products and ingredients shall be stored in original containers. If removed from the original container, food and ingredients must be stored in labeled and closed containers. Container must be of a material that will not cause the food to become adulterated.

34.1(3) All food shall be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption. Food products shall not be stored on the floor.

34.1(4) All potentially hazardous food must be refrigerated at 45°F or less, or held at 140°F or higher to control bacteria growth. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165°F or higher before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

34.1(5) Food storage facilities must be kept clean and located to protect food from unsanitary conditions or contamination from any source at all times.

34.1(6) The floors, walls, ceilings, utensils, machinery, equipment and supplies in the food preparation area and all vehicles used in the transportation of food must be kept thoroughly clean. All food contact surfaces shall be easy to clean, smooth, nonabsorbent, and free of cracks or open seams.

34.1(7) All food must be protected against insects and rodents at all times. Outside doors, windows, and other openings must be fitted with screens and self-closing doors, if not otherwise protected. No dogs, cats, or other pets are allowed in the room where food is prepared or stored.

34.1(8) All garbage and refuse must be kept in containers and removed from the premises regularly to eliminate insects and rodents, offensive odors, or health or fire hazards. Garbage and refuse containers must be durable, easy to clean, insect- and rodent-resistant and of material that neither leaks, nor absorbs liquid.

34.1(9) All food handlers must be free from contagious or communicable diseases, sores or infected wounds, and must keep their hair covered and restrained.

34.1(10) All food handlers must keep themselves and their clothing clean. Hands must be washed as frequently as necessary to maintain good sanitation.

34.1(11) Smoking is not permitted while handling or preparing food or in food preparation or storage areas.

34.1(12) All establishments must have an adequate supply of hot and cold potable water under pressure from an approved source. Facilities must ensure that equipment, utensils, and containers used in the preparation of food shall be washed, rinsed and sanitized. If the residence is not served by a public water system, the water must be tested annually for nitrites and coliform. Records of water tests must be maintained by license holders who are not served by a public system. These records must be available to the regulatory authority upon request.

34.1(13) All establishments must have proper toilet facilities, equipped with a hand-washing lavatory, complete with hot and cold potable water under pressure and hand soap. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near the hand-washing facility.

34.1(14) Inspection findings shall be recorded on the inspection report form set out in Section 8-205 of the 1982 Edition of the FDA Retail Food Store Sanitation Code.

481—34.2(137D) Enforcement. All serious violations (four- and five-point items) shall be corrected within 10 days. Within 15 days, the license holder shall make a written report to the regulatory authority, stating the action taken to correct the serious violation. All one- and two-point items shall be corrected by the next routine inspection.

Violation of these rules or any provision of Iowa Code chapter 137D is a simple misdemeanor. The department may employ various remedies if violations are discovered.

A license may be revoked.

An injunction may be sought.

A case may be referred to a county attorney for criminal prosecution.

481—34.3(137D) Labeling requirement. All labels shall contain the following information in legible English:

1. Name and address of the person(s) preparing the food, and
2. Common name of the food.

481—34.4(137D) Annual gross sales. Annual gross sales shall not exceed $20,000. The license holder shall maintain a record of sales of food licensed under Iowa Code section 137D.1(3). The record shall be available to the regulatory authority when requested.

481—34.5(137D) Criminal offense—conviction of license holder.

34.5(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed home food establishment; and

b. Is convicted of a felony as a result.

34.5(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed home food establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

34.5(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

34.5(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

This rule is intended to implement Iowa Code section 137D.8(3).

These rules are intended to implement Iowa Code chapter 137D.

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CHAPTER 37
HOTEL AND MOTEL INSPECTIONS

481—37.1(137C) Building and grounds. Owners or managers are expected to keep hotels clean. This means there shall be no litter nor accumulation of refuse anywhere on the premises.

The floors, walls, and ceilings shall be kept clean and in good repair.

37.1(1) Screens or self-closing doors shall be used to keep flies, mosquitoes and other pests out of hotel lobbies, kitchens, or any other indoor area. Other effective methods are acceptable.

37.1(2) All garbage must be kept in metal or plastic containers with tight-fitting lids. Garbage must be removed regularly so it does not create offensive odors, a problem with insects or rodents, or health or fire hazards.

37.1(3) Any room or article which becomes infested with insects or vermin shall be cleaned or chemically treated until there are no more insects or vermin.

481—37.2(137C) Guest rooms. Hotels built or extensively remodeled as determined by the department, after January 1, 1979, shall provide ventilation in guest rooms with windows or mechanical devices. The furniture, drapes and accessories shall be kept clean and in good repair.

481—37.3(137C) Bedding. All materials used on a bed or any sleeping place shall be kept clean and in good repair.

37.3(1) There shall be an under sheet and top sheet for every bed. Pillows shall have pillow slips. The sheets shall be large enough to completely cover the mattress.

37.3(2) Each guest shall be furnished clean sheets and pillow slips.

37.3(3) All other bedding shall be aired between guests and shall be kept clean.

481—37.4(137C) Lavatory facilities. Hotels built or remodeled after January 1, 1979, shall have lavatory facilities in each guest room, except for bed and breakfast inns.

37.4(1) Each guest room shall be equipped with hot and cold running water. The fixtures must be easy to clean. The floors shall be nonabsorbent and impermeable so they can be washed with water.

37.4(2) Lavatory rooms shall be well-lighted and shall be vented to the outside of the building. This may be done with electric units.

37.4(3) Each guest shall have a clean towel each day.

37.4(4) Bed and breakfast inns shall provide at least one restroom which is available to overnight guests. The restroom must be equipped as provided in subrules 37.4(1) to 37.4(3).

481—37.5(137C) Glasses and ice.

37.5(1) Each guest shall have clean glasses to use. All cups, glasses or utensils usable more than once shall be sanitized by:

a. Immersion for at least one-half minute in clean, hot water at a temperature of at least 170°F; or

b. Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75°F; or

c. Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F; or

d. Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of a least 75°F for one minute.

37.5(2) When hot water is used for sanitizing, the following equipment shall be used:

a. An integral heating or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F; and

b. A numerically scaled indicating thermometer, accurate to ± 3°F, convenient to the sink for frequent checks of water temperature.

37.5(3) Ice kept for guests to use shall be protected from contamination. Lids on ice machines or storage bins shall be tight. Containers used to store ice shall be continuously drained and there shall be an air gap in addition to the drain. Standards in Chapter 4, "Equipment and Utensil Materials" of the 1976 edition of the Food Service Establishment Ordinance are to be met for equipment and utensils used to store or handle ice.

481—37.6(137C) Employees. No employer shall allow a person who has a communicable disease, as defined in Iowa Code chapter 139, to work in a hotel.

481—37.7(137C) Room rates. A list visible to the public posted near the office shall indicate room numbers and floor and the cost per day per person. The cost per day per person shall also be posted in each room.

481—37.8(137C) Inspections. Hotels shall be inspected at least once biennially. An inspector may enter a hotel at any reasonable hour and shall be given free access to every part of the premises for each inspection. The inspector shall receive any help needed to make a thorough and complete inspection.

481—37.9(137C) Enforcement. Violation of these rules or any provision of Iowa Code chapter 137C is a simple misdemeanor. The department may employ various remedies if violations are discovered.

A license may be revoked.

An injunction may be sought.

A case may be referred to a county attorney for criminal prosecution.

481—37.10(137C) Criminal offense—conviction of license holder.

37.10(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed hotel or motel establishment; and

b. Is convicted of a felony as a result.

37.10(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed hotel or motel establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

37.10(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

37.10(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

This rule is intended to implement Iowa Code section 137C.10(3).

These rules are intended to implement Iowa Code chapter 137C.

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CHAPTERS 38 and 39
Reserved

CHAPTER 40
FOSTER CARE FACILITY INSPECTIONS

481—40.1(10A) License surveys. The department of human services (DHS) will notify the department of inspections and appeals when someone has applied for approval, certification or license under Iowa Code chapter 232, 237, 238 or 600. A copy of the application is sent to the department of inspections and appeals and an inspection occurs to ensure compliance with the following Iowa Administrative Code chapters.

441—105 County and Multicounty Juvenile Detention Homes and County and Multicounty Juvenile Shelter Care Homes
441—107 Certification of Adoption Investigators
441—108 Child-Placing Agencies
441—112 Licensing and Regulation of Child Foster Care Facilities
441—114 Licensing and Regulation of All Group Living Foster Care Facilities for Children
441—115 Licensing and Regulation of Comprehensive Residential Facilities for Children
441—116 Licensing and Regulation of Residential Facilities for Mentally Retarded Children

481—40.2(10A) Unannounced inspections. The department of inspections and appeals staff will make unannounced inspections of licensed facilities.

This rule is intended to implement Iowa Code section 237.7.

481—40.3(10A) Results. The results of all inspections and recommendations are submitted to DHS.

481—40.4(10A) Ownership of records. All information concerning these inspections is the property of DHS and is governed by DHS rules of confidentiality. Public access relative to the Iowa fair information practices Act must be through DHS.

These rules are intended to implement Iowa Code sections 10A.502(5), 17A.3(1)*"b,"* and 22.11.

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CHAPTER 41
PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN (PMIC)

481—41.1(135H) Definitions.

"Nurse practitioner" means a registered professional nurse who is currently licensed to practice in the state, who meets state requirements and is currently licensed to practice nursing under the nursing board[655] rules in the Iowa Administrative Code.

"Physician" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy under Iowa Code chapter 148, 150 or 150A.

"Physician assistant" means a person licensed to practice under Iowa Code chapter 148C.

"Psychiatric services" means services provided under the direction of a physician which address mental, emotional, medical or behavioral problems.

"Resident" means a person who is less than 21 years of age and has been admitted by a physician to a psychiatric medical institution for children.

481—41.2(135H) Application for license. In order to obtain an initial license for a PMIC, the applicant must comply with Iowa Code chapter 135H and the rules in this chapter. Each applicant must submit the following documents to the department:

1. A completed Psychiatric Medical Institutions for Children application;
2. A copy of a department of human services license as a comprehensive residential care facility issued pursuant to Iowa Code section 237.3(2)*"a,"* or a copy of a license granted by the department of public health pursuant to Iowa Code section 125.13, as a facility which provides substance abuse treatment;
3. A floor plan of each floor of the facility on 8½" by 11" paper showing:
   Room areas in proportion,
   Room dimensions,
   Numbers for all rooms including bathrooms,
   A designation of use for each room, and
   Window and door locations;
4. A photograph of the front and side elevation of the facility;
5. The PMIC license fee; and
6. Evidence of:
   Accreditation by the joint commission on accreditation of health care organizations (JCAHO);
   Department of public health certificate of need;
   Department of human services determination of approval; and
   Three years under the direction of an agency which has operated a facility:
   - Licensed under Iowa Code section 237.3(2)*"a,"* or
   - Providing services exclusively to children or adolescents and the facility meets or exceeds the requirements for licensure under Iowa Code section 237.3(2)*"a."*

This rule is intended to implement Iowa Code sections 135H.4 and 135H.5.

481—41.3(135H) Renewal application or change of ownership. In order to renew a license or change ownership of the psychiatric medical institution for children, the applicant must submit to the department:

1. A completed application form 30 days before the renewal date or before the date of the ownership change;
2. The PMIC license fee; and
3. A copy of any revisions to the department of human services application for a comprehensive care residential facility license.

41.3(1) *Denial, suspension or revocation of a license.* The department may deny, suspend or revoke a PMIC license for any of the following reasons:

a. The applicant or licensee failed to comply with the rules in this chapter;

b. A resident is a victim of cruelty or neglect because of the acts or omissions of the licensee;

c. The licensee permitted, aided or abetted in the commission of an illegal act in the institution; or

d. The applicant or licensee attempted to obtain or retain a license by fraudulent means, misrepresentation, or by submitting false information.

The department will issue notice of denial, suspension or revocation by certified mail or by personal service.

41.3(2) *Appeal process.* When a license is denied, revoked or suspended, a hearing may be requested pursuant to 481—subrule 50.5(2) and shall be conducted pursuant to rule 481—50.6(10A). During the appeal process, the status of a license shall remain as it was on the date the hearing was requested. The status shall not change until a final decision is rendered by the department.

This rule is intended to implement Iowa Code sections 135H.8 and 135H.9.

481—41.4(135H) Licenses for distinct parts. Separate licenses may be issued for clearly identifiable parts of a health care facility as defined in Iowa Code section 135C.1 or a hospital as defined in Iowa Code section 135B.1. A distinct part must contain contiguous rooms in a separate wing or building or be on a separate floor of the facility. Distinct parts shall provide care and services of separate categories. The following requirements shall be met for licensing a distinct part:

41.4(1) The distinct part shall serve only children who require the category of care and services immediately available within that part.

41.4(2) The distinct part shall meet all the standards, rules and regulations which pertain to the category for which a license is sought.

41.4(3) The distinct part must be operationally and financially feasible.

41.4(4) A separate personal care staff with qualifications appropriate to the care and services offered must be regularly assigned and working in the distinct part under responsible management.

41.4(5) Separately licensed distinct parts may have some services such as management, building maintenance, laundry and dietary in common with each other.

481—41.5(135H) Variances. Variances from these rules may be granted by the director of the department:

1. When the need for a variance has been established; and
2. When there is no danger to the health, safety, welfare or rights of any child.

The variance will apply only to a specific PMIC.

Variances shall be reviewed at the time of each licensure survey by the department to determine continuing need.

41.5(1) To request a variance, the licensee must:

a. Apply in writing on a form provided by the department;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain how the variance is consistent with the individual program plans; and

e. Demonstrate that the requested variance will not endanger the health, safety, welfare or rights of any child.

41.5(2) Upon receipt of a request for variance, the director shall:

a. Examine the rule from which the variance is requested;

b. Evaluate the requested variance against the requirement of the rule to determine whether the request is necessary to meet the needs of the children; and

c. Examine the effect of the requested variance on the health, safety or welfare of the children.

481—41.6(135H) Notice to the department.

41.6(1) The department shall be notified at the times stated when the following events are expected to occur:

a. Thirty days before addition, alteration or new construction is begun in the PMIC or on the premises;

b. Thirty days in advance of closure of the PMIC;

c. Within two weeks of any change of administrator; and

d. Within 30 days when a change in the category of license is sought.

41.6(2) Prior to the purchase, transfer, assignment or lease of a PMIC the licensee shall:

a. Inform the department in writing of the pending sale, transfer, assignment or lease of the facility;

b. Inform the department in writing of the name and address of the prospective purchaser, transferee, assignee or lessee at least 30 days before the sale, transfer, assignment or lease is complete;

c. Submit written authorization to the department permitting the department to release information of whatever kind from department files concerning the licensee's PMIC to the named prospective purchaser, transferee, assignee or lessee.

481—41.7(135H) Inspection of complaints. The department shall conduct a preliminary review of all complaints filed against a PMIC. Unless a complaint is determined to be intended as harassment or to be without reasonable basis, the department shall inspect the PMIC within 20 working days of receipt of the complaint.

This rule is intended to implement Iowa Code section 135H.12.

481—41.8(135H) General requirement. Inpatient psychiatric services for recipients under age 21 must be provided under the direction of a physician.

When a resident has received services immediately before reaching age 21, services must be complete before the earlier of the following:

1. The date the recipient no longer requires services; or
2. The date the recipient reaches age 22.

481—41.9(135H) Certification of need for services. All recipients of services shall have written certification which ensures the following:

1. Ambulatory care resources available in the community do not meet the treatment needs of the recipient;
2. Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and
3. The services can reasonably be expected to improve the recipient's condition or prevent further regression so services will no longer be needed.

Certification of need shall be completed by the team described in subrules 41.13(2) and 41.13(3). Certification must be made at the time of admission by an independent team for Medicaid recipients. For emergency admissions, the certification must be made by the team described in 41.13(135H) within 14 days after admission. If an individual applies for Medicaid while in a PMIC, certification of need must be made by the team described in 41.13(135H) before a Medicaid agency authorizes payment.

481—41.10(135H) Active treatment. Inpatient psychiatric services must involve "active treatment," which means implementation of a professionally developed and supervised individual plan of care as described in rule 41.12(135H). The plan of care shall be:

1. Developed and implemented no later than 14 days after admission; and
2. Designed to achieve discharge from inpatient status at the earliest possible time.

481—41.11(135H) Individual plan of care. "Individual plan of care" means a written plan developed for each child. The plan of care shall be designed to improve the condition of each child to the extent that inpatient care is no longer necessary.

41.11(1) The plan of care must be based on a diagnostic evaluation that includes examination of the:

a. Medical,
b. Psychological,
c. Social,
d. Behavioral, and
e. Developmental aspects of the child's situation.

The plan of care shall reflect the need for inpatient psychiatric care.

41.11(2) The plan of care shall be developed by the team of professionals specified in rule 41.13(135H) in consultation with the recipient, the parents, legal guardian or other person into whose care the child will be released after discharge. The plan of care shall include:

a. Diagnoses, symptoms, complaints and complications indicating the need for admission;
b. Treatment objectives;
c. An integrated program of therapies, activities and experiences designed to meet the objectives;
d. A description of the functional level of the individual;
e. Any orders for:
(1) Medications,
(2) Treatments,
(3) Restorative and rehabilitative services,
(4) Activities,
(5) Therapies,
(6) Social services,
(7) Diet, and
(8) Special procedures recommended for the health and safety of the patient; and
f. At an appropriate time, postdischarge plans and coordination of inpatient services with partial discharge plans and related community services to ensure continuity of care with the recipient's family, school and community upon discharge.

41.11(3) The plan of care shall be reviewed every 30 days by the team referred to in rule 41.13(135H) to:

a. Determine that services being provided are or were required on an inpatient basis; and
b. Recommend changes in the plan as indicated by the recipient's overall adjustment as an inpatient.

This rule is intended to implement Iowa Code section 135H.3.

481—41.12(135H) Individual written plan of care. Before admission to a PMIC and before authorization for payment, the attending physician or staff physician must establish written plans for continuing care including review and modification of the plan of care.

481—41.13(135H) Plan of care team. The individual plan of care shall be developed by an interdisciplinary team of physicians and other personnel who are employed by the facility or provide services to patients.

41.13(1) Based on education and experience, the team must be capable of:

a. Assessing the recipient's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;

b. Assessing the potential resources of the recipient's family;

c. Setting treatment objectives; and

d. Prescribing therapeutic modalities to achieve the plan's objectives.

41.13(2) The team shall include at least one member who is experienced in child psychiatry or child psychology and must include, as a minimum, either:

a. A board-eligible or board-certified psychiatrist; or

b. A clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; or

c. A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnoses and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the state psychological association.

41.13(3) The team must also include one of the following:

a. A psychiatric social worker;

b. A registered nurse with specialized training or one year of experience in treating mentally ill individuals;

c. A licensed occupational therapist who has specialized training in treating mentally ill individuals; or

d. A psychologist who has a master's degree in clinical psychology or who has been certified by the state psychological association.

This rule is intended to implement Iowa Code section 135H.3.

481—41.14(135H) Required discharge. The licensee shall not refuse to discharge a child when directed by the physician, parent or legal guardian unless so directed by the court.

481—41.15(135H) Criminal behavior involving children. A person who has a record of a criminal conviction or a founded child abuse or dependent adult abuse shall not be licensed to operate, be employed by, or reside in a PMIC unless an evaluation of the crime or founded child or dependent adult abuse has been made by the department of human services which concludes that the crime or founded child or dependent adult abuse does not merit prohibition of employment.

41.15(1) A PMIC shall request that the department of human services (DHS) conduct a criminal and child abuse record check, when a person is being considered for licensure or for employment if the person will:

a. Have direct responsibility for a child;

b. Have access to a child when the child is alone; or

c. Reside in the facility.

41.15(2) A PMIC shall inform all new applicants for employment of the requirement for the criminal and child abuse record checks and the possibility of a dependent adult abuse record check. The PMIC shall obtain, from the applicant, a signed acknowledgment of the receipt of this information.

41.15(3) A PMIC shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

41.15(4) DHS will inform the PMIC of the results of the criminal, child abuse, and dependent adult abuse record checks. If a record of a criminal conviction or founded child or dependent adult abuse exists, the PMIC will be informed on Form 470-2310, "Record Check Evaluation." The subject of the report shall complete that form and it shall be returned to DHS to request evaluation of the record to determine whether prohibition of the person's licensure, employment, or residence is warranted.

41.15(5) If the evaluation is not requested or if the DHS determines that the person has committed a crime or has a record of founded child abuse or dependent adult abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed to operate, be employed by, or reside in a PMIC.

This rule is intended to implement Iowa Code section 135H.7.

481—41.16(22,135H) Confidential or open information. The department maintains files for psychiatric medical institutions for children. These files are organized by facility name and contain both open and confidential information.

41.16(1) Open information includes:

a. License application and status;

b. Variance requests and responses;

c. Final findings of state license survey investigations;

d. Records of complaints;

e. Plans of correction submitted by the facility;

f. Medicaid status; and

g. Official notices of license sanctions.

41.16(2) Confidential information includes:

a. Inspection or investigation information which does not comprise a final finding. This information may be made public in a proceeding concerning the denial, suspension or revocation of a license, under Iowa Code section 135H.8;

b. Names of all complainants; and

c. Names of children in all facilities, identifying information and the address of anyone other than an owner.

This rule is intended to implement Iowa Code sections 22.11, 135H.11 and 135H.13.

This chapter is intended to implement Iowa Code chapters 17A, 22 and 135H.

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CHAPTERS 42 to 49
Reserved

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58.7(2) The following requirements shall be met for a separate licensing of a distinct part:

a. The distinct part shall serve only residents who require the category of care and services immediately available to them within that part; (III)

b. The distinct part shall meet all the standards, rules, and regulations pertaining to the category for which a license is being sought;

c. A distinct part must be operationally and financially feasible;

d. A separate staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management; (III)

e. Separately licensed distinct parts may have certain services such as management, building maintenance, laundry, and dietary in common with each other.

481—58.8(135C) Administrator.

58.8(1) Each intermediate care facility shall have one person in charge, duly licensed as a nursing home administrator or acting in a provisional capacity. (III)

58.8(2) A licensed administrator may act as an administrator for not more than two intermediate care facilities.

a. The distance between the two facilities shall be no greater than 50 miles. (II)

b. The administrator shall spend the equivalent of three full eight-hour days per week in each facility. (II)

c. The administrator may be responsible for no more than 150 beds in total if the administrator is an administrator of more than one facility. (II)

58.8(3) The licensee may be the licensed nursing home administrator providing the licensee meets the requirements as set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet the requirement. (III)

58.8(4) A provisional administrator may be appointed on a temporary basis by the intermediate care facility licensee to assume the administrative duties when the facility, through no fault of its own, has lost its administrator and has been unable to replace the administrator provided that no facility licensed under Iowa Code chapter 135C shall be permitted to have a provisional administrator for more than 6 months in any 12-month period and further provided that:

a. The department has been notified prior to the date of the administrator's appointment; (III)

b. The board of examiners for nursing home administrators has approved the administrator's appointment and has confirmed such appointment in writing to the department. (III)

58.8(5) In the absence of the administrator, a responsible person shall be designated in writing to the department to be in charge of the facility. (III) The person designated shall:

a. Be knowledgeable of the operation of the facility; (III)

b. Have access to records concerned with the operation of the facility; (III)

c. Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)

d. Be at least 18 years of age; (III)

e. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)

f. Have had training to carry out assignments and take care of emergencies and sudden illness of residents. (III)

58.8(6) A licensed administrator in charge of two facilities shall employ an individual designated as a full-time assistant administrator for each facility. (III)

58.8(7) An administrator of only one facility shall be considered as a full-time employee. Full-time employment is defined as 40 hours per week. (III)

481—58.9(135C) Administration.

58.9(1) The licensee shall:

a. Assume the responsibility for the overall operation of the intermediate care facility; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (III)

c. Establish written policies, which shall be available for review, for the operation of the intermediate care facility. (III)

58.9(2) The administrator shall:

a. Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

b. Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs to increase skills and knowledge needed for the position; (III)

c. Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

d. Make available the intermediate care facility payroll records for departmental review as needed; (III)

e. Be required to maintain a staffing pattern of all departments. These records must be maintained for six months and are to be made available for departmental review. (III)

481—58.10(135C) General policies.

58.10(1) There shall be written personnel policies in facilities of more than 15 beds to include hours of work, and attendance at educational programs. (III)

58.10(2) There shall be a written job description developed for each category of worker. The job description shall include title of job, job summary, pay range, qualifications (formal education and experience), skills needed, physical requirements, and responsibilities. (III)

58.10(3) There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

a. Employees shall have a physical examination and tuberculin test before employment; (I, II, III)

b. Employees shall have a physical examination at least every four years, including an assessment of tuberculosis status. (I, II, III)

58.10(4) Health certificates for all employees shall be available for review. (III)

58.10(5) Rescinded IAB 10/19/88, effective 11/23/88.

58.10(6) There shall be written policies for emergency medical care for employees and residents in case of sudden illness or accident which includes the individual to be contacted in case of emergency. (III)

58.10(7) The facility shall have a written agreement with a hospital for the timely admission of a resident who, in the opinion of the attending physician, requires hospitalization. (III)

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5.4(3) Describe the proposed management of your facility and identify management personnel by function and, with respect to personnel, please furnish personal history résumés on forms provided by the commission. Attach a copy of any written contract or describe the terms of any oral agreement between applicant and the employee.

5.4(4) Provide financial projections reflecting the development period and the first five succeeding years. Show the number of racing days needed to break even and the optimum number of racing days the applicant seeks. Include any and all known feasibility studies which have been done on the type of racing in the particular locale where the applicant intends to conduct racing.

491—5.5(99D) Economic, demographic, and other. Every application to become a license holder shall contain the following economic, demographic, and miscellaneous information:

5.5(1) Describe briefly climatic conditions prevalent during the proposed racing season.

5.5(2) Indicate the population of the local area, and the growth trend. Indicate the potential market, including tourists, transients, and patrons from neighboring areas.

5.5(3) Indicate the principal sources of local income, showing the percentage from farming and ranching, industrial, professional and services, and military and other governmental sources.

5.5(4) Indicate the effect of competition with other racetracks in and out of the state and with other sports or recreational facilities in the area. State in detail what effect the competition from other racetracks will have on the availability of racing stock and track personnel.

5.5(5) Indicate what effect opposition from area residents will have on the economic outlook for the proposed track.

491—5.6(99D) Commission approval of sale. In the event the control, whether majority or less of the capital stock, of any corporation holding a license for racing from the commission is to be conveyed, no sale or conveyance shall take effect until approval is obtained from the Iowa racing and gaming commission. The application of the purchaser for the permission and approval of the racing and gaming commission shall contain, where applicable, the same information as is required to be furnished under rule 5.2(99D).

491—5.7(99D) Duties and obligations.

5.7(1) Duties and obligations of applicants and licensees. No person shall give or promise to give anything of value with the intent to influence the action or decision of an individual, on any matter brought before that individual acting in the individual's official capacity, including but not limited to:

a. Any member of the commission.

b. Any officer, agent or employee of the state of Iowa or a political subdivision of the state or an office holder or candidate for public office.

c. Any spouse, lineal heir, or employee of any of the persons listed in paragraph *"a"* or *"b"* of this subrule.

5.7(2) Upon application to the commission, prior to entering into any such contract or doing any business, or making any such payment or contribution, the provision of subrule 5.7(1) may be waived by the commission, in its discretion, if the proposed contract, or the proposed business, or any proposed payment or contribution, is, under the circumstances, advantageous to the applicant in the conduct of its business of racing.

5.7(3) If any officer, director, or stockholder of the applicant, or any officer or director of any corporation which is a stockholder of the applicant, or any spouse or lineal heir of any such person, or any corporation in which an officer, director, or stockholder is a stockholder shall:

a. Contract with the applicant, except for bona fide contracts for salaries for directors and officers actually serving as such or for professional services actually rendered; or

b. Provide goods or services which are ultimately sold to applicant's patrons; then describe such contract, provision, or arrangement.

5.7(4) Evidence of character and reputation. The commission will not issue a license to an applicant if there is substantial evidence that the officers, directors, partners or shareholders of the applicant are not of good repute and moral character. Any evidence concerning an officer's, director's, partner's or shareholder's current or past conduct, dealings, habits, or associations which is otherwise relevant to that individual's character and reputation may be considered. The commission may consider all relevant facts surrounding alleged criminal or wrongful conduct resulting in the filing of criminal charges, a conviction, nolo contendere, no contest or Alford pleas entered by the applicant or operator in any court or administrative proceedings. A criminal conviction of an individual will be conclusive evidence that the individual committed the offense for which the individual was convicted, but this does not preclude the commission from considering evidence that the individual committed additional offenses. The commission will decide what weight and effect evidence about an officer, director, partner or shareholders should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. Officers, directors, partners and shareholders who have a significant interest in the management, ownership, operation, or success of an application may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role in such matters.

This rule is intended to implement Iowa Code sections 99D.7 and 99D.9.

491—5.8(99D) Commission approval of contracts. Rescinded IAB 4/14/93, effective 3/22/93.

491—5.9(99D) Availability of minutes. Minutes of the meetings of stockholders and directors of the applicant shall be made available to the commissioners, but copies thereof need not be filed as a matter of record in the office of the commission.

491—5.10(99D) Leased facilities. If any applicant for a license will lease a racing facility from another entity, the lessor shall be required to provide the same information required by these rules to the commission including copies of all leases, agreements, and contracts of any nature between the lessor entity and the applicant.

491—5.11(99D) Additional information. The commission may require any additional information it deems necessary from the applicant for the purpose of ruling on the license application.

5.15(8) *Security plan.* Security plans are subject to commission approval and shall be updated annually. Under a separate cover marked confidential, provide detailed security plan with the following information:

a. Location of central security office.

b. Describe security coverage of restricted areas including, but not limited to, money room, stable/kennel area, paddock, testing barn, mutuel lines and all entrances (during racing and during off hours). Describe the size and stationing of security staff.

c. Describe arrangement made for transporting cash through public areas.

d. Describe arrangements for liaison with local law enforcement agencies, expected response time and provisions for on-site police officers with arrest powers.

e. Provide after hour telephone numbers for key personnel.

f. Describe security procedures for transporting start-up cash to the track, transporting deposits to financial institutions and storage of cash at the track.

g. Describe fencing and gates around the stable/kennel area.

5.15(9) *Certification.* A certification will be provided by both the president of the association and the general manager that all contracts and financial documents described in rule 491—4.28(99D,99F) have been submitted to the commission for approval.

5.15(10) *Gambling treatment program.*

a. The holder of a license to operate gambling games within a racetrack enclosure shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) Training of key employees to identify and report suspected problem gamblers;

(2) Procedures for recording and tracking identified problem gamblers;

(3) Policies designed to prevent serving alcohol to intoxicated casino patrons;

(4) Steps for removing problem gamblers from the casino; and

(5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include in its racing program and a substantial number of its advertisements information on the availability of the gambling treatment program.

5.15(11) *Other information.* The association shall submit all other information specifically requested in writing by the commission or administrator.

5.15(12) *Confidential license.* The commission may approve a license renewal request based upon specific performance or condition that the commission may deem appropriate and falls within the authority granted to the commission under Iowa Code chapter 99D.

5.15(13) *Changes in approval requests.* Once a license has been renewed, any changes to the items approved by the commission shall be requested in writing and subject to the written approval of the administrator.

491—5.16(99D) Track licensee's and general manager's responsibilities.

5.16(1) *Maintenance of grounds, facilities and uniform track.* Each licensee shall at all times maintain its grounds and facilities so as to be neat and clean, well-landscaped, painted and in good repair, handicap accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance; with special consideration for the health and safety of the racing animals.

a. Insect and rodent control. The association shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas and mice, to all areas of association premises at all times during a race meeting.

b. Stalls. In horse racing only, the association shall ensure that racing animals are stabled in individual box stalls; that the stables and immediate surrounding area are maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse are kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.

c. Paddocks and equipment. In horse racing only, management shall be responsible that paddocks, starting gates and other equipment subjected to contact by different animals be kept in a clean condition and free of dangerous surfaces.

d. Receiving barn and stalls. Each association shall provide a conveniently located receiving barn or stalls for the use of arriving horses during the meeting. The barn shall have adequate stable room and facilities, hot and cold water, and stall bedding. The association shall employ attendants to operate and maintain in clean and healthy condition the receiving barn or stalls.

5.16(2) *Racetrack.*

a. Each horse racing licensee shall provide:

(1) The surface of a racetrack, including the cushion, subsurface and base, must be designed, constructed and maintained to provide for the safety of the jockeys and racing animals.

(2) Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

(3) An association shall provide an adequate drainage system for the racetrack.

(4) An association shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The association shall provide backup equipment for maintaining the track surface. An association that conducts races on a turf track shall:

1. Maintain an adequate stockpile of growing medium; and
2. Provide a system capable of adequately watering the entire turf course evenly.

(5) Rails.

1. Racetracks, including turf tracks, shall have inside and outside rails including gap rails, designed, constructed and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the commission prior to the first race meeting at the track.
2. The top of the rail must be at least 38 inches but not more than 44 inches above the top of the cushion. The inside rail shall have no less than a 24-inch overhang with a continuous smooth cover.
3. All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

b. Each greyhound racing licensee shall provide a race course which:

(1) Is constructed and elevated in a manner that is safe and humane for greyhounds.

(2) Has a surface, including the cushion subsurface and base, that is constructed of materials and to a depth that adequately provides for the safety of the greyhounds.

(3) Has a drainage system that is approved by the commission.

(4) Must be approved by the commission and be subject to periodic inspections by the commission.

5.16(3) *Horsemen's bookkeeper.*

a. General authority. The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the association and commission may prescribe.

b. Records.

(1) The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(2) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements and registrations of authorized agents.

5.16(14) *Conditions for license.* Every license to hold a race meeting in Iowa is granted upon the condition that the licensee shall accept, observe, and enforce the rules of the commission. Furthermore, it shall be the duty of each and every officer, director and every official and employee to observe and enforce the rules. Failure to comply with the rules of the commission may result in penalties the commission deems proper, including fine, suspension or revocation of the license.

5.16(15) *Commission approval of plans.* Any licensee contemplating any change of any kind pertaining to the racetrack itself, or the erection of any buildings, stands or other structures, or the remodeling of any of these which are to be used as a part of the facilities, must first submit plans to and receive the approval of the commission.

5.16(16) *Photo finish camera.* An association shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish devices must be approved by the commission before its first use in a race. The association shall promptly post a photograph, on a monitor, of each photo finish for win, place or show, or fourth place in superfecta races in an area accessible to the public. The association shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the association shall provide, without cost, a print of a photo finish to the commission. A photo finish of each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the administrator.

5.16(17) *Starting gate (horse racing only).*

a. During racing hours, an association shall provide at least two operable padded starting gates which have been approved by the commission.

b. An association shall make at least one starting gate and qualified starting gate personnel available for schooling during designated training hours.

c. If a race is started at a place other than in a chute, the association shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

5.16(18) *Distance markers (horse racing only).*

a. An association shall provide and maintain starting point markers and distance poles in a size and position that is clearly seen from the steward's stand.

b. The starting point markers and distance poles must be marked as follows:

1/4 poles	red and white horizontal stripes
1/8 poles	green and white horizontal stripes
1/16 poles	black and white horizontal stripes
220 yards	green and white
250 yards	blue
300 yards	yellow
330 yards	black and white
350 yards	red
400 yards	black
440 yards	red and white
550 yards	black and white horizontal stripes
660 yards	green and white horizontal stripes
770 yards	black and white horizontal stripes
870 yards	blue and white horizontal stripes

5.16(19) *Detention enclosure (horse racing only).* Each association shall maintain a detention enclosure for use by the commission in securing, from horses who have run in a race, samples of urine, saliva, blood or other bodily substances or tissues for chemical analysis. The enclosure shall include a wash rack, commission veterinarian office, and a walking ring. At least four stalls, a workroom for the sample collectors with hot and cold running water, and glass observation windows for viewing the horses from the office and workroom. An owner, trainer or designated representative, licensed by the commission, shall be with a horse at all times in the detention barn.

5.16(20) *Ambulance.* In horse racing only, an association shall maintain, on the grounds during every day that its track is open for racing or exercising, an ambulance for humans and an ambulance for horses, equipped according to prevailing standards and manned by medical doctors, paramedics or other personnel trained to operate them. When an ambulance is used for transfer of a horse or patient to medical facilities, a replacement ambulance must be furnished by the track to comply with this rule.

5.16(21) *Helmets and vests.* The association shall not allow any person to exercise any horse on association grounds unless that person is wearing a protective helmet and safety vest of a type approved by the commission.

5.16(22) *Fire protection.* The association shall develop and implement a program for fire prevention on association premises in accordance with applicable state fire codes. The association shall instruct employees working on association premises of procedures for fire prevention and evacuation.

In horse racing only, in accordance with applicable state fire codes, for the protection of persons and property from fire damage, the association shall prohibit the following:

a. Smoking in horse stalls, feed and tack rooms, and in the alleyways,

b. Sleeping in feed rooms or stalls,

c. Open fires and oil- or gasoline-burning lanterns or lamps in the stable area,

d. Leaving electrical appliances in use unattended or in unsafe proximity to walls, beds or furnishings,

e. Keeping flammable materials, including cleaning fluids or solvents, in the stable area.

5.16(23) *Electric timing device.* Any electric timing device used by the association shall be approved by the commission.

5.16(24) *Official scale.* The association shall provide and maintain in good working order an official scale or other approved weighing device in the paddock. The association shall provide to the stewards certification of the accuracy of the scale at the beginning of each race meeting or more frequently if requested by the stewards.

5.16(25) *Track payroll to commission office.* The racing association shall provide commission office with a copy of all payroll upon request so it may be determined whether all employees have been licensed.

5.16(26) *Outriders.* During each race of a performance, the licensee shall provide a minimum of two outriders.

5.16(27) *Failure to comply.* Failure of the track licensee or general manager, or both, to comply with provisions of this rule shall be prima facie evidence that a violation of these rules has occurred.

These rules are intended to implement Iowa Code chapter 99D.

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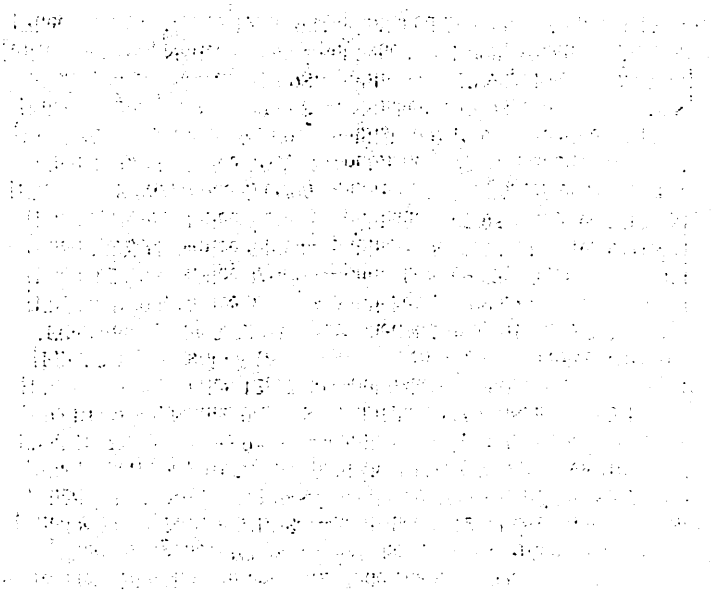
◊ Two ARCs
*Effective date of 5.1(5)"*c*" delayed until the end of the 1999 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 1998.



e. Wager on the outcome of any race under the jurisdiction of the commission;

f. Accept or receive money or anything of value for the official's assistance in connection with the official's duties;

g. Be licensed in any other capacity without permission of the commission, or in case of an emergency, the permission of the stewards;

h. Consume or be under the influence of alcohol or any prohibited substance while performing official duties.

10.2(4) *Report of violations.* Every racing official and assistant(s) is responsible to report immediately to the stewards of the meeting every observed violation of these rules and of the laws of this state which occur within the official's jurisdiction.

10.2(5) *Single official appointment.* No official appointed to any meeting, except placing judges, may hold more than one official position listed in 10.2(1) unless in the determination of the stewards or commission, the holding of more than one appointment would not subject the official to a conflict of interests and duties in the two appointments.

10.2(6) *Stewards.* (For practice and procedure before the stewards and the racing commission, see Chapter 4.)

a. General authority.

(1) General. The board of stewards for each racing meet shall be responsible to the commission for the conduct of the racing meet in accordance with the laws of this state and the rules adopted by the commission. The stewards shall have authority to resolve conflicts or disputes between all other racing officials, licensees, and those persons addressed by 491—4.6(99D,99F), numbered paragraph "8," where the disputes are reasonably related to the conduct of a race, or races, and to punish violators of these rules in accordance with provisions of these rules.

(2) Appointment of substitute. Should any steward be absent at race time, the other two stewards shall agree on the appointment of a deputy for the absent steward or if they are unable to agree on a deputy, then the racing secretary shall appoint a deputy for that race. If any deputy steward is appointed, the commission shall be notified immediately by the stewards.

(3) Attendance. All three stewards shall be present in the stand during the running of each race, except during simulcasting when one commission steward or commission representative shall be on the premises.

(4) Period of authority. The period of authority shall commence 30 days prior to the beginning of each racing or simulcasting meet and shall terminate 30 days after the end of each racing or simulcasting meet or with the completion of their business pertaining to the meeting.

(5) Initiate action. Stewards may, from their own observations, take notice of alleged misconduct or rule violations and initiate investigations and compliance of possible rule violations.

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of racing during racing and simulcasting. They shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose fines or suspensions within the limits and procedures of the Iowa racing commission. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final for purposes of distribution of the pari-mutuel pool.

(7) Racetrack policies. It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with the racetrack policies as published in literature distributed by the racetrack or posted in a conspicuous location.

b. Duties of stewards.

(1) The laws of Iowa and the rules of racing supersede the conditions of a race and the regulations of a racing meet and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the association.

(2) The stewards shall have the authority to interpret the rules and to decide all questions not specifically covered by them.

(3) All questions pertaining to which their authority extends shall be determined by a majority of the stewards.

(4) The stewards shall have the authority to regulate and control owners, trainers, grooms and other persons attendant to horses, officials, licensed personnel of the meeting, and those persons addressed by 491—4.3(99D,99F), numbered paragraph "8."

(5) The stewards shall have control over and access to all areas of the racetrack grounds.

(6) The stewards shall have the authority to determine all questions arising with reference to entries and racing.

(7) Persons entering horses to run on licensed Iowa tracks agree in so doing to accept the decision of the stewards on any questions relating to a race or racing.

(8) The stewards shall have the authority to punish for violation of the rules any person subject to their control and in their discretion to impose fines or suspensions or both for infractions.

(9) The stewards shall have the authority to order the exclusion or ejection from all premises and enclosures of the association any person who is disqualified for corrupt practices on any race course in any country.

(10) The stewards shall have the authority to call for proof that a horse is neither itself disqualified in any respect, nor nominated by, nor the property, wholly or in part, of a disqualified person, and in default of proof being given to their satisfaction, they may declare the horse disqualified.

(11) The stewards shall have the authority at any time to order an examination, by person or persons they think fit, of any horse entered for a race or which has run in a race.

(12) The stewards shall take notice of any questionable conduct with or without complaint and shall investigate promptly and render a decision on every objection and on every complaint made to them.

(13) The stewards, in order to maintain necessary safety and health conditions and to protect the public confidence in horse racing as a sport, shall have the right to authorize a person or persons in their behalf to enter into or upon the buildings, barns, motor vehicles, trailers or other places within the grounds of a licensed racetrack, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

(14) Upon the finding of a violation of these rules, or an attempted violation, on the grounds of a licensed facility, the stewards may suspend the license of any person for one calendar year or racing season, whichever is greater, or they may impose a fine not to exceed $1000 or both. In addition, the stewards may redistribute the purse. They may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing commission or a board of stewards of any recognized meeting. They may also order the redistribution of purse payments where appropriate. All suspensions and fines must be reported to the commission. If the punishment so imposed is not, in the opinion of the stewards, sufficient, they shall so report to the commission. All fines and suspensions imposed by the stewards shall be promptly reported to the racing secretary and racing commission.

c. Emergency authority.

(1) Substitute officials. When in an emergency any official is unable to discharge duties, the stewards may approve the appointment of a substitute and shall report it immediately to the commission.

(2) Substitute jockeys. The stewards have the authority in an emergency to place a substitute jockey on any horse in the event the trainer does not do so. Before using that authority, the stewards shall in good faith attempt to inform the trainer of the emergency and to afford the trainer the opportunity to appoint a substitute jockey. If the trainer cannot be contacted, or if the trainer is contacted but fails to appoint a substitute jockey and to inform the stewards by 30 minutes prior to post time, then the stewards may appoint under this rule.

(3) Substitute trainer. The stewards have the authority in an emergency to designate a substitute trainer for any horse.

(4) Excuse horse. In case of accident or injury to a horse or any other emergency deemed by the stewards before the start of any race, the stewards may excuse the horse from starting.

(5) Exercise authority. No licensee may exercise a horse on the track between races unless upon the approval of the stewards.

(6) At the discretion of the stewards, any horse(s) precluded from having a fair start may be declared a nonstarter, and any wagers involving said horse(s) may be ordered refunded.

d. Investigations and decisions.

(1) Investigations. The stewards may, upon direction of the commission, conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses and submit a written report of every such inquiry made by them to the commission.

(2) Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering or determine that the conduct of the race would not be in the interest of the regulation of the pari-mutuel wagering industry or in the public confidence in racing. The stewards shall cancel trifecta wagering anytime there are fewer than seven betting interests at the time the horses leave the paddock for the post. The administrator may approve smaller fields for trifecta wagering if extraneous circumstances are shown by the licensee.

(3) Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer or other persons connected with the horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win or finish as near as possible to first.

(4) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and shall place any horse found to be disqualified behind others in the race with which it interfered or may place the offending horse last in the race.

2. Coupled entry. When a horse is disqualified under this rule and that horse was a part of a coupled entry and, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may, at their discretion, disqualify the other part of the entry.

3. Jockey guilty of foul. The stewards may discipline any jockey whose horse has been disqualified as a result of a foul committed during the running of a race.

(5) Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and file reports daily with the commission.

1. Involving fraud. Protests involving fraud may be made by any person at any time to the stewards.

2. Not involving fraud. Protests, except those involving fraud, may be filed only by the owner of a horse, authorized agent, the trainer, or the jockey of the horse in the race over which the protest is made. The protest must be made to the clerk of the scales or to the stewards before the race is declared official. If the placement of the starting gate is in error, no protest may be made, unless entered prior to the start of the race.

3. Protest to clerk of scales. A jockey who intends to enter a protest to the clerk of scales following the running of any race, and before the race is declared official, shall notify the clerk of scales of this intention immediately upon the arrival of the jockey at the scales or a person designated by the stewards to be notified.

4. Prize money of protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race shall be paid to and held by the horsemen's accountant until the protest is decided.

5. Protest in writing. A protest, other than one arising out of the actual running of a race, must be in writing, signed by the complainant, and filed with the stewards one hour before post time of the race out of which the protest arises.

6. Frivolous protests. No person or licensee shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

10.2(7) *Racing secretary.*

a. General authority. The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due, and recording of racing results. The racing secretary shall permit no person other than licensed racing officials to enter the racing secretary's office or work areas until such time as all entries are closed, drawn, smoked, etc. Exceptions to this rule must be approved by the stewards.

(1) Minimum purse. Thirty days prior to the opening of a race meeting, the association shall present to the commission for approval the proposed purse structure for the race meeting including the minimum purse to be offered. Any contract with an organization representing the horsemen shall also be presented for commission approval at this time.

(2) Purse supplements for Iowa-bred horses. The commission shall also approve the proposed plan for purse supplements for the owners of Iowa-bred horses to be funded by the breakage as provided in Iowa Code section 99D.12.

b. Conditions. The secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers and the commission. Unless otherwise provided by the conditions, the winner of a certain sum means the winner of a single race of that sum. Corrections to the conditions must be made within 24 hours of publication.

c. Posting of entries. Upon the closing of entries each day, the secretary shall post a list of entries in a conspicuous location in the office of the secretary and furnish that list to local newspaper, radio and television stations.

d. Stakes and entrance money records. The secretary shall be caretaker of the permanent records of all stakes, entrance moneys and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.

e. Record of racing. The secretary shall no later than the day following each race, attach or endorse on the registration certificate of each horse winning in any race the fact of that winning performance and the distance, the date of the race, and the type or conditions of the race.

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CHAPTER 11
APPLICATION FOR TAX CREDIT BY HORSE RACING LICENSEES
Rescinded IAB 8/17/94, effective 9/21/94

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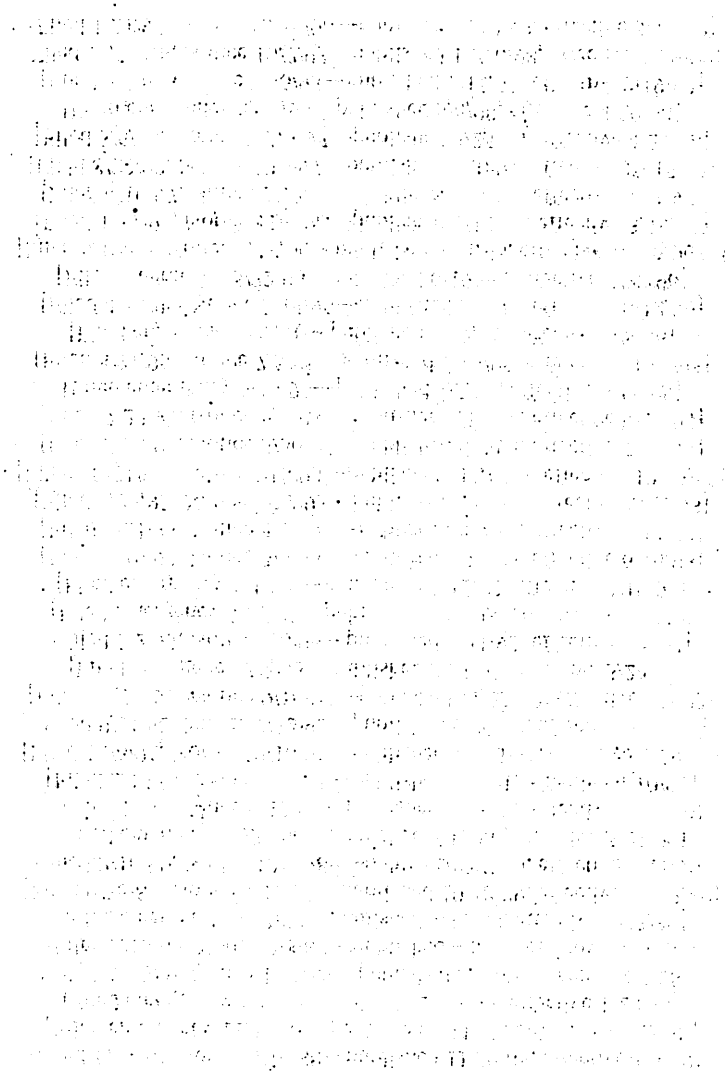

491—20.15(99F) Duties and obligations of nonprofit applicant and proposed operators.

20.15(1) *Duties and obligations of applicants and licensees.* No person shall give or promise to give anything of value with the intent to influence the action or decision of an individual on any matter brought before that individual acting in the individual's official capacity including but not limited to:

a. Any member of the commission.

b. Any officer, agent or employee of the state of Iowa or a political subdivision of the state or an officeholder or candidate for public office.

c. Any spouse, lineal heir, or employee of any of the persons listed in paragraph *"a"* or *"b"* of this subrule.

20.15(2) *Political campaign contributions.* This rule shall not prohibit a licensed boat operator or an applicant for a boat operator's license from making political campaign contributions otherwise legal under state and federal law.

20.15(3) *Powers of the commission.* Without in any way limiting the powers of the commission, the commission may provide:

a. That a time period be accelerated or extended; or

b. That the processing of an application or to the granting of an approval, subject to such conditions as the commission may deem appropriate.

20.15(4) *Evidence of character and reputation.* The commission will not issue a license to an applicant if there is substantial evidence that the officers, directors, partners or shareholders of the applicant are not of good repute and moral character. Any evidence concerning an officer's, director's, partner's or shareholder's current or past conduct, dealings, habits, or associations which is otherwise relevant to that individual's character and reputation may be considered. The commission may consider all relevant facts surrounding alleged criminal or wrongful conduct resulting in the filing of criminal charges, a conviction, nolo contendere, no contest or Alford pleas entered by the applicant or operator in any court or administrative proceedings. A criminal conviction of an individual will be conclusive evidence that the individual committed the offense for which the individual was convicted, but this does not preclude the commission from considering evidence that the individual committed additional offenses. The commission will decide what weight and effect evidence about an officer, director, partner or shareholders should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. Officers, directors, partners and shareholders who have a significant interest in the management, ownership, operation, or success of an application may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role in such matters.

20.15(5) *Duty to comply.* It shall be the affirmative responsibility and continuing duty of each applicant, licensee, and boat operator to comply with the requirements of an application and conditions of a license.

491—20.16(99F) Commission approval of contracts. Rescinded IAB 7/17/96, effective 8/21/96.

491—20.17(99F) Availability of minutes. Minutes of the meetings of partners, stockholders and directors of the applicant or thereafter licensee shall be made available to the commissioners, but copies thereof need not be filed as a matter of record in the office of the commission.

491—20.18(99F) Leased facilities. If any applicant for a license will lease an excursion gambling boat facility from another entity, the lessor shall be required to provide the same information required by these rules to the commission including copies of all leases, agreements and contracts of any nature between the lessor entity and the applicant.

491—20.19(99F) Additional information as required. The commission may require any additional information it deems necessary from the applicant for the purpose of ruling on the license application.

491—20.20(99F) Distribution of applications and fees. The original and five copies of all applications, notices and other matters required by these rules shall be filed with the Racing and Gaming Commission Office, 717 East Court, Suite B, Des Moines, Iowa 50309. One additional copy shall be delivered to each commissioner at the address of record on file in the office of the commission. The applicant shall pay a nonrefundable application fee to offset the commission cost for processing the application in the amount of $25,000; however, the fee shall be $5,000 for the second application involving the same operator and the same qualified sponsoring organization. Additionally, the applicant will remit an investigative fee of $15,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or excursion gambling boat begins operation. Any application fee for a license to operate gambling games within a racetrack enclosure shall be determined by the commission. Customary documentation by the department of public safety will be the basis for determining cost of background investigations. All applications, notices and other matters shall be verified, under oath, and all copies shall be manually signed in ink.

491—20.21(99F) Subsequent license applications.

20.21(1) Every licensee, and person associated with a licensee, and every qualified sponsoring organization, and persons associated with or members of a qualified sponsoring organization, shall file a statement with the commission whenever they become a partner, limited partner, officer, director or the beneficial owner, directly or indirectly, of more than 10 percent of any class of security of any partnership, limited partnership, corporation, association or entity which engages in, conducts or participates in any racing, gaming or gambling activities.

20.21(2) The statement shall contain the following information:

a. The name and address of the entity and a description of its organization (i.e., partnership, corporation, etc.).

b. The type of racing, gaming, or gambling activities.

c. The name and address of all other participants (i.e., partners, officers, directors, shareholders) in the racing, gaming or gambling entity.

d. The relationship of the licensee or qualified sponsoring organization, or any person associated with or a member of a licensee or sponsoring organization, with the racing, gaming or gambling entity.

e. The identity of any state or local agency which has jurisdiction over the racing, gaming or gambling activities of the entity.

f. Any other information required by the Iowa racing and gaming commission.

The commission may deny, revoke, suspend, limit, condition, or restrict any license on finding that the licensee is associated with, or controls, or is controlled by, or is under common control with, an unsuitable person.

491—20.22(99F) Limitation on the number and locations of licenses to conduct gambling games on excursion boats.

20.22(1) The total number of licenses issued to conduct gambling games on excursion boats shall not exceed ten and shall be restricted to the counties where such boats were operating (or licensed to operate in the future) as of May 1, 1998.

20.22(2) Notwithstanding subrule 20.22(1), with the approval of the commission:

a. A licensed excursion gambling boat may move to a new location within the same county.

b. A licensed excursion gambling boat and its facilities may be sold and a new license issued for operation in the same county.

c. If a license to conduct gambling games on an excursion gambling boat is surrendered, not renewed, or revoked, a new license may be issued for operation in the same county.

***20.22(3)** A licensee seeking an increase in the number of gaming tables or gaming machines on an excursion gambling boat must obtain prior approval from the commission. In the request for approval, a licensee shall demonstrate to the commission's satisfaction that the additional gaming tables and gaming machines:

a. Will have a positive economic impact on the community in which the licensee operates;

b. Will benefit the residents of Iowa;

c. Will result in increased distributions to qualified organizations entitled to distributions under Iowa Code section 99F.6(4)*"a"*;

d. Are necessary to satisfy overall excess demand in the particular market in which the licensee is located;

e. Will result in permanent improvements and land-based development in Iowa;

f. Are supported within the broader community in which the licensee operates;

g. Will not have a detrimental impact on the financial viability of other licensees operating in the market in which the licensee operates; and

h. Are consistent with legislative intent concerning the purpose of excursion gambling boats.

The various criteria set forth may not have the same importance in each instance and other factors may present themselves in the consideration of the increase. The criteria are not listed in any order or priority.

In addition to the foregoing criteria, a licensee requesting additional gaming tables or gaming machines shall demonstrate to the commission's satisfaction that (1) the licensee is in compliance with applicable statutes, rules and orders and has not had any material violation of any statutes, rules or orders in the previous 12 months; and (2) the licensee has taken sufficient steps to address the social and economic burdens of problem gambling.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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CHAPTER 21
CRITERIA FOR GRANTING AN EXCURSION BOAT AND RACETRACK ENCLOSURE GAMING LICENSE

[491—Chapters 20 to 25, relating to Games of Skill, Chance, Raffles and Bingo, transferred to 481—Chapters 100 to 105, 6/14/89 IAB]

491—21.1 to 21.9 Reserved.

491—21.10(99F) In general—excursion boat gaming license. This chapter sets forth criteria which the commission will consider when deciding whether to issue a license to conduct casino gambling on an excursion gambling boat on Iowa jurisdiction bodies of water. The various criteria set forth may not have the same importance in each instance and other factors may present themselves in the consideration of an application or applications for a license. The criteria are not listed in any order of priority.

21.10(1) *Compliance with Iowa Code section 99F.4.* The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99F.4.

21.10(2) *Revenue provided by facility.* The commission will consider the amount of revenue to be provided by the proposed facility to the state and local communities through direct taxation on its operation and indirect revenues from tourism, ancillary businesses, creation of new industry, and taxes on employees and patrons.

21.10(3) *Boat viable and properly financed.* The commission will consider whether the proposed boat is economically viable and properly financed.

21.10(4) *Adequate security.* The commission will consider whether the proposed boat is planned in a manner which provides adequate security for all aspects of its operation and for the people working, visiting, or traveling on the boat.

21.10(5) *Efficient and safe operation.* The commission will consider whether the proposed boat is planned in a manner which promotes efficient and safe operation of all aspects of its facility including, but not limited to, docking facilities, all areas of boat concession areas, and casino management areas.

21.10(6) *Efficient, safe and enjoyable for patrons.* The commission will consider whether the proposed boat is planned in a manner which promotes efficient, safe, and enjoyable use by patrons including, but not limited to, boat structure, parking facilities, concessions, the casino, access to cashier windows, and restrooms.

21.10(7) *Compliance with applicable state and local laws.* The commission will consider whether the proposed boat is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

21.10(8) *Employ appropriate persons.* The commission will consider whether the applicant will employ the persons necessary to operate the boat in a manner consistent with the needs, safety, and interests of all persons who will be on the boat.

21.10(9) *Population of area boat will serve.* The commission will consider the population of the area to be served by a boat together with location of other boats within and without the state of whatever nature. The commission may engage an independent firm proficient in market feasibility studies in the gaming industry for specific analysis of any application to determine the potential market of any proposed riverboat as well as the impact on existing licensees.

21.10(10) *Community support.* The commission will consider support within the community in which a proposed excursion gambling boat is to be located for the promotion and continuation of excursion gambling boat gambling.

21.10(11) *Character and reputation.* The commission will consider the character and reputation of all persons identified with the ownership and operation of the excursion gambling boat or licensed business, and their capability to comply with the rules of the commission and the Iowa Code.

21.10(12) *Gaming integrity.* The commission will consider whether the proposed operation would ensure high gaming integrity in Iowa.

21.10(13) *Economic development.* The commission will consider whether the proposed operation will maximize economic development.

21.10(14) *Tourism.* The commission will consider whether the proposed operation is beneficial to Iowa tourism.

21.10(15) *Employment opportunities.* The commission will consider the number and quality of employment opportunities for Iowans created and promoted by the proposed operation.

21.10(16) *Sale of Iowa products.* The commission will consider how the proposed operation will promote the development and sale of Iowa products.

21.10(17) *Shore development.* The commission will consider the amount and type of shore developments associated with the excursion gambling boat project.

21.10(18) *Body of water.*

a. The commission will consider the proposed route to be taken during the excursion, including the distance the boat will traverse, and any relevant data from the U.S. Army Corps of Engineers or the Iowa department of natural resources on the body of water.

b. The commission will consider whether the body of water is adequate to accommodate any large commercial excursion boats operating in these waters.

c. The commission will consider the type of boats utilizing this body of water, any recreational or commercial uses and the potential impact upon them.

d. The commission will consider any environmental risks the boat poses for the body of water and the consequences if an unforeseen accident or event occurs.

e. The commission will consider what safety concerns cruising presents on this body of water and if safety concerns could result in the failure to meet the cruising requirements.

f. For proposed boats on inland waters, the commission will consider whether the applicant has satisfied all requirements of the department of natural resources including, but not limited to, wake speed restrictions.

g. For proposed boats on inland waters not under the jurisdiction of the U.S. Coast Guard, the commission will consider how the applicant will ensure that the proposed boat will be certified and inspected to meet the standards and criteria on an ongoing basis mandated by the U.S. Coast Guard for boats on waters under its jurisdiction.

21.10(19) *Miscellaneous.* The commission will consider such other factors as may arise in the circumstances presented by a particular application.

491—21.11(99F) Limited number of licenses. If the commission receives applications for excursion gambling boat casinos, all of which cannot be granted in the best interests in the state of Iowa, it will consider which of the applications best promotes the considerations set forth in rule 491—21.10(99F).

21.11(1) *Affirmative responsibility to establish qualifications.* It shall be the affirmative responsibility and continuing duty of each applicant and licensee to produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's qualifications are in accordance with the Act and commission rules. No application shall be granted to any applicant who fails to prove qualifications for an application.

21.11(2) *Duty to disclose and cooperate.* It shall be the affirmative responsibility and continuing duty of each applicant, licensee, boat operator, and person required to be qualified to provide all information, documentation, and assurances pertaining to qualifications required or requested by the commission and to cooperate with the commission in the performance of its duties. Any refusal by any person or corporate entity to comply with a request for information from the commission or its staff, evidence or testimony shall be a basis for denial, revocation or disqualification. No license shall be granted to any applicant who fails to provide information, documentation and assurances required by or requested by the commission or who fails to reveal any fact material to qualification.

491—21.12(99F) Licensing of a natural person under the age of 18. Rescinded IAB 12/25/91, effective 1/29/92.

491—21.13(99F) In general—racetrack enclosure gaming license.

21.13(1) *Compliance with Iowa Code chapter 99F.* The commission will consider whether or not the applicant is and has been in compliance with applicable provisions of Iowa Code chapter 99F regarding minimum number of racing dates and has designated a portion of the funds from gaming revenue to supplement purses for dog and horse owners in a manner which will ensure the continuation and growth of the pari-mutuel racing industry in Iowa.

21.13(2) *Adequate security.* The commission will consider whether the racetrack enclosure provides adequate security for all aspects of its operation and for the people working and visiting the enclosure.

21.13(3) *Efficient, safe and enjoyable for patrons.* The commission will consider whether the proposed racetrack enclosure is planned in a manner which promotes efficient, safe, and enjoyable use by patrons including, but not limited to, parking facilities, concessions, the casino, access to cashier windows, and restrooms.

21.13(4) *Gaming integrity.* The commission will consider whether the proposed operation would ensure high gaming integrity in Iowa.

21.13(5) *Employment opportunities.* The commission will consider the number and quality of employment opportunities for Iowans created and promoted by the proposed operation.

21.13(6) *Sale of Iowa products.* The commission will consider how the proposed operation will promote the development and sale of Iowa products.

21.13(7) *Miscellaneous.* The commission will consider such other factors as may arise in the circumstances presented by a particular application.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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CHAPTER 25
RIVERBOAT OPERATION

[491—Chapters 20 to 25, relating to Games of Skill, Chance, Raffles and Bingo, transferred to 481—Chapters 100 to 105, 6/14/89 IAB]

491—25.1 to **25.9** Reserved.

491—25.10(99F) Licensing.

25.10(1) *Who may apply.* A qualified sponsoring organization may apply for a license for more than one boat with identical or different operators. Each request for a boat will be considered a separate application for purposes of these rules.

25.10(2) *License period.* Licenses will be issued for not more than an original three-year period and subject to annual renewals thereafter.

491—25.11(99F) Casino.

25.11(1) *Area utilized for the casino.* Rescinded IAB 6/8/94, effective 5/20/94.

25.11(2) *Gambling games authorized.*

a. Dice, roulette, twenty-one, big-six (roulette), red dog, and poker are authorized as table games.

b. Slot machines, progressive slot machines, video poker and all other video games of chance will be allowed as machine games, subject to the approval of individual game prototypes. For racetrack enclosures, video machine as used in Iowa Code section 99F.1(9) shall mean any video poker, video blackjack, video keno or similar games requiring a decision on the part of a player after the wager has been made but prior to completing the game. Video machine shall also include a video lottery machine which dispenses payouts in the form of a paper credit slip. A weighted average of the theoretical payout percentage, as defined in 491—subrule 26.15(6), on all machine games shall be posted at the point of ticket sales, main casino entrance, cashier cages, and slot booths.

c. Rescinded IAB 6/8/94, effective 5/20/94.

25.11(3) *Checks and credit cards.*

a. A licensee shall not accept a credit card as defined in Iowa Code section 537.1301, subsection 16, to purchase coins, tokens, or other forms of credit to be wagered on gambling games.

b. The acceptance of personal checks will be allowed; however, "counter" checks will not be allowed, and all checks accepted must be deposited in a bank by the close of the banking day following acceptance.

491—25.12(99F) Riverboat uniform requirements.

25.12(1) A boat utilized for gaming purposes must meet or exceed uniform requirements for passenger vessels as specified in Title 46, Code of Federal Regulations. All such boats shall conduct and log all drills and actions required to be logged under subchapter "h" as of April 1, 1992. The minimum capacity necessary for an excursion gambling boat is 250 persons with tickets for admission pursuant to Iowa Code subsection 99F.5(1).

25.12(2) Boats must be self-propelled. A boat may contain more than one "vessel" as defined by the U.S. Coast Guard. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed and operated as a single unit. In addition, all vessels must comply with all operating conditions as stated on the certificate of inspection as issued by the U.S. Coast Guard and vessels containing passengers must comply with U.S. Coast Guard passenger vessel standards for fire systems. The boat must comply with U.S. Coast Guard standards for lifesaving, steering, main propulsion and bilge systems.

491—25.13(99F) Excursions.

25.13(1) *Length.* The excursion season shall be from April 1 through October 31 of each calendar year. An excursion gambling boat must operate at least one excursion each day for 100 days during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat's operation, if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of two hours in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during its business hours pursuant to Iowa Code subsection 99F.4(17).

25.13(2) *Completion of excursions.* Rescinded IAB 6/8/94, effective 5/20/94.

25.13(3) *Dockside completion of excursions.* If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain would determine that passenger safety is threatened.

25.13(4) *Notification.* If an excursion is not completed due to reasons specified in 25.13(3), an Iowa racing and gaming commission official shall be notified as soon as is practical.

491—25.14(99F) Security force.

25.14(1) *Employ adequate security.* Each licensee will employ sufficient security to remove a person violating a provision of Iowa Code chapter 99F, commission rules, orders, final orders, any person deemed to be undesirable by Iowa racing and gaming commission officials, or any person engaging in a fraudulent practice from the licensed premises.

25.14(2) *Peace officer.* Each licensee will ensure that a person who is a certified peace officer is present during all gaming hours, unless permission is otherwise granted by the administrator.

25.14(3) *Incident reports.* The licensee is required to file a written report detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99F or any commission rule, order or final order, or is removed for reasons specified under 25.14(1).

25.14(4) *Report received.* Rescinded IAB 12/25/91, effective 1/29/92.

491—25.15(99F) Firearms—possession within casino.

25.15(1) No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a casino without the express written approval of the administrator unless:

a. The person is a peace officer, on duty, acting in the peace officer's official capacity; or

b. The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that casino.

25.15(2) Each casino licensee shall post in a conspicuous location at each entrance to the casino a sign that may be easily read stating, "Possession of any firearm within the casino without the express written permission of the Iowa racing and gaming commission is prohibited."

491—25.16(99F) Videotaping. Licensees are required to conduct continuous surveillance with the capability of videotaping all gambling activities under 661—Chapter 23, promulgated by the department of public safety, division of criminal investigation.

491—25.17(99F) Gaming board. Rescinded IAB 10/8/97, effective 11/12/97.

491—25.18(99F) Disciplinary measures by commission. Rescinded IAB 10/8/97, effective 11/12/97.

491—25.19(99F) Gaming officials—duties. Rescinded IAB 10/8/97, effective 11/12/97.

491—25.20(99F) Boat operator's responsibilities.

25.20(1) *Maintenance of ground and boat.* Each licensee shall, at all times, maintain its grounds and facilities, to include all areas of the boat to which passengers have access, so as to be neat, clean, and in good repair, with special consideration for the safety of patrons, employees, and other persons whose business requires their attendance.

25.20(2) *Facilities for commission.* Each licensee shall provide reasonable, adequate furnished shore facility office space, including utilities, direct long distance access, custodial services and necessary office equipment, for the exclusive use of commission employees and officials, as well as a work space on the boat. Also, the licensee shall make available to the commission appropriate parking places for commission and staff. A proposal for such facilities shall be submitted to the administrator for approval 60 days prior to an excursion season if there is to be a change from the previous season.

25.20(3) *Sanitary facilities for patrons.* Each licensee shall provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the boat or boat support facilities.

25.20(4) *First-aid room.* Each licensee shall equip and maintain adequate first-aid facilities and have in attendance, during the hours of operation, either a physician, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician, all properly licensed according to requirements of the Iowa department of public health.

25.20(5) *Ejection or exclusion.* A licensee may eject or exclude any person, licensed or unlicensed, from the grounds or boat or a part thereof, solely of its own volition and without any reason or excuse given, provided ejection or exclusion is not founded on race, creed, color, or national origin.

The licensee shall eject or exclude from the grounds or boat all persons believed to be engaged in a bookmaking activity or solicitation of bets or engaging in or encouraging others to participate in any illegal wagering, and a report shall be submitted promptly to the commission officials and to the division of criminal investigation.

Reports of all ejections or exclusions for any reason shall be made promptly to the commission officials and the division of criminal investigation and shall state the circumstances. The name of the person must be reported when ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all grounds or boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

25.20(6) *Admissions.* In addition to the requirements of Iowa Code section 99F.10(1)*"c"* and *"d,"* tax-exempt admission passes shall not be transferable and licensees shall exclude or eject from the boat any person attempting to use tax-exempt admission credentials not issued to that person. Tax-exempt passes shall be limited to guests of the commission and holders of current valid occupational licenses, except that tax-exempt passes may be issued by the licensee if prior approved by the administrator.

All gates used for admission of patrons must be approved by the commission.

All licensees must give a ticket good for one admission to each person having paid an admission charge on a day when excursions are discontinued due to weather, malfunction of equipment, or other unforeseen circumstances which might prevent the patron from participating in a major portion of any excursion conducted by the licensee.

The number of tickets distributed shall be reported to the racing and gaming commission the day of the cruise.

25.20(7) *Enforcement of commission rules.* Every license in Iowa is granted upon the condition that the licensee shall accept, observe, and enforce the rules. Failure to comply with the rules of the commission may result in penalties the commission deems proper, including revocation of the license.

25.20(8) *Remodeling.* For any change to be made in land-based structures directly associated with gaming or in the structure of the boat itself, the licensee must first submit plans to and receive the approval of the administrator. When such plans are submitted, the administrator shall render a decision within five days after the next commission meeting.

25.20(9) *Gambling treatment program.*

a. The holder of a license to operate gambling games within an excursion gambling boat shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) Training of key employees to identify and report suspected problem gamblers;

(2) Procedures for recording and tracking identified problem gamblers;

(3) Policies designed to prevent serving alcohol to intoxicated casino patrons;

(4) Steps for removing problem gamblers from the casino; and

(5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include in a substantial number of its advertisements information on the availability of the gambling treatment program.

491—25.21(99F) Taxes and admission fees.

25.21(1) *Annual taxes and fees.* All taxes and fees, whose collection by the state is authorized under Iowa Code chapter 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

25.21(2) *Admission fees.* Admission fees whose collection by the state is authorized under Iowa Code section 99F.10(2) shall be set for the following fiscal year by the commission on or before the June meeting of the commission. The total amount payable to the commission shall be determined on a per boat basis with each responsible licensee paying a proportionate amount of the total amount appropriated to the commission, less any prior year surplus from license fees collected by the commission. The admission fee will be assessed upon each person embarking upon an excursion gambling boat in the manner prescribed in paragraph *"a"* or *"b"* below. The responsible licensee may elect either of the two methods of payments prescribed in paragraphs *"a"* and *"b"* below. Such election must be made two weeks prior to the beginning of excursion boat gambling in each fiscal year and remain unchanged until the following fiscal year.

a. A prospective admission fee for each person embarking upon the excursion gambling boat will be established. The fee will be determined by the commission by dividing the proportionate amount allocable to the boat by 80 percent of the anticipated passenger count for that boat during the fiscal year. Any excess collected or deficit incurred different from the allowable amount shall be forwarded to the following fiscal year in determining the admission fee for that year.

b. A retrospective admission fee for each person embarking upon the excursion gambling boat will be established. The fee will be paid weekly during the fiscal year and determined by the commission by dividing the amount allocable to the boat by 52. The per passenger amount will be determined at the close of the fiscal year.

25.21(3) *Submission of taxes and admission fees.* All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis on a form provided by the commission. A week shall begin on Monday and end on Sunday. The reporting form and the moneys owed must be received in the commission office by the close of business on the Thursday following the week's end.

25.21(4) *Racetrack enclosure.* Admission fees as required by Iowa Code subsection 99D.14(2) shall be collected in lieu of any fees imposed by Iowa Code section 99F.10.

25.21(5) *Turnstile requirement.* All gates used for admission of patrons must have turnstiles of a type approved by the commission, equipped with meters. Turnstiles must be numbered consecutively or have other means of individual identification.

491—25.22(99F) Slot machines and video games of chance movement. Reports must be filed with the commission on movements of slot machines and video games of chance into and out of the state of Iowa. Reports must be on forms provided by the commission and must be received in the commission office no later than 15 calendar days after the movement.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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k. In calculating adjusted gross receipts, a licensee may deduct its pro-rata share of the present value of any system jackpots awarded during the month. Such deduction amount shall be listed on the detailed accounting records provided by the person authorized to provide the multilink system. A licensee's pro-rata share is based on the number of coins-in from that licensee's machines on the multilink system, compared to the total amount of coins-in on the whole system for the time period(s) between jackpot(s) awarded.

l. In the event an excursion gambling boat or racetrack enclosure licensee ceases operations and a progressive jackpot is awarded subsequent to the last day of the final month of operation, the excursion gambling boat or racetrack enclosure licensee may not file an amended wagering tax submission or make a claim for a wagering tax refund based on its contributions to that particular progressive prize pool.

m. An excursion gambling boat or racetrack enclosure licensee, or an entity that is licensed as a manufacturer or distributor, shall provide the multilink system in accordance with a written agreement which shall be reviewed and approved by the commission prior to offering the jackpots, provided, however, a trust comprised of the participating excursion gambling boat and racetrack enclosure licensees shall be established to control the system jackpot fund (trust fund) provided for in paragraph "*n,*" subparagraph "3."

n. The payment of any system jackpot offered on a multilink system shall be administered by a trust, in accordance with a written trust agreement which shall be reviewed and approved by the commission prior to the offering of the jackpot. The trust may contract with a licensed manufacturer or distributor to administer the trust fund. The trust agreement shall require the following:

(1) Any excursion gambling boat or racetrack enclosure licensee participating in offering the multilink system jackpot shall serve as trustee for the trust fund.

(2) Any excursion gambling boat or racetrack enclosure licensee shall be jointly and severally liable for the payment of system jackpots won on a multilink system in which the licensee is or was a participant at the time the jackpot was won.

(3) The moneys in the trust fund shall consist of the sum of funds invoiced to and received by the trust from the excursion gambling boat or racetrack enclosure licensees with respect to each particular system, which invoices shall be based on a designated percentage of the handle generated by all machines linked to the particular system; any income earned by the trust; and sums borrowed by the trust and any other property received by the trust. Prior to the payment of any other expenses, the trust funds shall be used to purchase Iowa state issued debt instruments or United States Treasury debt instruments in sufficient amounts to ensure that the trust will have adequate moneys available in each year to make all multilink system jackpot payments which are required under the terms of the multilink system jackpots which are won.

(4) A reserve shall be established and maintained within the trust fund sufficient to purchase any United States Treasury or Iowa state debt instruments required as multilink system jackpots are won (systems reserves). For purposes of this rule, the multilink system reserves shall mean an amount equal to the sum of the present value of the aggregate remaining balances owed on all jackpots previously won by patrons on the multilink systems; the present value of the amount currently reflected on the system jackpot meters of the multilink systems; and the present value of one additional reset (start amount) on such systems.

(5) The trust shall continue to be maintained until all payments owed to winners of the multilink system jackpots have been made.

(6) For multilink system jackpots disbursed in periodic payments, any United States Treasury or Iowa state debt instruments shall be purchased within 90 days following notice of the win of the multilink system jackpot, and a copy of such debt instruments will be provided to the commission office within 30 days of their purchase. Any United States Treasury or Iowa state debt instrument shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment, and shall have a maturity date prior to the date the periodic jackpot payment is required to be made.

(7) The trust shall not be permitted to sell, trade, or otherwise dispose of any United States Treasury or Iowa state debt instruments prior to maturity unless approval to do so is first obtained from the commission.

(8) Upon becoming aware of an event of noncompliance with the terms of the approved trust agreement or reserve requirement mandated by paragraph "*n,*" subparagraph (4) above, the trust must immediately notify the commission of such event. An event of noncompliance includes a nonpayment of a jackpot periodic payment or a circumstance which may cause the trust to be unable to fulfill, or otherwise impair, its ability to satisfy its jackpot payment obligations.

(9) With the exception of the transfer to the estate or heir(s) of a deceased system jackpot winner or to the estate or heir(s) of such transferee upon death or the granting of a first priority lien to the trust to secure repayment of a tax loan to the winner should a tax liability on the full amount of the jackpot be assessed by the Internal Revenue Service against the winner, no interest in income or principal shall be alienated, encumbered or otherwise transferred or disposed of in any way by any person while in the possession and control of the trust.

(10) On a quarterly basis, the trust must deliver to the commission office a calculation of system reserves required under paragraph "*n,*" subparagraph (4), above.

(11) The trust must be audited, in accordance with generally accepted auditing standards, on the fiscal year of the trust by an independent certified public accountant. Two copies of the report must be submitted to the commission office within 90 days after the conclusion of the trust's fiscal year.

o. For multilink system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a "qualified prize option," as that term is defined in Section 451(h) of the Internal Revenue Code. For purposes of calculating the single cash payment, the trust administrator shall obtain quotes for the purchase of U.S. Government Treasury Securities at least three times per month. The quote selected by the trust administrator shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected quote, until a new quote becomes effective.

491—26.18(99F) Other games approved by the commission.

26.18(1) The commission must approve the conducting of any new game on a licensed riverboat.

26.18(2) Requests to conduct additional games must be accompanied by a complete set of rules, which must be approved by the administrator prior to conducting the game.

491—26.19(99F) Poker.

26.19(1) *Rules and limits—poker.* Proposals for rules for each poker game, minimum buy-in and table limits, table rake and rental charges must be submitted in writing and approved by the administrator prior to the operator's conducting any poker games. Rules must be clear and legible and placed at each poker table or in a conspicuous location so that a player may easily read the rules.

26.19(2) *Imprest dealer banks.* When the operator conducts poker with a dealer chip bank at an imprest amount, the administrative rules in 491—Chapter 24 for closing and distributing/removing gaming chips to/from gaming tables are not required. The entire amount of the table rake is subject to the wagering tax pursuant to Iowa Code section 99F.11. Proposals for imprest dealer chip banks must be submitted in writing and approved by the administrator prior to conducting poker under this rule.

26.19(3) *Table stakes.* All games shall be played according to table stakes rules as follows:

a. All bets must be made with coins or chips issued by the operator.

b. Only chips on the table at the start of a deal shall be in play for that pot.

c. Concealed chips do not play.

d. A player with chips may add additional chips between deals, provided that the player complies with the minimum buy-in requirement.

e. A player is never obliged to drop out of contention because of insufficient chips to call the full amount of a bet, but may call for the amount of chips the player has on the table. The excess part of the bet made by other players is either returned to the players or used to form a side pot.

26.19(4) *Collusion.* Each player in a poker game is required to act only in their own best interest. The operator has the responsibility to ensure that any behavior designed to assist one player over another is prohibited and may prohibit any two players from playing in the same game.

26.19(5) *Operator funded payouts.* Poker games where winning wagers are paid according to specific payout odds or pay tables are permitted. Proposals for rules, permissible wagers, shuffling and cutting procedures, payout odds, and pay tables must be submitted in writing and approved by the administrator prior to the operator's conducting any game. Changes in rules, wagers, payout odds, or pay tables must be submitted in writing and approved by the administrator prior to implementation.

491—26.20(99F) Red dog.

26.20(1) *Rules, permissible wagers, shuffling, dealing and cutting procedures, and payout odds.* Proposals for rules, permissible wagers, shuffling and cutting procedures, and payout odds must be submitted in writing and approved by the administrator prior to the operator conducting any games of red dog. Changes in rules, permissible wagers, shuffling, dealing and cutting procedures, and payout odds must be submitted in writing and approved by the administrator prior to implementation.

26.20(2) *Placement of wagers.* Prior to the first card being dealt from each round of play, each player at the game of red dog shall make a wager against the dealer by placing gaming chips on the appropriate areas of the layout. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager to double down has been made and confirmed by the dealer, no player shall handle, remove or alter such wagers until a decision has been rendered and implemented with respect to that wager except as explicitly permitted by these rules. No dealer or other casino employee or casino key employee shall permit any player to engage in conduct violative of this rule.

26.20(3) *Wagers—amount—red dog.* Rescinded IAB 6/8/94, effective 5/20/94.

491—26.21(99F) Tournaments and contests.

26.21(1) *Rules.* Proposals for rules, entry fee and prize accounting and procedures must be submitted in writing and approved by the administrator prior to the operator's conducting any tournament or contest. Rules, fees, and a schedule of prizes must be made available to the player prior to entry.

26.21(2) *Limits.* Tournaments and contests must be based on gambling games authorized by the commission. Entry fees, less the operator's cash equivalent cost of prizes paid out not to exceed total entry fees, are subject to the wagering tax pursuant to Iowa Code section 99F.11.

491—26.22(99F) Keno.

26.22(1) *Requirements.*

a. Keno shall be conducted using an automated ticket writing and redemption system where a game's winning numbers are selected by a random number generator.

b. Each game shall consist of the selection of 20 numbers out of 80 possible numbers, 1 through 80.

c. For any type of wager offered, the payout must be at least 80 percent.

d. Multigame tickets shall be limited to 20 games.

e. Writing or voiding tickets for a game after that game has closed is prohibited.

f. All winning tickets shall be valid up to a maximum of one year. The dollar amount of all expired and unclaimed winning tickets shall be added to existing keno jackpots in a manner approved by the administrator.

26.22(2) *Rules, procedures, permissible wagers and payout odds.* Proposals for permissible rules, wagers, procedures, payout odds, ticket contents, and progressive jackpots must be submitted in writing and approved by the administrator prior to the operator's conducting any keno games. Changes in conduct or operation of keno games must be submitted in writing and approved by the administrator prior to implementation.

26.22(3) *Equipment.* The administrator shall determine minimum hardware and software requirements to ensure the integrity of play. An automated keno system must be proven to accurately account for adjusted gross receipts to the satisfaction of the administrator.

26.22(4) *Wagering tax.* Adjusted gross receipts from keno games shall be the difference between dollar amount of tickets written and dollar amount of winning tickets as determined from the automated keno system. The wagering tax pursuant to Iowa Code section 99F.11 shall apply to adjusted gross receipts of keno games.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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(3) An owner or operator who has had a lapse of financial responsibility coverage shall be allowed to remain eligible for remedial benefits if the following conditions are met:

1. The owner or operator applies for reinstatement of remedial benefits and submits a reinstatement fee equal to the full premium which would have been paid to maintain financial responsibility coverage plus an additional 10 percent. The reinstatement fee shall be prorated on a per-month basis for each month for which there was a lapse of financial responsibility coverage. There is a minimum reinstatement fee of $500 per site per lapse of coverage.

2. At the time of the application for reinstatement of remedial benefits, all active tanks must be in compliance with all state and federal technical and financial responsibility requirements.

3. The owner or operator is in compliance with all other requirements of this rule.

4. An owner or operator is only eligible for reinstatement of remedial benefits one time per site. If there is another lapse of financial responsibility coverage on any active tank on site after remedial benefits have been reinstated, the owner or operator will lose eligibility for remedial benefits and will be subject to cost recovery pursuant to Iowa Code section 455G.13.

c. Impact of insurance on remedial account benefits. If owners or operators have insurance to cover corrective action costs for their underground storage tanks after January 1, 1985, other than pursuant to 455G.11 or other than pursuant to 40 CFR 280.95, 280.96, 280.99, 280.101, 280.102, and 280.103, the remedial account is only available to eligible owners and operators as follows:

(1) The remedial account will pay the deductible amount applicable to such insurance for owners and operators who are eligible for remedial account benefits, subject to the applicable remedial account deductible and copayment provisions.

(2) Except for payments made pursuant to 11.1(3)*"c"*(1) remedial account benefits are secondary to all such insurance.

(3) Remedial account benefits shall not be used to reimburse insurance companies for proceeds paid by those companies pursuant to the terms of such insurance.

(4) In the event of a dispute between the insurance company and the owner or operator or the board regarding insurance coverage, otherwise eligible owners and operators will receive remedial account benefits upon assigning their interest in such insurance to the board.

d. Claims which are filed with the board prior to January 31, 1990, or if filed by a city or county on or before September 1, 1990, for releases reported to the department after July 1, 1987, but prior to May 5, 1989; and claims filed with the board prior to September 1, 1990, for releases reported to the department after January 1, 1984, but prior to July 1, 1987, are retroactive claims which shall be eligible for reimbursement subject to the following guidelines:

(1) After a cutoff date has been passed.

(2) After priority payment procedures are established, if required.

(3) After the claim has been verified and all supporting materials have been supplied to the administrator for review.

(4) After a signed and notarized claim form has been received.

(5) Owners or operators whose method of showing proof of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa environmental protection commission's underground storage tank financial responsibility rules, 567—Chapter 136, in which the ultimate financial responsibility for corrective action costs is not shifted from the owner or operator are self-insured for purposes of 455G.9(1)*"a"*(1)(a) and 455G.9(1)*"a"*(3)(b).

(6) A retroactive claim for a release shall be subject to the copayment requirements of Iowa Code section 455G.9(4).

(7) A retroactive claim for a release reported to the department prior to May 5, 1989, and after July 1, 1987, shall only be eligible if the owner or operator applying for benefits has not claimed bankruptcy anytime after July 1, 1987; a retroactive claim for a release reported to the department after January 1, 1984, but prior to July 1, 1987, shall only be eligible if the owner or operator applying for benefits has not claimed bankruptcy on or after January 1, 1985.

e. Claims filed with the board prior to February 26, 1994, for releases reported to the department after May 5, 1989, and on or before October 26, 1990, are remedial claims eligible for reimbursement subject to the following guidelines:

(1) After the owner/operator completes the claim form and has it notarized.

(2) When bills and estimates are received along with contracts, description of remedial plan and correspondence for budget approval on the work required by the department.

(3) When the work is complete or, if ongoing, as approved by the administrator and in accordance with priority rules.

(4) After the owner or operator has met deadlines and the department's technical requirements for cleanup. To be eligible, corrective action costs must be reasonable and necessary to complete the work required by the department. The board shall reimburse or pay only those corrective action costs which will cover the work as mandated by Iowa Code section 455B.471 et seq.

(5) Remedial claims shall be subject to copayments consistent with Iowa Code section 455G.9(4).

f. Remedial and retroactive claims may be paid monthly and will include all approved expenses, including tank and piping removal for active systems if the tank and piping removal occurs on or before March 17, 1999, and other costs as provided in Iowa Code chapter 455G. Cost of replacement materials excavated shall be a reimbursable expense. Contractors and groundwater professionals shall confirm that the work meets department of natural resources requirements.

g. The board shall reimburse or pay eligible expenses for remedial or retroactive benefits only if those expenses have been approved prior to the commencement of work, as required by Iowa Code section 455G.12A. No corrective action costs shall be reimbursed unless reasonable, necessary and approved by the board or its designee.

h. When practical to do so, the board shall bid any work associated with this chapter with firms which have indicated to the administrator an interest to be on the board's list of firms supplying goods or services. To be eligible for inclusion in the vendors list, the firm shall have appropriate registration as a groundwater professional. Any firm supplying goods and services including, but not limited to, testing laboratories, cleanup equipment manufacturers and leak detection testing firms may also be included in the vendors list.

i. Reimbursement to the owner, operator or contractor under this chapter is subject to overall site cleanup report prioritization and classification. Sites which are classified as low-risk are eligible for remedial account benefits for monitoring expenses required by Iowa Code section 455B.474(1)"*f*""5," unless the tank is removed, upgraded, or replaced. If the underground tank system is removed, upgraded or replaced, provisions outlined in IAC 591—11.5(455G) and 591—11.6(455G) shall apply.

j. All claims eligible for funding under Iowa Code section 455B.474 will be subject to available funding.

k. The board may appeal any adverse administrative law decision or court judgment.

l. Rescinded IAB 6/5/96, effective 7/10/96.

m. The board may ratify and approve any actions taken by the board or its designee which were consistent with the provisions of this subrule 11.1(3) without regard to whether this subrule was in effect at the time the actions to be ratified were taken.

n. One hundred percent of corrective action costs and third-party liability not to exceed $1 million shall be reimbursed for a release for which the eligible claimant is subject to financial hardship if all of the following conditions are met:

(1) The claimant has completed the claim form, had it notarized, and submitted it to the board on or before December 1, 1996.

(2) Claimant is a small business as defined in Iowa Code section 455G.2(18) and has submitted self-certification forms documenting small business status.

(3) Claimant does not have a net worth of $15,000 or greater and has submitted documentation of net worth in accordance with Iowa Code section 455G.10(4) and 591—subrule 12.10(3) or the claimant is an individual who is financially unable to pay copayments associated with the cost of corrective action as determined by using the department's evaluation of ability to pay found at 567 IAC 135.17(455B).

(4) The release for which the claim has been made occurred prior to October 26, 1990.

(5) The release for which the claim has been made was reported to the DNR on or before December 1, 1996.

(6) The site for which the claim is made is in compliance with all technical requirements of 567—Chapters 135 and 136.

(7) The site for which the claim is made shall not be deeded or quitclaimed to the state or board in lieu of cleanup.

(8) Property taxes shall not be delinquent, unpaid or otherwise overdue.

(9) A responsible party with the ability to pay corrective action expenses cannot be found.

(10) The release for which the claim is made is one for which the federal Underground Storage Tank Trust Fund or other federal moneys do not provide coverage.

(11) The work is complete or, if ongoing, is approved by the administrator or the board pursuant to the cost containment provisions of Iowa Code section 455G.12A.

(12) All claims and payments are subject to prioritization guidelines set forth in rule 591—11.7(455G).

o. An owner/operator eligible for remedial benefits who complied with 11.1(3)*"b"* by using program insurance authorized pursuant to Iowa Code section 455G.11 will remain eligible for remedial benefits even though the insured tanks were not upgraded by December 22, 1998, under the following conditions:

(1) The owner/operator temporarily closes the tanks in compliance with the closure requirements of the environmental protection commission 567—subrule 135.9(1) while the tanks are still insured under Iowa Code section 455G.11; and

(2) The owner/operator certifies the tanks continuously had financial responsibility coverage acceptable under 567—Chapter 136 from October 26, 1990, until the temporary closure; and

(3) The owner/operator certifies the tanks will be empty during the entire period of the temporary closure. Empty means all materials have been removed from the tanks using commonly approved practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent of weight of the total capacity of the tank system, remain in the tank system; and

(4) The owner/operator certifies that during the entire period of the temporary closure vent lines will be left open and functioning and all other lines, pumps, manways, and ancillary equipment will be capped and secured.

(5) The owner/operator certifies that within one year from the time the tanks were temporarily closed, the tanks will either be permanently closed, removed and replaced, or upgraded; and

(6) The owner/operator certifies the upgraded tanks and replacement tanks will meet the new tank or upgrade standards of the environmental protection commission rule 567—135.3(455B); and

(7) The owner/operator certifies the upgraded tanks and replacement tanks will not be used until the owner/operator demonstrates proof of financial responsibility for the tanks using a method provided for under 567—Chapter 136; and

(8) The owner/operator meets all other applicable requirements pertaining to remedial benefits.

An owner/operator receiving remedial account benefits pursuant to this paragraph *"o"* will be subject to cost recovery pursuant to Iowa Code section 455G.13 in the event the owner/operator does not comply with all of the conditions of this paragraph *"o,"* the provisions of the certifications required by this paragraph *"o,"* and applicable statutes and rules of the environmental protection commission and the board.

p. The board may reimburse expenses associated with tank systems identified in 11.1(3)*"a"*(1) to (3) when all of the following conditions have been documented:

(1) The release for which benefits are being requested is from tanks operated on a site which is otherwise eligible for benefits under Iowa Code section 455G.9(1);

(2) The release for which benefits are being requested is commingled with an on-site release which is eligible for benefits under Iowa Code chapter 455G;

(3) The site has had active underground storage tanks continuously from the date of the release for which benefits are being requested until the date at which a release for which the site is currently eligible for benefits was reported to the department;

(4) The claimant certifies that the tanks for which benefits are being requested will be permanently closed within 90 days of notification of the eligibility and does permanently close the tanks in compliance with rule 567—135.9(455B) within the 90 days;

(5) All other eligibility requirements have been met.

q. An owner/operator of a site which is eligible for benefits under section 455G.9 who discovered a tank on the site after October 26, 1990, shall maintain eligibility for benefits even if that tank does not meet the financial responsibility requirements continuous since October 26, 1990, if all of the following conditions have been met:

(1) The tank was discovered after October 26, 1990;

(2) The tank has not been operated since the discovery and has never been operated by the claimant;

(3) The tank has been empty of all product since it was discovered;

(4) The tank was properly registered with the department when discovered;

(5) The tank is a regulated tank which previously contained only petroleum products as defined in this chapter;

(6) The tank is permanently closed within 90 days of discovery, or by July 1, 1995, whichever date is later.

r. Compliance with report submittal deadlines. To be eligible for remedial benefits, claimants must comply with all department deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements and must submit a Tier 1, and Tier 2 if required, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later.

11.1(4) *Payments of financial responsibility claims.*

a. Payments under the financial responsibility account shall include claim and claim-related expenses incurred including adjusting, legal and professional fees. Legal fees do not include the costs associated with an insured hiring an attorney to qualify or to attempt to qualify for benefits hereunder.

b. Payment shall occur after program liability has been determined. The board may offer a settlement or deny a claim based on its individual merits. A claimant whose financial responsibility claim has been denied may appeal the denial. A claim may be settled or defended as provided for in the applicable section of the financial responsibility coverage.

c. The board may appeal any adverse administrative law decision or court judgment.

d. The board may approve of or hire all contractors and groundwater professionals on any claim submitted for payment hereunder. The board may negotiate cost for work to ascertain program exposure. The negotiation of the costs shall not be an admission of liability under this chapter. The terms and conditions of the financial responsibility document shall be reviewed and used as the basis of any liability associated with the financial responsibility account.

11.1(5) *Payment of benefits under Iowa Code section 455G.21(2)"a."* Consistent with Iowa Code chapter 455G, the board may reimburse an owner of petroleum-contaminated property who is not otherwise eligible to receive benefits under Iowa Code section 455G.9 for eligible expenses not to exceed the benefits they would otherwise receive based upon the date the release was reported if they were eligible under Iowa Code section 455G.9(1)*"a"*(1) to (3), subject to the copayment requirements of Iowa Code section 455G.9(4), the requirement of 11.1(3), and subject to the available funding and limitations of the innocent landowner fund created by Iowa Code section 455G.21(2)*"a,"* for corrective action subject to the following priority:

a. Late-filed retroactive claims. For releases reported to the department on or after January 1, 1984, but prior to May 5, 1989:

(1) Claims must be filed with the board by February 26, 1994.

(2) All costs incurred on or after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

b. Preregulation claims. For releases from petroleum USTs which are not eligible for remedial account benefits under 455G.9(1)*"a"*(1) to (3) only because the USTs were taken out of use prior to January 1, 1974, or permanently closed or removed before July 1, 1985.

(1) Claims must be filed with the board by December 1, 1997.

(2) USTs have not been operated on the site since the time the tanks were taken out of use or permanently closed.

(3) All costs incurred after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

(4) The owner cannot have claimed bankruptcy on or after the date of the reported release.

c. Innocent landowner claims. For releases reported by owners of petroleum-contaminated property as defined under 455G.9(9) who did not comply with the reporting or filing deadlines identified in this chapter with priority to those owners who did not have knowledge of the USTs or did not have control over the property.

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to the department consistent with the department requirements.

(3) The owner did not have knowledge of the UST or of a release impacting the property prior to acquisition of the property if the property was acquired on or after October 26, 1990, or if the owner did have such knowledge, the acquisition was necessary to protect a security interest.

(4) All costs incurred on or after July 10, 1996, must be approved by the board to be eligible for reimbursement.

(5) The owner cannot have claimed bankruptcy on or after the date of the reported release.

d. Acquired properties. For releases reported by owners of petroleum-contaminated property as defined under 455G.9(9) who acquired the petroleum-contaminated property after October 26, 1990, and who did not comply with the reporting or filing deadlines identified in this chapter.

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to the department consistent with the department requirements.

(3) The owner could not have been the owner or operator of the UST system which caused the release prior to acquiring the property after October 26, 1990.

(4) All costs incurred on or after December 1, 1996, must be preapproved by the board to be eligible for reimbursement.

(5) For claims submitted under this paragraph, the precorrective action value shall be the purchase price paid by the owner after October 26, 1990.

(6) For claims submitted under this paragraph, the purchase must have been an arm's-length transaction.

(7) The owner cannot have claimed bankruptcy on or after the date of the reported release.

e. Other innocent landowner claims. Claims for releases submitted to the board after December 1, 1997, which would have been eligible for benefits pursuant to paragraphs *"a"* through *"d"* of this subrule if filed by December 1, 1997, will be eligible for reimbursement subject to a first-in, first-out priority and the funding limitations of the innocent landowner fund. The owner must demonstrate that the owner has met all other requirements of this subrule in order to receive benefits.

f. Compliance with report submittal deadlines. To be eligible for remedial benefits, claimants must comply with all department deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements and must submit a Tier 1, and Tier 2 if required, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later.

591—11.2(455G) Investigation of claims—remedial, retroactive and financial responsibility.

11.2(1) All remedial, retroactive and financial responsibility claims shall be investigated and overall fund liability estimated.

11.2(2) Costs which are not reasonable, necessary or eligible shall not be paid. The budget for the work shall be submitted prior to the initiation of the work for approval by the board or its designee. Failure to obtain prior approval shall invalidate the board's and the owner's or operator's obligations as provided for under Iowa Code section 455G.12A.

11.2(3) Owner or operator compliance with regulatory and program requirements shall be evaluated as part of the investigation. The failure to meet regulatory and program standards shall not bar recovery hereunder. However, failure to meet regulatory and program requirements which exist at the time of payment may result in cost recovery claims as provided under Iowa Code section 455G.13.

11.2(4) Cause of loss and determination of responsible parties shall be ascertained as a part of the investigation process. Independent environmental consultants may be retained to assist in the determination of the cause of the release and for the application of coverage.

11.2(5) Other financial responsibility in effect at the time a claim is made shall be reviewed. If other coverage that covers environmental damage is in effect at the time a claim is made, the UST financial responsibility program under Iowa Code section 455G.11 shall be excess.

11.2(6) Subrogation and cost recovery opportunities shall be pursued against any responsible party, as deemed appropriate by the board to do so.

11.2(7) The administrator may retain, subject to board bidding requirements, an outside groundwater professional to assist in the evaluation of any financial responsibility claim presented under Iowa Code section 455G.11, up to $3,000. Any expense in excess of that amount must be approved by the board at their next regularly scheduled meeting.

591—11.3(455G) Other terms and conditions.

11.3(1) The board shall publish its financial responsibility policy for public review and inspection.

11.3(2) Terms and conditions are as mandated under 567—Chapter 136, Iowa Administrative Code.

11.3(3) Cancellation for nonpayment is effective ten days after proof of mailing.

11.3(4) Premiums for extended coverage endorsement shall be 50 percent of policy annual premium. For the extended coverage endorsement to be effective, premium must be received prior to the expiration of the ten-day period from the expiration date of the policy. The extended coverage endorsement will cover only releases reported within the time frame outlined in the policy for releases occurring during the policy period. New releases shall not be covered. The board has no obligation of notifying individual insureds of this coverage as it is a part of each policy issued.

11.3(5) Supplementary payments coverage shall be limited to $250,000 maximum per incident and in the aggregate for all losses during the coverage period.

591—11.4(455B,455G) Tank and piping upgrades and replacements.

11.4(1) Definitions.

"Administrator" means the Iowa comprehensive petroleum underground storage tank fund board administrator as provided in Iowa Code section 455G.5.

"Automatic in-tank gauging" means a device used for leak detection and inventory control in tanks that meet the department's standards as set out in 567—paragraph 135.5(4)*"d."*

"Board or UST board" means the Iowa comprehensive petroleum underground storage tank fund board as provided for in Iowa Code section 455G.4.

"Department" means the Iowa department of natural resources.

"Environmentally sensitive site" means, as classified under the Unified Soil Classification System as published by the American Geologic Institute or ASTM designation: D 2487-85, any site where the native soils outside or under the tank zone are materials where more than half of the material is larger than no. 200 sieve size. As used herein, tank zone means the native soils immediately outside the excavation area or nearest native soil under the tank.

The following classifications of soil descriptions are considered environmentally sensitive:

1. Well-graded gravels, gravel-sand mixtures, little or no fines, classified using the group symbol of "GW";
2. Poorly graded gravels, gravel-sand mixtures, little or no fines, classified using the symbol of "GP";
3. Silty gravels, gravel-sand-clay mixtures, classified using the symbol of "GM";
4. Clayey gravels, gravel-sand-clay mixtures, classified using the symbol of "GC";
5. Well-graded sands, gravelly sands, little or no fines, classified using the symbol "SW";
6. Poorly graded sands, gravelly sands, little or no fines, classified using the symbol "SP";
7. Silty sands, sand-silt mixtures, classified using the symbol "SM";

In addition, environmentally sensitive sites include any site which is within 100 feet of a public or private well, other than a monitoring well on a site, and any site where the tank is installed in fractured bedrock or "Karst" formations. Any one of the above-specified conditions shall constitute an environmentally sensitive site under this rule.

A site shall be classified as environmentally sensitive when:

- Fifty percent or more of the soils from a boring or a monitoring well are logged and classified as one or more of the areas noted in paragraphs "1" through "7" and 50 percent of the total wells located on or immediately next to the property show the same or similar conditions. If no testing of the site has occurred and the soil condition as classified under the unified soil classification system in or under the tank zone is one of the conditions as classified, the site shall be considered to be environmentally sensitive. Reports previously prepared on the site and available from DNR may be used to make the soil classification. At least three borings/wells must have been completed. If fewer than three have been completed, an additional well which triangulates the tank zone shall be completed to determine the types of soils present.

• For the purposes of this definition, fractured bedrock or Karst formations appearing in the tank zone or piping run, or within a 25-foot diameter around the tank zone or piping run, or within 25 feet of the bottom of the tank excavation area shall be classified environmentally sensitive. Generally available data, including that available from local utilities, may be used when specific drilling has not determined that conditions specified in this definition have not been identified on the site. If the site shows any surface condition which is fractured bedrock or Karst, then the site shall be classified as being environmentally sensitive.

• For the purposes of this definition, wells are those which are in use and the water is being used for human consumption. The well as developed shall generate a volume of two gallons per minute, unless a holding device or cistern is used for water pumped. An abandoned well, or a well being used for some other purpose, shall not be included in the definition, unless the end use may be for human consumption.

"Piping replacement" means any modernization or modification of piping at a site which includes the removal of the existing piping and the installation of new piping.

"Piping upgrade" means any modernization or modification of piping at a site which does not include the removal of the existing piping and the installation of new piping.

"System upgrade" or *"Upgrading"* means the modernization or modification of underground storage tank system installations through tank and piping upgrades to comply with the rules of the department under 567—subrule 135.3(2).

"Tank replacement" means any modernization or modification of a tank at a site which includes the removal of the existing tank and the installation of a new tank.

"Tank upgrade" means any modernization or modification of a tank at a site which does not include the removal of the existing tank and the installation of a new tank.

"Upgrade benefit" means the cost of board-approved systems specified in subrule 11.4(6). If the installation includes a board-approved secondary containment system, the upgrade benefit relates specifically to the cost difference attributable to the board-approved system specified in subrule 11.4(6). The upgrade benefit includes the following:

1. Cost of double walled tanks and pipes minus the cost of single wall tanks and piping, or
2. Cost of double walled steel tanks minus the cost of single wall steel tanks, or
3. Cost of nonmetallic double walled tanks minus the cost of nonmetallic single wall tanks.

In addition, the upgrade benefit shall include the cost of the additional labor, if any, to install the board-approved system which is in excess of the cost to install a single wall system. The upgrade benefit also includes the cost of automatic in-tank gauging equipment when installed in conjunction with secondary containment, but such costs shall be limited to the lowest expense for the system best suited to provide a reasonable degree of protection.

If the system does not include the approved secondary containment, no upgrade benefit is payable. Secondary containment as defined in subrule 11.4(6) is mandatory after March 25, 1992.

11.4(2) The maximum upgrade benefit payable from the remedial fund on any tank or system installed since January 1, 1985, to meet upgrading requirements shall be $10,000 for any one site, subject to applicable copayment requirements as specified in Iowa Code section 455G.9. Benefits payable under subrule 11.4(6) cover the additional cost of the tank system upgrade or replacement as set forth in the definition of upgrade benefits. Prior to installation, budgets shall be provided to the administrator outlining the cost and scope of work proposed and the cost differences between a single wall system and the board-approved system which is proposed. The cost of the original upgraded or new system without board-approved secondary containment as defined herein is not subject to these fund upgrade benefits for tank system upgrades or replacements.

11.4(3) The cost for system upgrading or replacement shall be separated from all other corrective action costs incurred on an individual site classified as high-risk or low-risk by the department. The upgrade benefits are not payable on any site classified by the department as a "No Action Required" site.

11.4(4) Upgrade benefit payments under subrule 11.4(6) shall be made upon evidence that the upgrade met standards in 567—Chapter 135 and the department registration Form 148 has been completed and mailed to the department and the administrator. These upgrade benefits shall be paid only if all requirements of 591—Chapter 15 have been met. If a site does not comply with the applicable provisions of 591—Chapter 15, the site is not eligible for these upgrade benefits unless installation or upgrade occurred prior to October 26, 1990. In that event, the individual reimbursement request will be reviewed to determine if other information is necessary before upgrade benefit payment can be made. In addition, the completed work must be within the budget previously approved by the administrator pursuant to Iowa Code section 455G.12A.

11.4(5) Upgrades and replacements allowed at contaminated sites. Iowa Code section 455B.474(1)*"f"*(8) provides the replacement or upgrade of tank systems on high- or low-risk sites must be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board-approved methodology. The following are the upgrade and replacement options which are board-approved for purposes of Iowa Code section 455B.474(1)*"f"*(8):

a. Tank upgrades. The following options are allowed for tank upgrades on any contaminated site:

(1) The tank meets the department's new tank standards set forth in 567—paragraph 135.3(1)*"a"*; or

(2) The tank meets the department's upgrade standards set forth in 567—paragraphs 135.3(2)*"b"* and *"d."*

b. Tank replacements. The following options are allowed for tank replacements:

(1) On any contaminated site, a double walled tank or a tank equipped with a secondary containment system meeting the department's new tank standards set forth in 567—subrule 135.3(1) and with monitoring of the space between the primary and secondary containment structures in accordance with the department's standards set forth in 567—paragraph 135.5(4)*"g."*

(2) On any contaminated site which is not environmentally sensitive the following additional options are allowed:

1. Tanks meeting the department's new tank standards set forth in 567—paragraph 135.3(1)*"a"* with automatic in-tank gauging acceptable under 567—subrule 135.5(4).

2. Tanks meeting the department's new tank standards set forth in 567—paragraph 135.3(1)*"a"* with an electronic tank level monitor used in conjunction with a department-approved statistical reconciliation method acceptable under 567—subrule 135.5(4). The owner must have monthly records on premises which show that all requirements for statistical reconciliation have been met.

c. Piping upgrades. The following options are allowed for piping upgrades at any contaminated site:

(1) Double walled piping.

(2) Single walled piping installed in a barrier providing secondary containment between soil and the piping.

(3) Single wall piping meeting the department's upgrade standards set forth in 567—paragraph 135.3(2)*"c"* and leak detection standards set forth in 567—paragraph 135.5(2)*"b."*

d. Piping replacements. The following options are allowed for piping replacements:

(1) For any contaminated site:

1. Double walled piping.

2. Single walled piping installed in a barrier providing secondary containment between soil and the piping.

3. On suction systems, single wall piping when only one check valve is on the line directly under the pump.

(2) For sites which are not environmentally sensitive, suction systems with single wall piping meeting the department's upgrade standards set forth in 567—subrule 135.3(2) on pipes with leak detection are allowed if there is no more than one valve on the piping. All suction systems shall be installed with the slope of the pipe back to the tank and shall have only one check valve located directly under the suction pump.

e. Spill and overfill protection, cathodic protection, and leak detection. Nothing in this rule alters the department's upgrade requirements for spill and overflow protection, cathodic protection, and leak detection.

11.4(6) Tank and piping upgrades and replacements eligible for upgrade benefits.

a. The following tank and piping upgrades or replacements are eligible for upgrade benefits if completed on or before March 17, 1999:

(1) Double walled tanks.

(2) Single walled tanks meeting the department's requirements as specified in 567—paragraph 135.5(4)*"g,"* the tank zone providing an impermeable barrier between native soils and the tank, thus providing secondary containment.

(3) Double walled piping.

(4) Single wall piping installed in a barrier system, providing secondary containment between the soil and the piping. Nothing in this rule alters upgrade requirements for spill/overfill protection, cathodic protection and leak detection.

b. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurs on or after March 25, 1992, and on or before March 17, 1999, on sites which are classified as being environmentally sensitive:

(1) Pressurized systems: Tanks and piping shall comply with one of the tank and piping options specified in 11.4(6)*"a."*

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system pipes shall have the check valve located at the suction pump. These systems shall meet one of the options specified in 11.4(6)*"a,"* except that piping may be single wall when one check valve is on the line, under the pump.

c. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurs on or after March 25, 1992, and on or before March 17, 1999, on sites which are not classified as being environmentally sensitive:

(1) Pressurized systems: Piping shall comply with one of the pipe options specified in 11.4(6)*"a."* Tanks installed must be either one of the options specified in 11.4(6)*"a"* or be a department-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4), or in lieu of automatic in-tank gauging, be a department-approved electronic tank level monitor in conjunction with a department-approved UST statistical inventory reconciliation method pursuant to 567—subrule 135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system piping shall have the check valve located at the suction pump. These systems must be either one of the options specified in 11.4(6)*"a"*; or be:

1. Pipes: single wall pipes meeting department upgrade standards on the pipes with leak detection pursuant to 567—subrule 135.3(2). If more than one valve is on the pipe, this option is not available.

2. Tanks: must be either one of the options specified in 11.4(6)*"a"* or be a department-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4), or in lieu of automatic in-tank gauging, be a department-approved electronic tank level monitor in conjunction with a department-approved UST statistical inventory reconciliation method pursuant to 567—subrule 135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

11.4(7) Any system upgrade or replacement installed prior to March 25, 1992, which complies with the provisions of this rule shall be eligible for upgrade benefits if the system has been fully upgraded or replaced in accordance with 567—Chapter 135.

11.4(8) The board reserves the right to establish cost controls on the purchase and installation of underground storage tank equipment and systems. Upgrade benefits are not equipment and capital improvements for purposes of Iowa Code section 455G.9(6).

11.4(9) Evidence of insurance or self-insurance shall be provided to the department upon completion of the upgrade or replacement unless the Iowa UST program provides insurance coverage. If the Iowa UST program provides coverage, the administrator will notify the department.

11.4(10) Failure to obtain approval or qualify for upgrade benefits may be appealed as provided in 591—Chapter 17.

11.4(11) Impact on cost of insurance. The cost of insurance will be directly impacted by the type of upgrade or replacement installation. In determining future costs of insurance coverage, the board shall assess the merit of each type of upgrade or replacement installation and establish a degree of risk and cost of actuarially determined premiums.

This rule is intended to implement Iowa Code sections 455B.474(1)*"f"*(8) and 455G.9(1)*"a"*(5).

591—11.5(455G) Environmental damage offset. Rescinded IAB 1/17/96, effective 12/29/95.

591—11.6(455G) Soil remediation payments.

11.6(1) When reviewing applications for benefits under Iowa Code chapter 455G for cost of remediating soils, the criteria in this rule shall apply when determining payment eligibility.

11.6(2) Overexcavation and remediation of soils will have the cost approved by the board or its administrator prior to exceeding excavation limits specified in this rule.

11.6(3) Excavation after completion of the site cleanup report shall be limited to the immediate tank zone and tank lines or piping on tanks registered by the department.

a. On sites where monitoring-in-place has been approved by the department, overexcavation may be approved to a maximum of the actual tank zone, plus six lineal feet out from the tank zone, and two feet below the tank itself, unless normal groundwater heights are above that level, and may be approved to a maximum of two feet deep below the line and three feet total width along the tank line.

b. On sites where monitoring-in-place has not been approved by the department, overexcavation may be approved to a maximum of the actual tank zone, plus six lineal feet out from the tank zone, and two feet below the tank itself, unless normal groundwater heights are above that level, and may be approved to a maximum of two feet deep below the line and three feet total width along the tank line.

11.6(4) If overexcavation occurs prior to completion of the site cleanup report (SCR), the SCR shall no longer be eligible for 100 percent reimbursement up to $20,000 if approval of costs associated with the overexcavation and the scope of the work is not first approved by the board or the administrator. In such situations, the cost of the SCR will be paid as a remediation expense and subject to deductibles and copayments should approval not be obtained prior to proceeding.

11.6(5) Preapproval is required for overexcavation of any site, whether as a part of a remediation project or a tank upgrade or replacement, if the distances exceed board-authorized ranges set forth in subrule 11.6(3).

11.6(6) Rescinded IAB 3/26/97, effective 4/30/97.

591—11.7(455G) Prioritization of remedial account benefits and expenses. Rescinded IAB 1/17/96, effective 12/29/95.

591—11.8(455G) Payments for conducting RBCA analysis on "monitor only" sites.

11.8(1) When reviewing applications for benefits for the cost of completing an RBCA analysis on a site which has an approved SCR requiring "monitoring only," or on a site with an SCR submitted between August 15, 1996, and January 31, 1997, the criteria in this rule shall apply when determining payment eligibility.

11.8(2) Tier 1, Tier 2, and Tier 3 risk-based corrective action analysis must have budgets preapproved by the board or its administrator prior to any costs being incurred.

11.8(3) Benefits shall be limited to those costs associated with activities which are required to be completed in order for a Tier 1, Tier 2, or Tier 3 to be accepted by the department and which will determine the risk associated with the site.

11.8(4) Only sites which are currently eligible for benefits under this chapter are eligible for reimbursement of costs associated with activities under this rule.

11.8(5) One hundred percent of the costs may be preapproved not to exceed $10,000 for all activities associated with the completion of the Tier 1, Tier 2, or Tier 3 analysis. Costs which exceed $10,000 will be subject to the limitations of Iowa Code section 455G.9(1)*"f."*

These rules are intended to implement Iowa Code section 455B.474 and chapter 455G.

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SAFETY REQUIREMENTS FOR THE USE OF RADIATION MACHINES AND CERTAIN USES OF RADIOACTIVE MATERIALS

641—41.1(136C) X-rays in the healing arts.

41.1(1) *Scope.* This rule establishes requirements, for which a registrant is responsible, for use of X-ray equipment by or under the supervision of an individual authorized by and licensed in accordance with state statutes to engage in the healing arts or veterinary medicine. The provisions of this rule are in addition to, and not in substitution for, any other applicable provisions of these rules. The provisions of Chapter 41 are in addition to, and not in substitution for, any other applicable portions of 641—Chapters 38 to 42. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of July 1, 1999.

41.1(2) *Definitions.* For the purpose of this chapter, the definitions of 641—Chapter 38 may also apply. The following are specific to rule 41.1(136C).

"Accessible surface" means the external surface of the enclosure or housing of the radiation producing machine as provided by the manufacturer.

"Added filtration" means any filtration which is in addition to the inherent filtration.

"Aluminum equivalent" means the thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question.

"Attenuation block" means a block or stack, having dimensions 20 centimeters by 20 centimeters by 3.8 centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation.

"Automatic exposure control (AEC)" means a device which automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation (see also "Phototimer"). (Includes devices such as phototimers and ion chambers.)

"Barrier" (see "Protective barrier").

"Beam-limiting device" means a device which provides a means to restrict the dimensions of the X-ray field.

"Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

"C-arm X-ray system" means an X-ray system in which the image receptor and X-ray tube housing assembly are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

"Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

"Certified components" means components of X-ray systems which are subject to regulations promulgated under Public Law 90-602, the "Radiation Control for Health and Safety Act of 1968," the Food and Drug Administration.

"Certified system" means any X-ray system which has one or more certified component(s).

"Coefficient of variation" or *"C"* means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{x}} = \frac{1}{\bar{x}} \left[\sum_{i=1}^{n} \frac{(x_i - \bar{x})^2}{n-1} \right]^{1/2}$$

where:
s = Estimated standard deviation of the population.
X = Mean value of observations in sample.
X_i = i^{th} observation in sample.
n = Number of observations in sample.

"Computed tomography" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

"Control panel" (see X-ray control panel).

"Cooling curve" means the graphical relationship between heat units stored and cooling time.

"CT" (see "Computed tomography").

"Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

"Detector" (see "Radiation detector").

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Direct scattered radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam (see "Scattered radiation").

"Entrance exposure rate" means the exposure free in air per unit time at the point where the center of the useful beam enters the patient.

"Equipment" (see "X-ray equipment").

"Field emission equipment" means equipment which uses an X-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Filter" means material placed in the useful beam to preferentially absorb selected radiations.

"Fluoroscopic imaging assembly" means a subsystem in which X-ray photons produce a visual image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

"Focal spot (actual)" means the area projected on the anode of the X-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates.

"General purpose radiographic X-ray system" means any radiographic X-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

"Gonad shield" means a protective barrier for the testes or ovaries.

"Healing arts screening" means the testing of human beings using X-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe such X-ray tests for the purpose of diagnosis or treatment.

"Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds, i.e., kVp × mA × second.

"Image intensifier" means a device, installed in its housing, which instantaneously converts an X-ray pattern into a corresponding light image of higher energy intensity.

(2) Provide randomly (at least every three years), at the request of agency mammography inspectors, two mammography examinations (mammograms) which meet the criteria in 41.6(2)*"f"*(1).

(3) Have the film returned by the agency for inclusion in the patient's file after quality interpretation by agency radiologists.

(4) Be billed the fee for the quality interpretation as set forth in 641—38.8(1)*"b"*(2).

(5) Be provided with a written explanation of the results of the quality evaluation which will accompany the returned mammograms referred to in 41.6(2)*"f"*(3).

g. Federal mammography regulations. All Iowa facilities performing mammography shall comply with the applicable regulations found in 21 CFR Parts 16 and 900 which have an effective date of April 28, 1999. Persons authorized to perform mammography in Iowa shall be responsible for ensuring compliance with the appropriate CFR regulations or Iowa administrative rules, whichever are more stringent.

41.6(3) *Mammography personnel.*

a. Physician consultant.

(1) Must be available either on staff or through arrangement.

(2) Must document in writing annually completion of:

1. Review of the procedural manuals to determine that they are adequate.

2. Verification that equipment and personnel meet applicable state requirements and are performing properly.

3. Verification that the safety procedures are being followed.

4. Verification that all other requirements of these rules are being met.

b. Interpreting physician. All mammograms must be interpreted by a radiologist who meets the following certification, experience, continuing education, and written report requirements:

(1) Be certified by the American Board of Radiology, the American Osteopathic Board of Radiology, or Royal College of Physicians and Surgeons of Canada in Radiology or have had at least two months of documented full-time training from a person recognized by this agency. The training must include interpretation of mammograms, including instructions in radiation physics, radiation effects and radiation protection.

(2) Has interpreted an average of ten or more mammograms per workweek in the prior six months or has completed a radiology residency within the past two years.

(3) Has successfully completed or taught a minimum of 40 hours (includes radiology residency) of postgraduate instruction in mammography interpretation.

(4) Has successfully completed or taught a minimum of 15 hours of postgraduate instruction in mammography interpretation every 36 months thereafter.

(5) Continues to interpret an average of ten or more mammograms per workweek.

(6) Signs a written report, as defined in 41.6(1), a copy of which must be sent to the referring physician or, if a referring physician is not available, directly to the patient.

(7) Provides a copy of the written report and the original images or films to the patient's mammography supplier for inclusion in the patient's medical record.

(8) Provides a written statement to the patient, either through a referring physician or designee or, if a referring physician is not available, directly to the patient. The statement must:

1. Be written in terms easily understood by a lay person.

2. Describe the test results and the importance of the mammogram to the patient's health (including, if the results are positive, a description of the next steps), as well as the patient's responsibility to share with any new physician or supplier of the next mammogram, the date and place of the previous mammogram.

3. Record the date of the procedure, name of the facility, and the name of the physician, if any, to whom the patient wants a copy to be sent.

4. Indicate that the original images of films are being provided to the mammographic supplier, for inclusion in the patient's medical record.

c. Mammography imaging medical physicist. All mammography imaging medical physicists conducting surveys of mammography facilities and providing oversight of the facility quality assurance program under the federal "Mammography Quality Standards Act of 1992" (MQSA) shall meet the requirements for initial qualifications as well as the requirements for continuing qualifications.

(1) Initial qualifications. All mammography imaging medical physicists shall be state-approved or be certified by the American Board of Radiology in Radiological Physics/Diagnostic Radiological Physics, the American Board of Medical Physics in Diagnostic Imaging Physics, or the Canadian College of Physicists in Medicine as a Fellow in Diagnostic Radiological Physics or any other body approved by FDA to certify medical physicists; and

1. Have a master's or higher degree in a science from a college or university accredited by one of the regional accreditation bodies of the Commission on Higher Education with not less than 30 semester hours or equivalent of college level physics or radiation science, have two years of experience in conducting performance evaluations of mammography facilities and 20 hours of documented specialized training in conducting performance evaluations of mammography facilities. Complete surveys of five mammography units shall be equal to one year of experience. Two or more years of training while pursuing a master's or higher degree in medical physics may be accepted in lieu of one year of experience. After April 28, 1999, the experience shall be acquired under the direct supervision of a mammography imaging medical physicist who meets the requirements in 41.6(3)*"c"*(1) and 41.6(3)*"c"*(2).

2. Prior to October 27, 1997, have a bachelor's degree in a physical science from a college or university accredited by one of the regional accreditation bodies of the Commission on Higher Education with not less than 15 semester hours or equivalent college level physics or radiation sciences and five years of experience in conducting performance evaluations of mammography facilities. The individual shall have surveyed at least five mammography units in each of the five years and have at least 40 hours of documented specialized training in conducting performance evaluations of mammography facilities to comply with the requirements of MQSA.

(2) Continuing qualifications.

1. Continuing education. After the third anniversary of completion of the requirements of 41.6(3)*"c"*(1), the individual shall have taught or completed at least 15 continuing education units in mammographic imaging over the three previous years. This shall include training, if available, appropriate to each mammographic modality evaluated by the mammography imaging medical physicist during the surveys or oversights of quality assurance programs for which the medical physicist is responsible.

2. Continuing experience. After the first anniversary of completion of the requirements of 41.6(3)*"c"*(1), and each year thereafter, the individual shall have surveyed at least three mammography units within the last 12 months. This requirement does not apply to an individual who is employed full-time at a single facility as a diagnostic medical physicist.

(3) All facility survey reports must be signed by a mammography imaging medical physicist who meets the qualification requirements of 41.6(3)*"c"*(1).

(4) A mammography imaging medical physicist who signs a facility survey report must have been present in that facility during the survey.

(2) If the software used to generate shielding requirements is not in the open literature, submit quality control sample calculations to verify the result obtained with the software.

III. Therapeutic radiation machines over 150 kV.

In addition to the requirements listed in Section I above, therapeutic radiation machine facilities which produce photons or electrons with a maximum energy in excess of 150 kV or electrons shall submit shielding plans which contain, as a minimum, the following additional information:

A. Equipment specifications including the manufacturer and model number of the therapeutic radiation machine, and gray (rad) at the isocenter and the energy(s) and type(s) of radiation produced (i.e., photon, electron). The target to isocenter distance shall be specified.

B. Maximum design workload for the facility including total weekly radiation output (expressed in gray (rad) at one meter), total beam-on time per day or week, the average treatment time per patient, along with the anticipated number of patients to be treated per day or week.

C. Facility blueprint/drawing (including both floor plan and elevation views) indicating relative orientation of the therapeutic radiation machine, scale (0.25 inch = 1 foot is typical), type(s), thickness and minimum density of shielding material(s), direction of north, the locations and size of all penetrations through each shielding barrier (ceiling, walls and floor), as well as details of the door(s) and maze.

D. The structural composition and thickness or concrete equivalent of all walls, doors, partitions, floor, and ceiling of the room(s) concerned.

E. The type of occupancy of all adjacent areas inclusive of space above and below the room(s) concerned. If there is an exterior wall, show distance to the closest area(s) where it is likely that individuals may be present.

F. Description of all assumptions that were in shielding calculations including, but not limited to, design energy (i.e., room may be designed for 6 MV unit although only a 4 MV unit is currently proposed), workload, presence of integral beam-stop in unit, occupancy and use(s) of adjacent areas, fraction of time that useful beam will intercept each permanent barrier (walls, floor and ceiling) and "allowed" radiation exposure in both restricted and unrestricted areas.

G. At least one example calculation which shows the methodology used to determine the amount of shielding required for each physical condition (i.e., primary and secondary leakage barriers, restricted and unrestricted areas, small angle scatter, entry door(s) and maze) and shielding material in the facility.

(1) If commercial software is used to generate shielding requirements, also identify the software used and the version/revision date.

(2) If the software used to generate shielding requirements is not in the open literature, submit quality control sample calculations to verify the result obtained with the software.

IV. Neutron shielding.

In addition to the requirements listed in Section III above, therapeutic radiation machine facilities which are capable of operating above 10 MV shall submit shielding plans which contain, as a minimum, the following additional information:

A. The structural composition, thickness, minimum density and location of all neutron shielding material.

B. Description of all assumptions that were used in neutron shielding calculations including, but not limited to, neutron spectra as a function of energy, neutron fluency rate, absorbed dose and dose equivalent (due to neutrons) in both restricted and unrestricted areas.

C. At least one example calculation which shows the methodology used to determine the amount of neutron shielding required for each physical condition (i.e., restricted and unrestricted areas, entry door(s) and maze) and neutron shielding material utilized in the facility.

(1) If commercial software is used to generate shielding requirements, also identify the software used and the version/revision date.

(2) If the software used to generate shielding requirements is not in the open literature, submit quality control sample calculations to verify the result obtained with the software.

D. The method(s) and instrumentation which will be used to verify the adequacy of all neutron shielding installed in the facility.

V. References.

A. NCRP Report 49, "Structural Shielding Design and Evaluation for Medical Use of X-Rays and Gamma Rays of Energies Up to 10 MeV" (1976).

B. NCRP Report 51, "Radiation Protection Design Guidelines for 0.1-100 MeV Particle Accelerator Facilities" (1977).

C. NCRP Report 79, "Neutron Contamination from Medical Electron Accelerator" (1984).

These rules are intended to implement Iowa Code chapter 136C.

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[Filed 1/21/99, Notice 11/4/98—published 2/10/99, effective 4/28/99]

◊Two ARCs

CHAPTER 101
DEATH CERTIFICATION, AUTOPSY AND DISINTERMENT
[Prior to 7/29/87, Health Department[470] Ch 101]

641—101.1(144) Report of autopsy findings.

101.1(1) In cases where an autopsy is to be performed, it shall not be necessary to defer the entry of the cause of death pending a full report of microscopic and toxicological studies.

101.1(2) In any case where the gross findings of an autopsy are inadequate to determine the cause of death, the physician or medical examiner shall enter the cause as "pending" on the certificate and sign the certification. Immediately after the medical data necessary for determining the cause of death have been made known, the physician or medical examiner shall forward the cause of death to the registrar on a supplemental form provided by the state registrar and signed by the physician or medical examiner.

101.1(3) In any case where the autopsy findings significantly change the medical diagnosis of cause of death, a supplemental report of the cause of death shall be made by the physician or medical examiner to the registrar as soon as the findings are available. Such report shall be made a part of the original certificate.

641—101.2(144) Attending physician not available. An associate physician, who relieves the attending physician while on vacation or otherwise unavailable, may certify to the cause of death in any case where the associate physician has access to the medical history of the case, provided that the associate physician views the deceased at or after death occurs and the death is from natural causes. In all other cases in which a physician is unavailable, the medical examiner shall prepare the medical certification of cause of death.

641—101.3(144) Hospital or institution may assist in preparation of certificate. When death occurs in a hospital or other institution and the death is not under the jurisdiction of the medical examiner, the person in charge of such institution or the designated representative where the cause of death is known may aid in the preparation of the death certificate as follows:

Place the full name of the deceased, date and place of death on the death certificate blank and obtain from the attending physician the medical certification of cause of death and the signature of the attending physician;

Present the partially completed death certificate (identified by the name) and the completed medical certification to the funeral director or person who acted as such.

641—101.4(135) Removal of dead body or fetus.

101.4(1) Before assuming custody of a dead human body or fetus, any person shall:

a. Contact the attending physician and receive assurance that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death or fetal death; or

b. If the case comes within the jurisdiction of the medical examiner, contact the medical examiner and receive authorization to remove the dead human body or fetus.

101.4(2) If a person other than a funeral director, medical examiner, or emergency medical service assumes custody of a dead human body or fetus, the person shall secure a burial-transit permit.

641—101.5(144) Burial-transit permit.

101.5(1) The burial-transit permit shall be issued upon a form prescribed by the state registrar and shall state:

a. The name, date of death, cause of death and other necessary details required by the state registrar;

b. That a satisfactory certificate of death has been filed;

c. That permission is granted to inter, remove or otherwise dispose of the body; and

d. The name and location of the cemetery or crematory where final disposition of the body is to be made.

The burial-transit permit shall be issued by the county medical examiner, a funeral director, or the county registrar of the county where the certificate of death or fetal death was filed.

101.5(2) The burial-transit permit shall be delivered to the person in charge of the place of final disposition.

101.5(3) The person in charge of every place of final disposition shall see that all of the requirements of this chapter relative to burial-transit permits have been complied with before disposition. Such person shall retain the burial-transit permit for a period of one year from the date of final disposition.

101.5(4) A burial-transit permit shall not be issued prior to the filing of a certificate of death or fetal death in the county where the death occurred.

101.5(5) A burial-transit permit shall not be issued to a person other than a licensed funeral director if the death or fetal death is of a suspected or known communicable disease as defined by 641—paragraph 1.2(1)*"a."*

101.5(6) In all cases where a fetus has reached a gestation period of 20 completed weeks or more, or with a weight of 350 grams or more, a burial-transit permit must be obtained for the disposition of the fetus.

641—101.6(135) Transportation and disposition of dead body or fetus.

101.6(1) A dead human body or fetus shall be transported only after enclosure in a tightly sealed outer receptacle, unless the body or fetus has been embalmed. In addition, the transport of a dead human body or fetus shall be in a manner that, applying contemporary community standards with respect to what is suitable, is respectful of the dead, the feelings of relatives, and the sensibilities of the community.

101.6(2) When a dead human body or fetus is transported from the state, the burial-transit permit shall accompany the body or fetus. When a dead human body or fetus is brought into the state, a burial-transit permit under the law of the state in which the death occurred shall accompany the body or fetus.

101.6(3) If the final disposition of a dead human body or fetus is cremation at a licensed cremation establishment, scattering of cremated remains shall be subject to the local ordinances of the political subdivision, and any and all regulations of the cemetery, if applicable, in which the scattering site is located. However, such local ordinances and cemetery regulations shall not allow scattering of cremated remains upon state property or upon private property without the property owner's consent. In the absence of an applicable local ordinance or cemetery regulation, scattering of cremated remains shall not be allowed upon any public property or upon private property without the property owner's consent. All other rules and regulations of the department relating to dead human bodies or fetuses shall not apply to the cremated remains.

101.6(4) If the final disposition of a dead human body or fetus is burial, interment or entombment, local ordinances of the political subdivision in which the final disposition site is located and any and all regulations of the cemetery, if applicable, shall apply. In the absence of an applicable local ordinance, the depth of the grave at its shallowest point shall be at least three feet from the top of the burial container.

641—101.7(135,144) Disinterment permits.

101.7(1) Disinterment permits shall be required for any relocation (above or below ground) of a body from its original site of interment. Disinterment permits shall be valid for 30 days after the date of issuance. Disinterment permits are to be issued on a four-copy form prescribed by the state registrar: one copy filed with the sexton or person in charge of the cemetery in which disinterment is to be made; one copy to be used during transportation; one copy filed with the sexton or person in charge of the cemetery of reinterment; and one copy to be returned within ten days after the date of disinterment by the funeral director or embalmer to the state registrar.

101.7(2) A dead body, properly prepared by an embalmer and deposited in a receiving vault, shall not be considered a disinterment when removed from the vault for final burial.

641—101.8(144) Extension of time. If the attending physician or medical examiner is unable to complete the medical certification of cause of death or if the funeral director is unable to obtain the personal information about the deceased within the statutory time period, the funeral director shall file a death certificate form completed with all information available. Such certificate shall be authority for the county registrar to issue a burial-transit permit. As soon as possible, but in all cases within 15 days, a supplemental report shall be filed with the local registrar providing the information missing from the original certificate.

These rules are intended to implement Iowa Code sections 135.11(9), 144.3 and 144.32.

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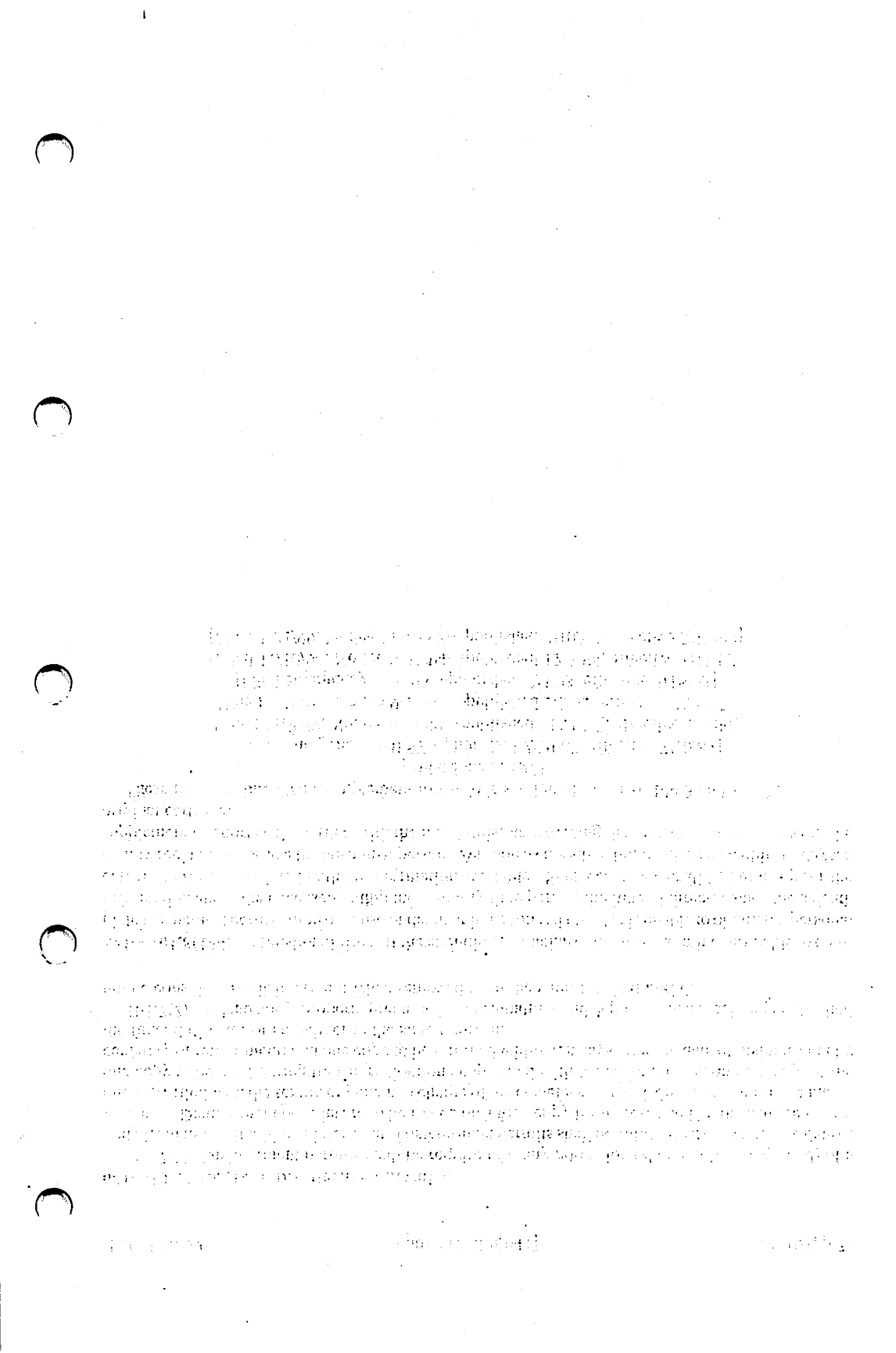

CHAPTER 102
CORRECTION AND AMENDMENT OF VITAL RECORDS
[Prior to 7/29/87, Health Department[470] Ch 102]

641—102.1(144) Application to amend records.

102.1(1) To amend a birth certificate, application may be made only by one of the parents, the guardian, or the registrant if of legal age.

102.1(2) To amend a death or fetal death certificate, application shall be made by the next of kin or the funeral director or person acting as such. Corrections or amendments to the medical certification of cause of death shall be requested by the attending physician or the medical examiner. The physician or medical examiner may by affidavit amend the cause of death within 90 days following the date of death or fetal death. Any amendment after 90 days following death or fetal death can be made only by court order. Provided, however, that the cause of death may be amended at any point upon submission of a report of autopsy findings.

102.1(3) To amend a marriage record, application shall be made by the parties married, the officiant, or by the next of kin.

102.1(4) To amend a divorce record, a certification must be received from the clerk of court maintaining the record from which the report was prepared stating in what manner such record has been amended. Those items appearing on the divorce record which are not a part of the divorce decree may be corrected or amended either by query or upon application of the parties to the divorce or their legal representatives.

641—102.2(144) Correction of minor errors within first year. Corrections of obvious errors, transposition of letters in words of common knowledge, or omissions, may be made by the state registrar within the first year after the date of the event, either upon observation, upon query, or upon request of a person with a direct and tangible interest in the record. If such additions or minor corrections are made by the state registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change, shall be made on the record. Certificates corrected under this section are not to be marked amended.

641—102.3(144) Amendments or major corrections.

102.3(1) All other corrections or amendments unless covered elsewhere in these rules or in the law, shall be supported by:

a. An affidavit setting forth

(1) Information to identify the certificate;

(2) The incorrect data as it is listed on the certificate;

(3) The correct data as it should appear.

b. One or more pieces of documentary evidence supporting the correction or amendment. If the application for correction or amendment is made one year or more after the event, the documentary evidence must be established at least five years prior to the date the correction or amendment is requested or within seven years of the date of event.

102.3(2) The state registrar may determine a priority of best evidence and may, upon discretion, require additional documentary evidence to support the requested correction or amendment. The state registrar shall evaluate the evidence submitted in support of any amendment, and when there is reason to question its validity or adequacy, the state registrar may reject the amendment and shall advise the applicant of the reasons for this action.

641—102.4(144) Correction of same item more than once. Once a correction of an entry is made on a vital record, that entry shall not be corrected again unless:

1. It can be shown that the first correction was made through mistake; or
2. A court order is received from a court of competent jurisdiction.

641—102.5(144) Methods of amending certificates. Corrections or amendments shall be made by drawing a single line through the incorrect item, if listed, and inserting the correct or missing data immediately above it or to the side of it, or by completing the blank item, as the case may be. In all cases where a line must be drawn through an original entry, it must not obliterate the original entry. In addition, there shall be inserted on the certificate, or in a separate file, a statement identifying the affidavit and documentary evidence used as proof of the correct facts and the date the correction was made. The word "amended" shall be placed on the certificate. In every case where the word "amended" is required to appear on the certificate, it shall appear on all copies of such certificates.

641—102.6(144) Amendment of birth certificate by paternity affidavit. A certificate of birth may be amended to show paternity, if paternity is not shown on the certificate, by submission of a sworn acknowledgment or affidavit signed by both parents. Where there is a legal finding of fact that the husband of the mother at time of conception or birth is not the biological father of the child, the husband's name shall be removed. Subsequent to the removal of the husband's name a sworn acknowledgment or affidavit may be used to establish paternity. The certificate shall not be marked as "amended."

641—102.7(144) Change of given names within first year.

102.7(1) Until the registrant's first birthday, given names may be added or changed upon written request of:

a. Both parents; or

b. The mother in the case of a child born out of wedlock or the death or incapacity of the father; or

c. The father in the case of the death or incapacity of the mother; or

d. The guardian in the case of the death or incapacity of both parents.

102.7(2) This procedure may be employed to change a given name only once. Thereafter, and at any time after the first year, the given name may be changed only upon submission of a court order.

641—102.8(144) Addition of given names until seventh birthday.

102.8(1) Until the registrant's seventh birthday, the given name for a child whose birth was reported without a given name may be added based upon an affidavit signed by:

a. Both parents; or

b. The mother in the case of a child born out of wedlock or the death or incapacity of the father; or

c. The father in the case of the death or incapacity of the mother; or

d. The guardian or agency having legal custody of the registrant in the case of death or incapacity of both parents.

102.8(2) A certificate amended in this manner is not to be marked "amended."

641—102.9(144) Addition of given name after seventh birthday. After the seventh birthday one or more pieces of documentary evidence must be submitted to substantiate the given name being added.

641—102.10(144) Legal change of name. For a legal change of name, a certified copy of the court order changing the name must be presented to the state registrar along with data to identify the birth certificate and a request that it be amended to show the new name.

These rules are intended to implement Iowa Code section 144.3.

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CHAPTER 103
CONFIDENTIALITY OF RECORDS
[Prior to 7/29/87, Health Department[470] Ch 103]

641—103.1(144) Disclosure of data.

103.1(1) The state registrar or county registrar shall permit the inspection of a record or issue a certified copy of a record or part thereof only when satisfied that the applicant has a direct and tangible interest in the content of the record and that the information contained therein is necessary for the determination of a personal or property right.

a. A request from the registrant, a member of the immediate family, the guardian, or their respective legal representatives shall be considered to be a direct and tangible interest.

b. For the purpose of securing information or obtaining certified copies of vital records, the term legal representative shall include an attorney, physician, funeral director, insurance company, or an authorized agency acting in behalf of the registrant or the registrant's family.

c. For the purpose of securing and obtaining data from vital records, requests from natural parents of adopted children, in the absence of a court order, and requests from commercial firms or agencies requesting listings of names and addresses shall not be considered to be direct and tangible interest.

103.1(2) The state registrar may permit use of data of vital statistics records for research purposes subject to conditions the state registrar may impose to ensure that the use of the data is limited to such research purposes.

103.1(3) The state registrar or county registrar may disclose data from vital statistics records to federal, state, county or municipal agencies of government which request such data in the conduct of their official duties, subject to conditions the state registrar may impose to ensure that the use of the data is limited to official purposes.

103.1(4) Information in vital records indicating a birth occurred out of wedlock shall be released by the state registrar to the registrant, to the legal parent(s), to the legal grandparents, to the legal guardian, to their respective legal representatives, to an authorized agency acting on behalf of the registrant or upon order of a district court. Information may also be released to a legal descendant, or the descendant's authorized agent, who has direct and tangible interest and satisfactorily substantiates a direct lineal consanguinity.

103.1(5) Whenever it shall be deemed necessary to establish an applicant's right to information from vital statistics records, the state registrar or county registrar may require written application, identification of the applicant, or a sworn affidavit.

103.1(6) No data shall be furnished from records for research purposes until the state registrar has prepared in writing the conditions under which the records may be used and received an agreement signed by a responsible agent of the research organization agreeing to meet with and conform to such conditions.

103.1(7) The state registrar or the registrar's designee shall have the right to appoint volunteers to assist with vital records. All volunteers utilized for the purging project for vital records shall be responsible to, and under the direction of, the state registrar or designees. Volunteers will be screened by the state registrar or the registrar's designee prior to participation. This purging shall be done in a secure place maintained to ensure the confidentiality of the vital records in question.

All volunteers will be required to sign an oath swearing to abide by all appropriate statutes and rules applicable to nondisclosure of confidential information contained in accessed vital records. The volunteers' obligation of confidentiality is to be clearly spelled out in the agreement as well as all penalties which the volunteers may be subjected to if violations occur.

All volunteers serve without compensation.

These rules are intended to implement Iowa Code section 144.3.

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[Filed 5/12/88, Notice 2/24/88—published 6/1/88, effective 7/6/88]

141.6(7) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings on them.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

141.6(8) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

141.6(9) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

141.6(10) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

141.6(11) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

These rules are intended to implement Iowa Code section 147A.4 and Iowa Code Supplement section 321.34.

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CHAPTERS 142 to 149
Reserved

CHAPTER 150
IOWA REGIONALIZED SYSTEM OF PERINATAL HEALTH CARE

641—150.1(135,77GA,ch1221) Purpose and scope. Hospitals within the state shall determine whether to participate in Iowa's regionalized system of perinatal health care and shall select the hospital's level of participation in the regionalized system. A hospital having determined to participate in the regionalized system shall comply with the rules appropriate to the level of participation selected by the hospital.

Iowa's regionalized system of perinatal health care helps practitioners in rural Iowa to rapidly access specialty services for their patients even though such services may not exist in the local community. This is predicated on several factors, including the willingness of certain hospitals in moderate-to-large Iowa cities to provide specialty services and the presence of a functional system of patient transportation. These rules address how participating Iowa hospitals relate to the regionalized system and suggest a level of functioning which should identify the role each participating hospital plays in the system.

The following rules present a description of the levels of care among Iowa perinatal hospitals. The levels are as follows: Level I hospital, Level II hospital, Level II regional center, and Level III center. The department is very much aware of the need for organization of limited resources in a rural state. Accordingly, the rules are designed to encourage and support the presence of a Level II regional center in areas not populous enough to support a Level III center.

These rules are not meant to hold Iowa hospitals and Iowa perinatal professionals to an impractical ideal. Although the rules are clearly not intended to serve as standards, they do specify particulars when feasible. For example, specification of a designated level of care for a hospital should be clearly evident from the descriptions. Levels of care are designated by the functional capacity of the hospital. Thus, it may be possible to have a number of Level II hospitals or Level III centers in one city.

The primary purpose of designation is to ensure Iowa perinatal patients appropriate care as close to their homes as possible. In an ideal situation, no community hospital would be more than 50 miles from a perinatal center. Unfortunately, Iowa's low population density precludes this. Accordingly, Iowa developed a network of regional centers.

The further intent of these rules is to ensure that when a hospital markets itself at a particular level of perinatal care, it is capable of providing that care. The public is entitled to know the level of functioning. The rules provide the framework to be used in defining and evaluating the level of perinatal services being offered.

641—150.2(135,77GA,ch1221) Definitions. For the purpose of these rules, the following definitions shall apply:

"Categorization" means a preliminary determination by the department that a hospital is capable of providing perinatal care at Level I, Level II, Level II regional, or Level III care capabilities.

"Certificate of verification" means a document awarded by the department that identifies a hospital's level of perinatal care and term of verification at that level.

"Department" means the Iowa department of public health.

"Director" means the director of the Iowa department of public health.

"Hospital" means a facility licensed under Iowa Code chapter 135B or a comparable facility located and licensed in another state.

"On-site verification survey" means an on-site survey conducted by the department's statewide perinatal care program based at the University of Iowa hospitals and clinics to assess a hospital's ability to meet the level of designation selected by the hospital.

"Perinatal advisory committee" means the committee that provides review and counsel to the statewide perinatal care program based at the University of Iowa hospitals and clinics.

"Perinatal guidelines advisory committee" means the committee that provides consultation to the department regarding these rules for the regionalized system of perinatal health care.

"Regionalized system of perinatal health care" means the department's program for the provision of appropriate perinatal care as close to patients' homes as possible.

"Respiratory distress" means tachypnea (respiratory rate of 60 or more per minute), grunting, tugging, retracting, nasal flaring, or cyanosis. Any or all of these may constitute respiratory distress.

"Statewide perinatal health care program" means the educational team based at the University of Iowa hospitals and clinics and retained by the department of public health.

"Verification" means a process by which the department certifies a hospital's capacity to provide perinatal care in accordance with criteria established for Level I hospitals, Level II hospitals, Level II regional centers, and Level III centers under these rules.

641—150.3(135,77GA,ch1221) Perinatal guidelines advisory committee.

150.3(1) *Purpose.* The director shall appoint an advisory committee to consult with the department in its development and maintenance of the regionalized system of perinatal health care. This advisory committee should not be confused with the perinatal advisory committee that provides review and counsel to the statewide perinatal care program.

150.3(2) *Appointment.*

a. Members of the advisory committee shall include a representative from each of the following organizations that chooses to designate a nominee to the director: Iowa Hospitals and Health Systems; Iowa Medical Society; Iowa Osteopathic Medical Association; Iowa Chapter, American Academy of Pediatrics; Iowa Section, American College of Obstetricians and Gynecologists; Iowa Academy of Family Physicians; Iowa Nurses Association; Iowa Association of Neonatal Nurses; Iowa Association of Women's Health, Obstetrical and Neonatal Nurses; and Iowa Chapter, Great Plains Organization for Perinatal Health Care.

b. Nonvoting ex officio members of the committee shall include representatives from the department of inspections and appeals, the statewide perinatal health care program at the University of Iowa hospitals and clinics and the division of family and community health medical director at the department.

c. Vacancies shall be filled in the same manner in which the original appointments were made.

d. Three consecutive unexcused absences shall be grounds for the director to consider dismissal of the committee member and appointment of another. The chairperson of the committee shall notify the director of the department.

150.3(3) *Officers.* Officers of the committee shall be a chairperson and a vice-chairperson and shall be elected at the first meeting of each fiscal year unless designated at the time of appointment. Vacancies in the office of chairperson shall be filled by elevation of the vice-chairperson. Vacancies in the office of vice-chairperson shall be filled by election at the next meeting after the vacancy occurs. The chairperson shall preside at all meetings of the committee, appoint such subcommittees as deemed necessary, and designate the chairperson of each subcommittee. If the chairperson is absent or unable to act, the vice-chairperson shall perform the duties of the chairperson. When so acting, the vice-chairperson shall have all the powers of and be subject to all restrictions upon the chairperson. The vice-chairperson shall also perform such other duties as may be assigned by the chairperson.

150.3(4) *Meetings.*

a. The committee shall establish a meeting schedule on an annual basis to conduct its business. Meetings may be scheduled as business requires, but notice to members must be at least five working days prior to the meeting date. A four-week notice is encouraged to accommodate the schedules of members.

b. Robert's Rules of Order shall govern all meetings.

c. Action on any issue before the committee can be taken only by a majority vote of the entire membership. The committee shall maintain information sufficient to indicate the vote of each member present.

150.3(5) *Subcommittees.* The committee may designate one or more subcommittees to perform such duties as may be deemed necessary.

150.3(6) *Expenses of committee members.* The following may be considered necessary expenses for reimbursement of committee members when incurred on behalf of committee business and are subject to established state reimbursement rates:

a. Reimbursement for travel in a private car.

b. Actual lodging and meal expenses including sales tax on lodging and meals.

c. Actual expense of public transportation.

641—150.4(135,77GA,ch1221) Categorization and selection of level of care designation. Hospitals that have previously participated in the regionalized system of perinatal health care shall be categorized by the department at the level of care designation last verified by the department. A hospital that has chosen to participate in the regionalized system for the first time or that has chosen to select a new level of care designation shall:

1. Submit the following information to the department:
   - Description of the geographic area to be served.
   - Identification of the target population to be served.
   - Identification of Level I hospitals to be served.
   - Identification of unmet needs of the area to be served.
   - Demonstration of the ability to meet these rules.
2. Mail the information to:
   Iowa Regionalized System of Perinatal Health Care
   Iowa Department of Public Health
   Division of Family and Community Health
   321 East 12th Street, Lucas State Office Building
   Des Moines, Iowa 50319-0075
3. Seek a certificate of need reviewability determination and, if reviewable, obtain certificate of need approval. See Iowa Code sections 135.61 to 135.83 and Iowa Administrative Code 641—Chapters 202 and 203.

641—150.5(135,77GA,ch1221) Recommendation by the statewide perinatal care program.

150.5(1) Upon receipt of the hospital's application information from the department, the statewide perinatal care program will provide verification of the hospital's ability to meet the criteria for the level of designation selected by the hospital. The results of the verification shall be submitted to the department, along with a recommendation to grant or deny the hospital a certificate of verification.

150.5(2) The statewide perinatal health care program shall also perform periodic on-site verification surveys of established perinatal service programs to verify the continued ability of each hospital visited to meet the criteria for the level of designation selected by the hospital. The results of each survey shall also be submitted to the department, along with a recommendation to continue, suspend, or revoke the hospital's certificate of verification.

150.5(3) Any review and evaluation of the University of Iowa hospitals and clinics' established perinatal service program shall be performed by the department, or for the department, by a person or entity unaffiliated with the University of Iowa hospitals and clinics.

641—150.6(135,77GA,ch1221) Level I hospitals.

150.6(1) *Definition.* Level I hospitals provide basic inpatient care for pregnant women and newborns without complications; manage perinatal emergencies, including neonatal resuscitation; provide leadership in early risk identification before and after birth; seek consultation or referral for high-risk patients; and provide public and professional education.

150.6(2) *Functions.* Level I hospitals have a family-centered philosophy. Parents have reasonable access to their newborns 24 hours a day within all functional units and are encouraged to participate in the care of their newborns. Generally, parents can be with their newborns in the mother's room. Non-infectious siblings may visit in the mother's room or in a designated space.

Level I hospitals have the capability to:

a. Provide surveillance and care of all patients admitted to the obstetric service with an established triage system for identifying high-risk patients who should be transferred to a facility that provides Level II or higher care, prior to delivery;

b. Provide proper detection and supportive care of unanticipated maternal-fetal problems that occur during labor and delivery;

c. Perform emergency Cesarean sections as soon as possible after the decision to do the operation has been made;

d. Provide transfusions of blood and fresh frozen plasma on a 24-hour basis;

e. Provide anesthesia, pharmacy, radiology, respiratory support, electronic fetal heart-rate monitoring, and laboratory services on a 24-hour basis;

f. Provide care of postpartum conditions;

g. Evaluate the condition of healthy neonates and their continuing care until discharge;

h. Resuscitate all neonates using the neonatal resuscitation program guidelines as published by the American Heart Association/American Academy of Pediatrics;

i. Stabilize all neonates including unexpectedly small or sick neonates before transfer;

j. Consult and arrange transfers in conjunction with the obstetrician, pediatrician or neonatologist at the referral center;

k. Maintain a nursery for normal-term or near-term newborns.

150.6(3) *Physical facilities.* Physical facilities for perinatal care in hospitals should be conducive to care that meets the normal physiologic and psychosocial needs of mothers, neonates, fathers, and families. Special facilities should be available when deviations from the norm require uninterrupted physiologic, biochemical, and clinical observations of patients throughout the perinatal period. Labor, delivery, and newborn care facilities should be located contiguously.

The following recommendations are intended as general guidelines and are meant to be flexible enough to meet local needs. It is recognized that individual limitations of physical facilities for perinatal care may impede strict adherence to the recommendations. Furthermore, not all hospitals will have all the functional units described. Provisions for individual units should be consistent within the framework of a regionalized perinatal care system and the state and local public health regulations.

a. Obstetric functional units.

(1) Labor. Areas used for women in labor are equipped with the following components:

1. Adequate space for support persons, personnel, and equipment;
2. Adequate ventilation and temperature control;

3. A labor or birthing bed;
4. A storage area for the patient's clothing and personal belongings;
5. Adjustable lighting that is pleasant for the patient and adequate for examinations;
6. An emergency signal and an intercommunication system;
7. A sphygmomanometer and stethoscope;
8. Mechanical infusion equipment;
9. Fetal monitoring equipment;
10. Oxygen and suction outlets;
11. Access to at least one shower for use by labor patients; and
12. Storage facilities for supplies and equipment.

(2) Delivery.

1. Delivery rooms should be close to the labor rooms in order to afford easy access and to provide privacy to women in labor. A waiting area for families should be adjacent to the delivery suite, and restrooms should be located nearby.

2. Traditional delivery rooms and Cesarean birth rooms are similar in design to operating rooms. Vaginal deliveries can be performed in either room, whereas Cesarean birth rooms are designed especially for that purpose and are thus larger. Each type of birthing room is well lighted and environmentally controlled to prevent chilling of the mother and neonate.

3. It is desirable that Cesarean deliveries be performed in the obstetric unit; however, if this is not possible due to cost and space, equipment for neonatal stabilization and resuscitation, as described herein under 150.6(3)*"b"*(1), is available during delivery.

4. Each delivery room is maintained as a separate unit with the following equipment and supplies necessary for normal delivery and for the management of complications:

- Delivery/operating table that allows variation in position for delivery;
- Instrument table and solution basin stand;
- Instruments and equipment for vaginal delivery, repair of laceration, Cesarean delivery, and the management of obstetric emergencies;
- Solutions and equipment for the intravenous administration of fluids;
- Equipment for administration of all types of anesthesia, including equipment for emergency resuscitation of the mother;
- Individual oxygen, air, and suction outlets for mother and neonate;
- An emergency call system;
- Mirrors for patients to observe the birth;
- Wall clock with a second hand;
- Equipment for fetal heart rate monitoring; and
- Scrub sinks with controls strategically placed to allow observation of the patient.

5. Trays containing drugs and equipment necessary for emergency treatment of both mother and neonate are kept in the delivery room area. Equipment necessary for the treatment of cardiac arrest is easily accessible.

(3) Postpartum care. The postpartum unit is flexible enough to permit comfortable accommodation of patients when the patient census is at its peak and use of beds for alternate functions when the patient census is low. Ideally, single-occupancy rooms should be provided; however, not more than two patients should share one room. If possible, each room in the postpartum unit should have its own toilet and hand-washing facilities. When this is not possible and it is necessary for patients to use common facilities, patients should be able to reach them without entering a general corridor. When the newborn rooms-in with the mother, the room should have hand-washing facilities, a mobile bassinet unit, and supplies necessary for the care of the newborn.

(4) Combined units (labor/delivery/recovery or labor/delivery/recovery/postpartum room).

1. Comprehensive obstetric and neonatal care can be provided to the low-risk and the high-risk parturient and infant and the family in a single room. A homelike, family-centered environment with the capability for providing high-risk care is a key design criterion for both the labor/delivery/recovery (LDR) and labor/delivery/recovery/postpartum (LDRP) rooms. Each room is equipped for all types of delivery except Cesarean deliveries or those that may require general anesthesia.

2. During the labor, delivery, and recovery phases, care can be provided in an LDR room or can be extended to include the postpartum period in an LDRP room.

3. Nurses providing care in combined units are knowledgeable in antepartum care, labor and delivery, postpartum care, and neonatal care, making the use of staff cost-effective and increasing the continuity and quality of care.

b. Neonatal functional units.

(1) Resuscitation/stabilization.

1. A resuscitation and stabilization bed should be available in the immediate area of delivery for those neonates who require it. Contingent upon their condition, neonates are moved from this area to the nursery for admission and stabilization and possible transfer to a Level II regional center or Level III center.

2. The resuscitation area contains the following items:

- Overhead source of radiant heat that can be regulated based on the infant's temperature; radiant warmers with accommodations for X-ray capabilities are recommended;
- Thin resuscitation/examination mattress that allows access on three sides;
- Wall clock;
- Equipment and medications as recommended by the neonatal resuscitation program. This includes a laryngoscope with infant-sized blades, endotracheal tubes, and resuscitation (breathing) bags with masks for full-term and preterm neonates;
- Oxygen, compressed air and suction sources that are separate from those for the mother;
- Equipment for examination, immediate care, and identification of the neonate.

3. The resuscitation area is usually within the delivery room, although it may be in a designated, contiguous, separate room. If resuscitation takes place in the delivery room, the area is large enough to ensure that the resuscitation of the neonate can be achieved without interference with or from the ongoing care of the mother. Following stabilization of the neonate, the newborn's vital signs must be maintained (e.g., by using prewarmed blankets). The room temperature is kept at a level higher than that customary for patient rooms or operating suites. Qualified nursing staff is available to assess the newborn during this period.

(2) Admission/observation (transitional care stabilization).

1. The admission/observation area is for careful assessment of the neonate's condition during the first 24 hours after birth (i.e., during the period of physiologic adjustment to extrauterine life). This assessment may take place within one or more functional areas (e.g., the room in which the mother is recovering, the LDRP room, the newborn nursery, or a separate admission/observation area). In some hospitals, the newborn nursery is the primary area for transitional care, both for neonates born within the hospital and for those born outside the hospital.

2. The admission/observation area should be near the delivery/Cesarean birth room. If it is part of the maternal recovery area, which is preferable, physical separation of the mother and newborn during this period can be avoided.

3. The capacity of the admission/observation area depends on the size of the delivery service and the duration of close observation. The admission/observation area is well lighted, has a wall clock, and contains emergency resuscitation equipment similar to that in the designated resuscitation area.

4. The physicians' and registered nurses' assessments of the neonate's condition determine the subsequent level of care. Most neonates are transferred from the admission/observation area to the newborn nursery or to the postpartum area for rooming-in. Some neonates may require transfer to another facility. Consultation with a pediatrician or neonatologist and possible referral to a hospital offering a higher level of care should be initiated for infants with respiratory distress or those infants requiring oxygen therapy for more than two hours.

(3) Newborn nursery. Routine care of apparently normal full-term neonates who have demonstrated successful adaptation to extrauterine life may be provided either in the newborn nursery or in the area where the mother is receiving postpartum care. The nursery should be relatively close to the postpartum area. The newborn nursery is well lighted, has a large wall clock, and is equipped for emergency resuscitation.

150.6(4) *Medical personnel.*

a. The obstetric/newborn care area is under the supervision of a board-eligible or board-certified obstetrician-gynecologist, pediatrician or a physician with special interest and experience in obstetrics or pediatrics.

b. Adequate anesthesia coverage by a qualified anesthesia provider is available in a timely fashion for emergency situations on a 24-hour-a-day, 7-day-a-week basis.

c. For Cesarean sections or if neonatal problems are anticipated during vaginal delivery, a second physician or attendant who is skilled in resuscitation and care of the neonate should be in attendance.

150.6(5) *Nursing personnel.* Nurses assigned to the obstetrical/neonatal service demonstrate competency in the care of the mother and infant.

a. Staffing. Registered nurses assigned to the obstetrical/neonatal service must be licensed to practice in Iowa, complete an obstetrical or neonatal orientation and demonstrate obstetrical or neonatal competencies as defined by each hospital. At least one of these registered nurses must be available at all times. The primary responsibility of the registered nurse is the delivery of nursing care and departmental organization.

b. Labor/delivery/immediate postpartum/newborn.

(1) A registered nurse is responsible for the admission assessment of the gravida in labor, as well as continuing assessment and support of the mother and fetus during labor, delivery and the early postpartum period.

(2) A registered nurse is responsible for the admission assessment of the newborn, as well as continuing assessment during the stabilization period.

(3) Licensed practical nurses, nursing assistants and other appropriate technical personnel may assist in the care of the gravida in labor, but should be under the direct supervision of the registered nurse.

c. Later postpartum period/newborn care.

(1) Nursing care of the mother and newborn is directed and supervised by a registered nurse. A licensed practical nurse may provide care for patients without complications.

(2) Nurses have a supporting and teaching role in assisting mothers to care for their infants. This should be recognized and fostered.

150.6(6) *Outreach education.* Level I hospitals should assume an active role in the development and coordination of wellness and preventive programs concerning maternal/child health at the community level (e.g., programs on family planning, family-life education, parenting, breast feeding, cessation of smoking).

150.6(7) *Allied health personnel and services.* Level I hospitals have available, but are not limited to, the following allied health personnel and services:

a. Registered dietitian with knowledge of maternal and neonatal nutrition management;
b. Social worker;
c. Bioengineer-safety and environmental control;
d. Pharmacy;
e. Radiology;
f. Laboratory;
g. Pathology.

150.6(8) *Infection control.*

a. Each hospital establishes written policies and procedures for assessing the health of personnel assigned to the perinatal care services and those who have significant contact with the newborn. This includes restricting their contact with patients when necessary. These policies and procedures include screening for tuberculosis and rubella. Routine culturing of specimens obtained from personnel is not useful, although selective culturing may be of value when a pattern of infection is suspected.

b. No special or separate isolation facilities are required for neonates born at home or in transit to the hospital. Detailed descriptions of the isolation categories and requirements should be available in each hospital's infection control manual.

150.6(9) *Newborn safety.* The protection of infants is the responsibility of all personnel in a facility. Infants are to be transported in a bassinet or stroller and should never be carried. Infants are transported one at a time and are never grouped in a hallway without direct supervision. Infants should always be within the sight and supervision of staff, the mother, or other family members or friends designated by the mother. Each hospital has a policy established that addresses strategies to promote infant safety.

150.6(10) *Maternal-fetal transport.* Maternal-fetal transport is an essential component of modern perinatal care. All facilities in the state providing obstetrics need to be familiar with their own resources and capabilities in dealing with obstetrical and neonatal complications. In most instances, maternal-fetal transport is preferable to neonatal transport. Each hospital, when transporting or accepting a transport, needs a system in place to facilitate a smooth transition of care in the most expeditious manner possible. The majority of maternal-fetal transports can be carried out by ground transportation. It is important for ambulance services to be equipped for maternal-fetal transport and have appropriately trained staff.

641—150.7(135,77GA,ch1221) Level II hospitals.

150.7(1) *Definition.* Level II hospitals provide the same care and services as Level I hospitals plus they provide management of certain high-risk pregnancies and services for newborns with selected complications. These hospitals deliver approximately 500 or more babies annually and have an obstetrician and pediatrician on staff. The perinatal unit is under the co-direction of a pediatrician and an obstetrician.

150.7(2) *Functions.* In addition to the functions of Level I hospitals, Level II hospitals have the capability to:

a. Manage selected high-risk pregnancies.
b. At a minimum, manage neonates of 34 weeks and greater gestation.
c. Manage recovering neonates who can be appropriately transferred from the referral center.

d. Maintain a special area designated for the care of sick neonates.

e. Maintain nursing personnel with demonstrated competency in the care of sick neonates.

f. Maintain nursing personnel with demonstrated competency in the care of high-risk mothers.

Consultation with a pediatrician or neonatologist and possible referral to a higher-level perinatal center should be initiated for infants requiring oxygen therapy for more than six hours or ventilatory care for more than two hours.

150.7(3) *Physical facilities.* Level II hospitals have the same physical facilities as Level I hospitals.

150.7(4) *Medical personnel.* Level II hospitals have the same medical personnel as Level I hospitals. In addition, the perinatal units in Level II hospitals are under the co-direction/supervision of either a board-eligible or board-certified obstetrician/gynecologist or a board-eligible or board-certified pediatrician for their respective areas. Allied medical specialists in various disciplines are on staff, including specialists in internal medicine, radiology, and pathology. Psychiatric services are available.

150.7(5) *Nursing personnel.* Level II hospitals have the same minimal requirements for nursing personnel as Level I hospitals. Nursing orientation and competencies in a Level II hospital are specific to the patient population they serve.

150.7(6) *Outreach education.* Level II hospitals have the same responsibility for outreach education as Level I hospitals.

150.7(7) *Allied health personnel and services.* Level II hospitals have the same allied health personnel and services available as Level I hospitals, with the addition of the following:

a. Respiratory therapy.

b. Ultrasound.

150.7(8) *Infection control.* Infection control guidelines are the same as for Level I hospitals.

150.7(9) *Newborn safety.* Level II hospitals have at least the same requirements for newborn safety as Level I hospitals.

150.7(10) *Maternal-fetal transport.* Level II hospitals have the same requirements for maternal-fetal transport as Level I hospitals. In addition, Level II hospitals are expected to accept patient referrals when appropriate. A critical function of providers at Level II hospitals is to communicate with the providers at Level I hospitals in deciding whether a particular patient should be transported to the Level II hospital. Careful assessment of the hospital's capabilities for perinatal management will be critical in these decisions. This information will need to be disseminated among the hospital staff. Providers of obstetric care need to know the critical gestational age limitations for their particular nursery. Below this gestational age, maternal-fetal transport should be utilized if delivery is anticipated and the circumstances permit.

150.7(11) *Perinatal care committee.*

a. All Level II hospitals maintain a perinatal care committee. Members of this committee should represent, but not be limited to, the fields of obstetrics, pediatrics, family practice, nursing, administration, laboratory, respiratory therapy, anesthesia and social services.

b. Responsibilities of the perinatal care committee include the following:

(1) Develop policies for the unit including provisions to ensure adequate patient care by qualified providers.

(2) Conduct a meeting at least semiannually to resolve problems related to the unit.

(3) Review educational activities conducted by the unit.

(4) Serve as a general liaison between the various groups represented on the committee.

641—150.8(135,77GA,ch1221) Level II regional centers.

150.8(1) *Definition.*

a. Level II regional centers have a developed neonatal intensive care unit (NICU). The sizes of the units vary because of the differing demands in the various regions in Iowa. Accordingly, a Level II regional center may have as few as four neonatal intensive care beds.

b. The obstetric service in a Level II regional center provides services for maternity patients at higher risk than those in Level II hospitals because of the presence of an NICU. However, reasonable efforts should be expended to transfer those patients whose newborns are likely to require a higher intensity of care not available in the Level II regional center but offered in a Level III center.

c. Level II regional centers provide the same care and services as Level II hospitals. In addition, Level II regional centers have the following differentiating characteristics:

(1) A defined referral area;

(2) A defined relationship with a Level III center either in Iowa or a contiguous state;

(3) A minimum of three pediatricians and three obstetricians on staff; and

(4) The ability to manage patients at higher risk than Level I or Level II hospitals. Complexity of care is determined by the training and experience of physicians and nursing staff and extent of support services available.

150.8(2) *Functions.* Level II regional centers have the same functions as Level II hospitals. In addition, Level II regional centers have the capability to:

a. Accept selected maternal transports based on criteria developed in conjunction with the Level III center;

b. Maintain nursing personnel demonstrating competency in the care of high-risk mothers;

c. Maintain a defined neonatal intensive care unit;

d. Maintain nursing personnel that demonstrate competency in the care of infants in neonatal intensive care;

e. Provide care for infants requiring ventilatory support;

f. Maintain a functioning neonatal transport team for the regional area served; and

g. Provide for follow-up care of high-risk newborns in accordance with the Iowa high-risk infant follow-up program.

150.8(3) *Physical facilities.* Level II regional centers have the same physical facilities as Level II hospitals with the addition of the following.

a. Obstetric functional units.

(1) Labor/delivery. Patients who have significant medical or obstetric complications are cared for in a room especially equipped with cardiopulmonary resuscitation equipment and other monitoring equipment necessary for observation and special care. It is preferable that this room be located in the labor and delivery area and meet the physical requirements of any other intensive care room in the hospital. When patients with significant medical or obstetric complications are cared for in the labor and delivery area, the unit has the same capabilities as an intensive care unit.

(2) Postpartum. Larger services may have a specific recovery room for postpartum patients with a separate area for high-risk patients. Required equipment is similar to that needed in any surgical recovery room and includes equipment for monitoring vital signs, suctioning, administering oxygen, and infusing fluids intravenously. Cardiopulmonary resuscitation equipment must be immediately available.

b. Neonatal functional units.

(1) Continuous cardiopulmonary monitoring and constant nursing care and other support for severely ill infants are provided in the intensive care area. Because emergency care is provided in this area, laboratory and radiological services are readily available 24 hours a day. The results of blood gas analysis are available soon after blood sample collection.

(2) The neonatal intensive care area should be near the delivery/Cesarean birth room and should be easily accessible from the hospital's ambulance entrance. It should be away from routine hospital traffic.

(3) The amount and complexity of equipment are considerably greater than required in Level I and Level II nurseries. Equipment and supplies in the intensive care area include the same items as needed in the resuscitation and intermediate care areas. Immediate availability of emergency oxygen is essential. Continuous monitoring of delivered oxygen concentrations, patient oxygenation, body temperature, ECG, respirations and blood pressure should be available. Supplies should be kept close to the patient station so that nurses are not away from the neonate unnecessarily and may use their time and skills efficiently.

150.8(4) *Medical personnel.*

a. Level II regional centers have the same medical personnel as Level II hospitals with the addition of a board-eligible or board-certified pediatrician serving as director of the NICU. This physician maintains a consultative relationship with Level III physicians. Additionally, Level II regional centers have a minimum of three pediatricians and three obstetricians on staff.

b. If an infant is placed on mechanical ventilation, a physician, nurse practitioner, physician assistant, or appropriate person capable of airway management and experienced in diagnosis is available in-house on a 24-hour basis.

150.8(5) *Nursing personnel.* Level II regional centers have the same minimal requirements for nursing personnel as Level II hospitals. Additionally, Level II regional center registered nurses have demonstrated competency in high-risk obstetrics or neonatal care.

150.8(6) *Outreach education.* Outreach education is provided to each hospital in the referral area at least once per year. This can be achieved by one or more of the following:

a. Sponsoring an annual conference;

b. Visiting Level I and Level II hospitals;

c. Providing educational programs at the regional center for the staff members of the Level I and Level II hospitals;

d. Sending written educational materials to the Level I and II hospitals.

150.8(7) *Allied health personnel and services.* Level II regional centers have the same allied health personnel and services available as Level II hospitals, with the addition of the following:

a. A respiratory therapist, certified lab technician/blood gas technician and an X-ray technologist should be in-house on a 24-hour basis when a neonate is being managed on mechanical ventilation.

b. Allied personnel should have special training and an interest in high-risk mothers and infants.

150.8(8) *Infection control.* Infection control guidelines are the same as for Level II hospitals.

150.8(9) *Newborn safety.* Level II regional centers have at least the same requirements for newborn safety as Level II hospitals.

150.8(10) *Maternal-fetal transport.* Level II regional centers have the same requirements for maternal-fetal transport as Level II hospitals. In addition, Level II regional centers are expected to provide transportation services.

150.8(11) *Perinatal care committee.* Level II regional centers have at least the same requirements for a perinatal care committee as Level II hospitals.

641—150.9(135,77GA,ch1221) Level III centers.

150.9(1) *Definition and function.* Level III centers provide the same care and services as Level II regional centers, plus they manage high-risk pregnancies and neonates, with the possible exception of a few very specialized complications. The Level III center is an extension of the Level II regional center and serves the same regional functions. The differentiating factor between them is primarily one of additional professional staff and more extensive physical facilities. There may be multiple Level III centers in the same city.

150.9(2) *Physical facilities.* Level III centers have the same physical facilities as Level II regional centers; however, they have more equipment and serve a more complicated patient population.

150.9(3) *Medical personnel.*

a. The medical director of the maternal-fetal intensive care unit is a full-time, board-eligible or board-certified obstetrician with certification in maternal-fetal medicine.

b. The medical director of the neonatal intensive care unit is a full-time, board-eligible or board-certified pediatrician with certification in neonatal/perinatal medicine.

c. Anesthesia providers on staff have special training or experience in obstetric and pediatric anesthesia.

d. A pediatric surgeon is on staff.

e. A pediatric cardiologist is on staff.

f. These physicians must be immediately available to the Level III center and reside in the same metropolitan area as the hospital.

g. A neonatologist should be on the premises when unstable critically ill infants are in the Level III center. An obstetrician should be on the premises when unstable critically ill mothers are in the Level III center.

150.9(4) *Nursing personnel.* Level III centers have the same minimal requirements for nursing personnel as Level II regional centers. The nurse managers of the perinatal units in Level III centers have prior experience in maternal or pediatric nursing and have a minimum of a bachelor of science in nursing degree, or a bachelor's degree in a related field.

150.9(5) *Outreach education.* Level III centers have the same responsibilities for outreach education as Level II regional centers.

150.9(6) *Allied health personnel and services.* Level III centers have the same allied health personnel and services as Level II regional centers. Additionally, Level III centers have respiratory therapists, certified lab technicians/blood gas technicians, X-ray technologists and ultrasound technicians with neonatal/perinatal experience available on a 24-hour basis. Level III centers also have social work services with social workers assigned specifically to the maternal and neonatal units.

150.9(7) *Infection control.* Infection control guidelines are the same as for Level II regional centers.

150.9(8) *Newborn safety.* Level III centers have at least the same requirements for newborn safety as Level II regional centers.

150.9(9) *Maternal-fetal transport.* Level III centers have the same requirements for maternal-fetal transport as Level II regional centers. In addition, Level III centers are capable of providing ground and air transportation whose crews have demonstrated competencies in maternal/neonatal resuscitation. Important decisions to be made jointly will include the appropriateness of transport, the best mode of transportation, the need for additional personnel accompanying the transport, and the appropriate medical management to initiate prior to transport.

150.9(10) *Perinatal care committee.* Level III centers maintain a perinatal care committee with additional representation by surgical specialties.

641—150.10(135,77GA,ch1221) Grant or denial of certificate of verification; and offenses and penalties.

150.10(1) Upon receipt of the on-site survey results, the department shall within 30 days issue its decision to grant or deny the hospital a certificate of verification. The department may deny verification or may give a citation and warning, place on probation, suspend, or revoke existing verification if the department finds reason to believe the hospital's perinatal care program has not been or will not be operated in compliance with these rules. The denial, citation and warning, period of probation, suspension, or revocation shall be effected and may be appealed in accordance with the requirements of Iowa Code section 17A.12.

150.10(2) All complaints regarding the operation of a participating hospital's perinatal care program shall be reported to the department and to the department of inspections and appeals.

150.10(3) Complaints and the investigative process shall be treated as confidential to the extent they are protected by Iowa Code section 22.7.

150.10(4) Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

150.10(5) Notice of denial, citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the hospital of denial, citation and warning, probation, suspension or revocation shall be served by certified mail, return receipt requested, or by personal service.

150.10(6) Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is: Iowa Regionalized System of Perinatal Health Care, Iowa Department of Public Health, Division of Family and Community Health, 321 East 12th Street, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

150.10(7) Upon receipt of a request for hearing, the request shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information, which may be provided by the aggrieved party, shall also be provided to the department of inspections and appeals.

150.10(8) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

150.10(9) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

150.10(10) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

150.10(11) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings on them.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

150.10(12) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

150.10(13) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

150.10(14) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Regionalized System of Perinatal Health Care, Iowa Department of Public Health, Division of Family and Community Health, 321 East 12th Street, Lucas State Office Building, Des Moines, Iowa 50319-0075.

150.10(15) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

150.10(16) Final decisions of the department relating to disciplinary proceedings may be transmitted to the department of inspections and appeals and to the appropriate professional associations or news media.

641—150.11(135,77GA,ch1221) Prohibited acts. A hospital that imparts or conveys, or causes to be imparted or conveyed, that it is a participating hospital in Iowa's regionalized system of perinatal health care, or that uses any other term, such as a designated level of care, to indicate or imply that the hospital is a participating hospital in the regionalized system of perinatal health care without having obtained a certificate of verification from the department is subject to licensure disciplinary action by the department of inspections and appeals, as well as to the application by the director to the district court for a writ of injunction to restrain the use of the term or terms "Level I hospital," "Level II hospital," "Level II regional center," and "Level III center" in relation to the provision of perinatal health care services.

641—150.12(135,77GA,ch1221) Construction of rules. Nothing in these administrative rules shall be construed to restrict a hospital from providing any services for which it is duly authorized.

These rules are intended to implement 1998 Iowa Acts, chapter 1221, section 5, subsection 4*"a"*(2)(c).

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OPTOMETRY EXAMINERS
CHAPTER 180
BOARD OF OPTOMETRY EXAMINERS
[Prior to 5/18/88, see 470—Chapters 143 and 144]

645—180.1(154) General definitions.

"Active licensee" means any person licensed to practice optometry in Iowa who has met all conditions of license renewal and maintains a current license to practice in this state.

"Board" means the board of optometry examiners.

"Department" means the department of public health.

"Diagnostically certified optometrist" means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry examiners to use cycloplegics, mydriatics and topical anesthetics as diagnostic agents topically applied to determine the condition of the human eye for proper optometric practice or referral for treatment to a person licensed under Iowa Code chapter 148 or 150A.

"Inactive licensee" means any person licensed to practice optometry in Iowa who has met all conditions of officially placing their license on inactive status and may not practice optometry until the reinstatement requirements as defined in these rules are met.

"Licensee" means any person licensed to practice as an optometrist in the state of Iowa.

"License renewal biennium" means July 1 of even-numbered years to June 30 of even-numbered years.

"Study compliance biennium" means May 1 of even-numbered years to April 30 of even-numbered years.

"Therapeutically certified optometrist" means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry examiners to use eye-related topical pharmaceutical agents, oral antimicrobial agents, oral antihistamines, oral antiglaucoma agents, oral analgesic agents, and may remove superficial foreign bodies from the human eye and adnexa.

645—180.2(154) Availability of information.

180.2(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, record of hearings, and examination results are available to the public between the hours of 8 a.m. and 4:30 p.m., Monday to Friday, except holidays.

180.2(2) Information may be obtained by writing to the Board of Optometry Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All official correspondence shall be in writing and directed to the board at this address.

645—180.3(154) Organization of the board and procedures.

180.3(1) A chair, vice chair, and secretary shall be elected at the first meeting after April 30 of each year.

180.3(2) Four board members present shall constitute a quorum.

180.3(3) The board shall hold an annual meeting and may hold additional meetings called by the chair or by a majority of the members of the board.

This rule is intended to implement Iowa Code section 147.22.

645—180.4(154) Conduct for licensure examination. Rescinded IAB 2/10/99, effective 3/17/99.

645—180.5(154) Requirements for licensure.

180.5(1) All applicants shall apply to the Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

180.5(2) The forms properly completed shall be filed with the department, together with satisfactory evidence of compliance with Iowa Code sections 154.3(1) and 154.3(2).

180.5(3) An applicant for admission to practice optometry in Iowa shall successfully pass the examinations specified in paragraphs *"a"* through *"c."* Examination results from the examination of the National Board of Examiners in Optometry and the examination of the International Board of Examiners in Optometry on "The Treatment and Management of Ocular Disease" (incorporated into the N.B.E.O. examination effective April 1993) shall be valid for ten years prior to date of application. An applicant shall present a diploma from an accredited school or college of optometry and, if the applicant graduated from optometry school prior to January 2, 1988, shall submit proof of satisfactory completion of all educational requirements contained in Iowa Code chapter 154.

a. All parts of the examination of the National Board of Examiners in Optometry in effect at the time of application;

b. The examination of the National Board of Examiners in Optometry (formerly given by the International Board of Examiners in Optometry) on "Treatment and Management of Ocular Disease." This paragraph does not apply to those applicants taking the examination of the National Board of Examiners in Optometry after January 1, 1993; and

c. The Iowa jurisprudence examination. Successful completion of the jurisprudence examination requires a minimum score of 75 percent.

d. An applicant must provide an official verification from each state board of examiners in which applicant is currently or formerly licensed, regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action.

e. Incomplete applications will be held in office files for three years. Applicants will be required to reapply after that time span.

STUDY COMPLIANCE FOR LICENSE RENEWAL
AND REINSTATEMENT AND DISCIPLINARY PROCEDURES
[Prior to 5/18/88, see 470—Chapter 144]

645—180.12(154) General.

180.12(1) The optometric license renewal study compliance biennium shall extend for a two-year period between May 1 and April 30 of even-numbered years during which period attendance at approved study sessions, educational programs, and courses approved by the board of examiners may be used as evidence of compliance in fulfillment of continuing education study requirements for the subsequent license renewal biennium which begins July 1 and expires June 30 of even-numbered years. Completion of continuing education requirements is a prerequisite for license renewal. The cost of continuing education is the responsibility of the licensee.

a. Requirements for nontherapeutically certified optometrists. Beginning with the continuing education period from June 1, 1984, to May 31, 1986, and each biennium thereafter, each person who is licensed to practice as an optometrist in this state and who is not therapeutically certified shall be required to complete a minimum of 30 hours of continuing education approved by the board. Not more than 18 hours of continuing education shall be credited during any 12-month period, from May 1 to April 30.

Nontherapeutically certified optometrists can comply with Iowa study compliance rules for license renewal and reinstatement by meeting the continuing education requirements of the licensee's place of practice.

b. Requirements for therapeutically certified optometrists. Beginning with the continuing education period from May 1, 1988, to April 30, 1990, and each biennium thereafter, each person who is licensed to practice as a therapeutically certified optometrist in this state shall be required to complete a minimum of 50 hours of continuing education approved by the board. A minimum of 20 hours of continuing education per biennium shall be in the treatment and management of ocular disease. Not more than 30 hours of continuing education shall be credited during any 12-month period, from May 1 to April 30.

Therapeutically certified optometrists must comply with Iowa study compliance rules for license renewal and reinstatement regardless of the licensee's place of residence or place or practice.

c. Rescinded IAB 2/26/97, effective 4/2/97.

d. Effective July 1, 1996, on the initial licensing renewal, the licensee must obtain at least four hours of continuing education in cardiopulmonary resuscitation (CPR). A licensee who has current certification in CPR as of the date of the initial license renewal, by the American Red Cross (Community CPR), the American Heart Association (Module C for health care providers) or an equivalent organization shall be deemed to meet this requirement.

180.12(2) Rescinded IAB 5/17/89, effective 4/20/89.

180.12(3) The required number of study hours may be obtained by one or more of the following methods:

a. The continuing education programs of the Iowa optometric association, the American Optometric Association, the American Academy of Optometry, and national regional optometric congresses.

b. Postgraduate study sessions or seminars by an accredited school or college of optometry.

c. Local study group programs approved by the board; study groups shall meet a minimum of six times per year. A maximum of one hour credit per meeting shall be given for each meeting unless prior approval is granted by the board for additional credit. A maximum of 12 hours of credit will be allowed for each continuing education biennium with no more than 7 hours allowed in any one year of the continuing education biennium.

d. Other meetings or seminars either within or without the state of Iowa may be approved in advance by the board with request for approval to be made to the board at least 30 days prior to the meeting or seminar. These meetings or seminars must have approval and be certified for optometric continuing education by the International Association of Board of Examiners in Optometry's Council on Optometric Practitioner Education Committee (COPE). Providers of COPE-approved continuing education must be approved by the board as having education as one of their primary functions.

e. Correspondence courses, which include written and electronic transmitted material and have a postcourse test, may be used for a maximum of ten hours' credit for each biennium. Certification of the continuing education requirements and of passing the test must be given by the institution providing the continuing education, and that institution must be accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education, and approved by the board of optometry examiners.

f. Practice management courses may be used for a maximum of six hours' credit for each biennium.

g. Dependent adult abuse or child abuse identification and reporting training may be used for a maximum of two hours' credit for each biennium.

h. In cases of extenuating circumstances, study material which is specified and approved in advance by the board.

i. The department of ophthalmology of the school of medicine of the State University of Iowa shall be one of the providers of continuing education for Iowa optometrists. Licensees may apply no more than 20 hours of continuing education for the treatment and management of ocular disease obtained at the University of Iowa toward license renewal. No more than 12 hours obtained in any one year of the licensing compliance period may apply toward renewal.

j. A licensee who has current certification in CPR, as of the date of license renewal, by the American Red Cross (Community CPR), the American Heart Association (Module C for health care providers) or an equivalent organization may apply a maximum four hours' credit for each biennium.

180.12(4) Certification to the board of attendance at any of the foregoing shall be submitted within 30 days of the meeting by the secretary or chairperson of the organization or group sponsoring the meeting, the dean of optometry school, or in the case of special meetings approved by the board, a person so designated by the board.

180.12(5) Failure to renew within 60 days shall cause the license to lapse. In case of an emergency which prohibited timely renewal by the licensee, disciplinary actions may be waived at the discretion of the board after an interview with the licensee. A person who allows the license to lapse may apply to the board for reinstatement of the license. Applicants to be considered for reinstatement shall complete a reinstatement application, satisfy Iowa requirements for continuing education study hours for each year the Iowa license was not renewed, pay renewal fees for each year the Iowa license was not renewed, and pay the reinstatement fee as provided by rule 645—180.10(147). Reinstatement of the lapsed license may be granted by the board if the applicant:

a. Submits a written application for reinstatement to the board; and

b. Pays all of the renewal fees then due; and

c. Pays all penalty fees (see 180.10(5) and 180.10(6)) which have been assessed by the board for failure to renew; and

d. Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 25 for therapeutically certified optometrists or 15 for nontherapeutically certified optometrists by the number of years (or quarterly fraction thereof) since the license lapsed. If the license has lapsed for more than five years, the applicant shall successfully pass the Iowa state optometry jurisprudence examination with a minimum grade of 75 percent.

PROCEDURES FOR USE OF CAMERAS
AND RECORDING DEVICES
AT OPEN MEETINGS

645—180.300(21) Conduct of persons attending meetings.

180.300(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

180.300(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board member presiding at the meeting.

These rules are intended to implement Iowa Code sections 147.2, 147.3, 147.10, 147.11, 147.29, 147.49, 147.54, 147.80, 154.3, 154.6, 155A.27, 272C.2, and 272C.3.

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Effective date of 645—180.9(154) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 1993. [The 3/3/93 IAC Supplement also incorrectly showed delay on amendments to rules 180.1, 180.5, 180.10, 180.12, 180.14 and 180.100 (IAB 1/26/93, ARC 3687A). This was corrected in IAC Supp. 3/17/93.]
Two separate ARCs

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TITLE I
GENERAL PROVISIONS

CHAPTER 1
DEFINITIONS
[Prior to 5/18/88, Dental Examiners, Board of [320]]

650—1.1(153) Definitions. As used in this chapter:

"Board" means the board of dental examiners.

"Chapter" means Iowa Code chapter 153.

"Dental hygiene committee," as defined in Iowa Code section 153.33A, means the dental hygiene committee of the board of dental examiners.

"Department" means the department of public health.

"Inactive status" means the status of a practitioner licensed in the state of Iowa to practice dentistry or dental hygiene who is not currently engaged in the practice of dentistry or dental hygiene in the state of Iowa and who has obtained a certificate of exemption from compliance with the requirements for continuing dental education.

"Peer review" as defined in Iowa Code section 272C.1(7) means evaluation of professional services rendered by a licensee.

"Peer review committee" as defined in Iowa Code section 272C.1(8) means one or more persons acting in a peer review capacity pursuant to these rules.

"Practice of dental hygiene" as defined in Iowa Code section 153.15 includes assisting the dental profession in providing oral health care by performing the following services:

1. Educational: Issuing written and oral instructions for optimal oral health, including the teaching of proper brushing techniques and interdental stimulation; assess the need for, plan, implement and evaluate oral health education programs for individual patients and community groups.
2. Therapeutic: Perform oral prophylaxis including removing supragingival and subgingival deposits and polishing restorations and removable prostheses; application or administration of medicaments prescribed by a licensed dentist; remove excess restorative materials; recognize and assist in management of medical and dental emergencies.
3. Preventive: The topical application of medicaments and other methods for caries control.
4. Diagnostic: Provide diagnostic aids including taking and recording medical and dental histories; making impressions for diagnostic models; exposing radiographs; making occlusal registrations for mounting study casts; testing pulp vitality; recording vital signs; making and analyzing dietary surveys; and indexing dental and periodontal disease, and any other abnormal conditions; perform oral inspection.

"Practice of dentistry" as defined in Iowa Code section 153.13 includes the rendering of professional services in this state as an employee or independent contractor.

This rule is intended to implement Iowa Code sections 147.1(2), 147.13, 147.30, 147.76, 147.80, 153.13 and 153.15, and chapter 272C.

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CHAPTERS 2 to 4
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TITLE II
ADMINISTRATION

CHAPTER 5
ORGANIZATION

[Ch 5, IAC 7/1/75 renumbered as Ch 50, IAC 9/20/78]
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—5.1(153) Board and dental hygiene committee.

5.1(1) The board shall be composed of five members licensed to practice dentistry, two members licensed to practice dental hygiene and two members not licensed to practice dentistry or dental hygiene and who shall represent the general public. All members shall be appointed by the governor subject to confirmation by the senate.

5.1(2) Five members of the board shall constitute a quorum for the purpose of conducting business.

5.1(3) The dental hygiene committee of the board shall be composed of the two dental hygiene members of the board and one dentist member of the board. The dentist member will be elected annually to serve on the committee by a majority vote of the board. The dentist member of the committee must have supervised and worked in collaboration with a dental hygienist for a period of at least three years immediately preceding election to the committee. Beginning January 1, 2000, persons appointed to the board as dental hygienist members shall not be employed by or receive any form of remuneration from a dental or dental hygiene educational institution.

5.1(4) Two members of the dental hygiene committee shall constitute a quorum for the purpose of conducting business.

This rule is intended to implement Iowa Code section 147.14(4).

650—5.2(153) Meetings.

5.2(1) The board shall hold an annual meeting each year in Des Moines to elect officers and conduct such other business as may properly come before the board. Officers of the board shall consist of a chairperson, vice chairperson, and secretary. Officers shall assume their duties immediately following their election at the annual meeting.

5.2(2) The board may hold additional meetings as the chairperson or vice chairperson or majority of the board deems necessary. Written notice stating the time and place of the meeting shall be provided consistent with the open meetings law.

5.2(3) All meetings of the board shall be governed by Sturgis Standard Code of Parliamentary Procedure.

5.2(4) The board may conduct ministerial business matters by mail. The chairperson or vice chairperson may direct the executive director to send such correspondence by ordinary mail. Members who shall make appropriate response shall do so to the executive director within ten days of the original mailing.

5.2(5) The dental hygiene committee shall hold an annual meeting each year in Des Moines, Iowa, to elect officers and conduct such other business as may properly come before the committee. Officers of the committee shall consist of a chairperson, vice chairperson, and secretary. Officers shall assume their duties immediately following their election at the annual meeting.

5.2(6) The dental hygiene committee may hold additional meetings as the chairperson or vice chairperson or majority of the committee deems necessary.

This rule is intended to implement Iowa Code section 147.22.

650—5.3(153) Budget. The chairperson and executive director shall prepare and submit the budget to the board.

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

650—5.4(153) Compensation. Each board member shall receive the statutory per diem in addition to necessary travel and other expenses incurred in the discharge of duties.

This rule is intended to implement Iowa Code section 147.24.

650—5.5(153) Office. The address of the board is the Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

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

650—5.6(153) Dental hygiene committee.

5.6(1) All matters regarding the practice, discipline, education, examination, and licensure of dental hygienists will be initially directed to the dental hygiene committee. The committee shall have the authority to adopt recommendations regarding the practice, discipline, education, examination, and licensure of dental hygienists and shall carry out duties as assigned by the board. Recommendations by the committee shall include a statement and documentation supporting its recommendation to the board. The board shall review all committee recommendations. The recommendations shall be ratified by the board unless the board makes a specific written finding that the recommendation exceeds the jurisdiction or expands the scope of the committee beyond the authority granted in subrule 5.6(2), creates an undue financial impact on the board, or is not supported by the record. The board may not amend a committee recommendation without the concurrence of the majority of the members of the dental hygiene committee.

5.6(2) This subrule shall not be construed as impacting or changing the scope of practice of the profession of dental hygiene or authorizing the independent practice of dental hygiene.

5.6(3) The committee shall not have regulatory or disciplinary authority with regard to dentists, dental assistants, dental lab technicians, or other auxiliary dental personnel.

This rule is intended to implement Iowa Code section 153.33A.

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CHAPTER 6
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa board of dental examiners hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

650—6.1(153,147,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "agency issuing these rules", insert "Iowa Board of Dental Examiners".

650—6.3(153,147,22) Requests for access to records.

6.3(1) *Location of record.* In lieu of the words "Insert agency name and address", insert "Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319".

6.3(2) *Office hours.* In lieu of the words "Insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4", insert "8 a.m. to 4:30 p.m. daily excluding Saturdays, Sundays, and legal holidays".

6.3(7) *Fees.*

c. Supervisory fee. In lieu of the words "(specify time period)", insert "one-half hour".

650—6.6(153,147,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "designate office", insert "the executive director".

650—6.9(153,147,22) Disclosures without the consent of the subject.

6.9(1) Open records are routinely disclosed without the consent of the subject.

6.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 6.10(153,147,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

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

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

h. Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

i. Notwithstanding any statutory confidentiality provision, the board may share information with the college student aid commission for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code sections 261.121 to 261.127.

650—6.10(153,147,22) Routine use.

6.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

6.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

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

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

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency and among board members; to other state agencies, boards and departments; federal agencies; to agencies in other states; national associations; or to local units of government as appropriate to administer the agency's statutory authority.

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

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

g. Disclosure to the attorney general's office for use in performing its official functions.

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

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

650—6.11(153,147,22) Consensual disclosure of confidential records.

6.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 6.7(153,147,22).

6.11(2) *Complaints to public officials.* A letter from the subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

6.11(3) *Obtaining information from a third party.* The agency is required to obtain information to verify and investigate applications for licensure or permit, complaints concerning licensees, and alleged violations of law and statute. Requests to third parties for this information may involve the release of records requiring special procedures.

a. Where necessary, the agency shall obtain from the subject individual an authorization for the release of specially protected information on a form that meets the requirements of the law.

b. To obtain alcohol and drug abuse patient information, the agency shall obtain special authorization from the subject individual on a "Consent to Release Alcohol and Drug Abuse Patient Information" form or other appropriate form.

c. The agency is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute an administrative hearing.

650—6.12(153,147,22) Release to subject.

6.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 6.6(153,147,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provisions of law.

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

c. Peace officers' investigative reports may be withheld from the subject, except as required by the provisions of Iowa Code section 22.7(5).

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

e. As otherwise authorized by state or federal law or rule.

6.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

650—6.13(153,147,22) Availability of records.

6.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

6.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

b. Prior to initiation of a contested case, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of the board or its employees or agents which relates to licensee discipline. (Iowa Code section 272C.6(4))

c. Criminal history, prior misconduct or investigative information relating to an applicant for licensure. (Iowa Code section 147.21(1))

d. Information relating to results of an examination for licensure or certification other than final score except for information about results of an examination which is given to the person who took the examination. (Iowa Code section 147.21(3))

e. Information relating to the contents of an examination for licensure or certification. (Iowa Code section 147.21(2))

f. Information contained in professional substance abuse reports or other investigative reports relating to the abuse of controlled substances. (Iowa Code section 204.504)

g. Minutes of closed meetings of the board. (Iowa Code section 21.5(4))

h. Records of closed session board disciplinary hearings. (Iowa Code sections 272C.6(1) and 21.5(4))

i. Information or records received from a restricted source and any other information or records made confidential by law.

j. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

k. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in conducting audits, in making inspections, in negotiating settlements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

l. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26 (b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

m. Any other records made confidential by law.

n. Records which are exempt from disclosure under Iowa Code section 22.7.

o. Information in nonlicensee investigation files maintained by the board which are otherwise exempt from disclosure under Iowa Code section 22.7 or other provisions of law.

6.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 6.4(153,147,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspections as provided in subrule 6.4(3).

650—6.14(153,147,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 6.1(153,147,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

6.14(1) *Information on nonlicensee investigation files maintained by the board.* This information is collected by the board pursuant to the authority granted in Iowa Code sections 147.2, 147.83, 147.84, 147.85, and 147.93. This information is stored on paper only. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7 or other provisions of law.

6.14(2) *Information in complaint, compliance, and investigative files maintained by the board for the purposes of licensee discipline.* This information is collected pursuant to Iowa Code sections 153.33, 272C.3, and 272C.9. This information is stored on paper only. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, information may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing.

6.14(3) *Records of board disciplinary hearings.* These records contain information about licensees and persons under the board's jurisdiction who are subject of a board disciplinary proceeding or other action. This information is collected by the board pursuant to the authority granted in Iowa Code sections 153.23 and 153.33, and chapter 272C. This information is stored on paper only. These records may also contain the following:

a. Formal charges and notices of hearings and final written decisions imposing sanctions, including informal stipulations and settlements. This information is collected by the board pursuant to the authority granted in Iowa Code sections 153.23 and 153.33, and chapter 272C. This information is stored on paper only. This information is a public record pursuant to sections 272C.5 and 272C.6.

b. Court reporter notes, tape recordings, exhibits, pleadings, motions, orders, and other documents that constitute the record in a disciplinary hearing. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4). This information is collected by the board pursuant to the authority granted in Iowa Code sections 153.23 and 153.33, and chapter 272C. This information is stored on recorder tape or paper only.

6.14(4) *Continuing dental and dental hygiene education records.* These records contain educational information about licensees licensed by the board. This information is collected pursuant to the authority granted in Iowa Code section 272C.2. This information is stored on paper only.

6.14(5) *Sponsors of continuing dental and dental hygiene education.* These records contain information concerning continuing education sponsors, annual reports, recertification forms, courses, and attendance sheets. This information is collected pursuant to Iowa Code section 272C.2. This information is stored on paper only.

6.14(6) *Application records.* These records contain information about applicants which may include name, address, telephone number, social security number, place of birth, date of birth, education, certifications, examinations with scores, character references, fingerprints, diplomas and any additional information the board may request. This information is collected by the board pursuant to Iowa Code sections 147.2, 153.21, 153.22, and 153.37. This information is stored on paper only. The personal information contained in these records may be confidential in whole or in part pursuant to 147.21(1) to 147.21(3), 22.7(1), and 22.7(19) or other provisions of law.

6.14(7) *Examination records.* These records contain examination information and scores for any of the following examinations: Joint Commission on National Dental Examinations; Joint Commission on National Dental Hygiene Examinations; Central Regional Dental Testing Service, Inc. examinations; Iowa jurisprudence examinations; state radiography examinations; state dental examinations; state dental hygiene examinations. This information is collected by the board pursuant to Iowa Code sections 147.21 and 147.34. This information is stored on paper only. The information contained in these records is confidential in part pursuant to Iowa Code sections 147.21(2), 147.21(3), 22.7(1), and 22.7(19).

6.14(8) *Licensure, permit or certification records.* These records contain information about currently, previously, or reinstated licensed dentists, dental hygienists, and dental assistants issued certificates of qualification in dental radiography. This information includes name of license, permit or certificate holder, license, permit or certificate number, date issued, current renewal status and current address. This information is collected by the board pursuant to the authority granted in Iowa Code sections 136C.2, 147.2, 147.10, 153.22, 153.23, 153.30. This information is stored on paper, in automated data processing systems, on microfiche, or in the state archives.

6.14(9) *Personnel files.* The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

6.14(10) *Compliance reports.* These records contain information about dentists and their dental facilities which are inspected to determine compliance with board regulations including the use of parenteral sedation, general anesthesia, or nitrous oxide by dentists in dental facilities. This information is collected by the board pursuant to the authority granted in Iowa Code section 153.20. The information contained in these reports is confidential in whole or in part pursuant to Iowa Code sections 22.7(5), 272C.3, and 272C.6(4). This information is stored on paper only.

6.14(11) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

650—6.15(153,147,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 6.1(153,147,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 6.13(153,147,22). These records are stored on paper only. The records listed may contain information about individuals.

6.15(1) Board agendas, minutes, news releases, statistical reports and compilations, newsletters, publications, correspondence, opinions, rulings, and other information intended for the public except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. These records may contain information about individuals, including board members and staff. This information is collected pursuant to Iowa Code section 21.3. This information is stored on paper only.

6.15(2) Records of board rule-making proceedings. These records may contain information about individuals making written or oral comments on rules proposed by the board. This information is collected pursuant to Iowa Code section 17A.4. This information is stored electronically and on paper.

6.15(3) Board decisions, findings of fact, final orders, declaratory rulings, and other statements of law or policy issued by the board in the performance of its function. This information is stored on paper only.

6.15(4) Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

6.15(5) Office manuals. Information in office manuals such as the procedures manual may be confidential under Iowa Code section 17A.2(7)*"f"* or other applicable provision of law.

650—6.16(153,147,22) Data processing system. The board does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information on another record system.

650—6.17(153,147,22) Purpose and scope. This chapter implements Iowa Code section 22.11 by establishing board policies and procedures for the maintenance of records.

This chapter does not:

1. Require the board to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the board which are governed by rules of another board or agency.
4. Apply to grantees, including local governments or subdivisions, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of the records to the general public or to any subject individual or party to litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.

These rules are intended to implement Iowa Code section 22.11 and chapters 147, 153, and 272C and Iowa Code chapter 252J.

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CHAPTER 7
RULES
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—7.1(153) Petition for rule making.

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

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

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

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

c. A statement showing how the petitioner would be affected by the requested action.

d. Name and address of petitioner.

7.1(3) The petition is filed when it is received by the board.

7.1(4) Upon receipt of the petition, the board shall take the petition under advisement. The board may request additional information from the petitioner or the board office.

7.1(5) If the petition raises an issue regarding the practice of dental hygiene, the petition shall be referred to the dental hygiene committee for review. The dental hygiene committee shall review the petition and timely submit its recommendations to the board. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.

7.1(6) The board shall deny the petition or initiate rule-making procedures within 60 days after filing of the petition. In the case of a denial, the board shall state in writing its reasons for the denial. The petitioner shall be notified by mail of the board action taken.

This rule is intended to implement Iowa Code sections 17A.3(1) and 17A.7.

650—7.2(153) Oral presentations for rule making.

7.2(1) Oral presentations may be made to the board when requested in writing not later than 20 days after notice of intended action is published in the Iowa Administrative Bulletin, by five interested persons, a governmental subdivision, the administrative rules review committee, an agency, or an association having not less than 25 members or upon discretion of the board.

7.2(2) The board shall give the public not less than 20 days' notice of the time and place where oral presentations may be made.

7.2(3) Persons wishing to speak shall notify the board prior to start of the oral presentations.

7.2(4) Oral presentations may be limited to ten minutes at the discretion of the board.

This rule is intended to implement Iowa Code sections 17A.3(1) and 17A.4(1).

650—7.3(153) Declaratory rulings.

7.3(1) Any interested person or agency affected by any statutory provision administered by the board, rule, or other written statement of law or policy, decision or order of the board may file a petition for a declaratory ruling as to the applicability of such statutory provision, rule or other written statement of law or policy, decision or order to that person or agency.

7.3(2) The petition shall be typewritten, signed and dated and shall contain, in the following order:

a. Statement that it is a petition for a declaratory ruling.

b. Name, address, telephone number and official title, if any, of the petitioner.

c. Clear statement of the question or questions upon which the petitioner requests a declaratory ruling.

d. Detailed statement of facts upon which petitioner requests the board to issue its declaratory ruling.

e. Identification of the statute, rule, policy statement, decision or order for which petitioner seeks a declaratory ruling.

f. The particular words, passages, sentences or paragraphs of the statutes, rules, policy statements, decisions or orders which are the subject of inquiry.

g. The nature of petitioner's interest in the subject matter, including whether the petition is on behalf of a corporation, partnership, organization or the like.

h. Any other supporting information, statements or facts.

7.3(3) The petition shall be deemed filed when received by the board. Receipt shall be acknowledged within 20 days after filing.

7.3(4) The board may return petitions not prepared in reasonable compliance with these rules.

7.3(5) The board shall issue a declaratory ruling or denial thereof within 60 days after the filing of the petition. The board may grant a request for an earlier disposition upon a showing of circumstances requiring the same.

7.3(6) The board may decline to issue a declaratory ruling in whole or in part and shall so notify the petitioner in writing, stating the reasons therefor.

7.3(7) Declaratory rulings issued by the board shall be in writing and mailed to the petitioner.

This rule is intended to implement Iowa Code sections 17A.3(1) and 17A.9.

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TITLE III
LICENSING

CHAPTER 10
GENERAL
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—10.1(153) Licensed personnel. Persons engaged in the practice of dentistry in Iowa must be licensed by the board as a dentist and persons performing services under Iowa Code section 153.15, must be licensed by the board as a dental hygienist.

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

650—10.2(153) Display of license and license renewal. The license to practice dentistry or dental hygiene and the current license renewal must be prominently displayed by the licensee at the principal office of employment.

10.2(1) Additional license certificates shall be obtained from the board whenever a licensee practices at more than one address. If more than two additional certificates are requested, explanation must be made in writing to the board.

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

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

650—10.3(153) Supervision of dental hygienist.

10.3(1) The administration of local anesthesia shall only be provided under the direct supervision of a dentist. Direct supervision of the dental hygienist requires that the supervising dentist be present in the treatment facility, but it is not required that the dentist be physically present in the treatment room.

10.3(2) All other authorized services provided by a dental hygienist shall be performed under the general supervision of a dentist currently licensed in the state of Iowa. General supervision shall mean that a dentist has examined the patient and has prescribed authorized services to be provided by a dental hygienist. The dentist need not be present in the facility while these services are being provided. If a dentist will not be present, the following requirements shall be met:

1. Patients or their legal guardian must be informed prior to the appointment that no dentist will be present and therefore no examination will be conducted at that appointment.
2. The hygienist must consent to the arrangement.
3. Basic emergency procedures must be established and in place and the hygienist must be capable of implementing these procedures.
4. The treatment to be provided must be prior prescribed by a licensed dentist and must be entered in writing in the patient record.

Subsequent examination and monitoring of the patient, including definitive diagnosis and treatment planning, is the responsibility of the dentist and shall be carried out in a reasonable period of time in accordance with the professional judgment of the dentist based upon the individual needs of the patient.

General supervision shall not preclude the use of direct supervision when in the professional judgment of the dentist such supervision is necessary to meet the individual needs of the patient.

Nothing in these rules shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening, or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

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

This rule is intended to implement Iowa Code section 153.15.

650—10.4(153) Unauthorized practice. A dental hygienist who assists a dentist in practicing dentistry in any capacity other than as an employee or independent contractor supervised by a licensed dentist or who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor, director, or supervisor of a practice as a guise or subterfuge to enable such dental hygienist to engage in the practice of dentistry or dental hygiene, or who renders dental service(s) directly or indirectly on or for members of the public other than as an employee or independent contractor supervised by a licensed dentist shall be deemed to be practicing illegally. The unauthorized practice of dental hygiene means allowing a person not licensed in dentistry or dental hygiene to perform dental hygiene services authorized in Iowa Code section 153.15 and rule 650—1.1(153). The unauthorized practice of dental hygiene also means the performance of services by a dental hygienist which exceeds the scope of practice granted in Iowa Code section 153.15.

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

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CHAPTER 11
APPLICATIONS
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—11.1(153) Examination required for licensure to practice dentistry. Any person desiring to take the examination to qualify for licensure to practice dentistry in this state must make application to the Central Regional Dental Testing Service, Inc. (CRDTS), 1725 Gage Blvd., Topeka, Kansas 66604, and meet such other requirements as CRDTS may establish for purposes of the examination.

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

650—11.2(153) Application to practice dentistry.

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

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

a. Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board.

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

c. Evidence of successful completion of Part I and Part II of the examination, with resulting scores, administered by the Joint Commission on National Dental Examinations. At the discretion of the board, any dentist who has lawfully practiced dentistry in another state or territory for five years may be exempted from presenting this evidence.

d. Evidence of successful completion of the examination, with resulting scores, administered by the Central Regional Dental Testing Service, Inc.

e. The fee as specified in 650—Chapter 15 of these rules is nonrefundable to applicants whose applications are considered by the board. A statement of reasons for rejection shall be sent to the applicant.

f. Successful completion of the jurisprudence examination administered by the board of dental examiners.

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

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

This rule is intended to implement Iowa Code section 147.3.

650—11.3(153) Application for dental licensure by credentials. The following requirements must be satisfied prior to licensure to practice dentistry in Iowa through the procedure of licensure by credentials:

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

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

a. Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board.

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

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

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

e. Certification by a state board of dentistry, or equivalent authority, from a state in which applicant has been licensed for at least five years immediately preceding the date of application and evidence of having engaged in the practice of dentistry in that state for five years immediately preceding the date of application or evidence of five years of practice satisfactory to the board.

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

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

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

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

j. When the applicant does not meet the requirements for licensure by credentials specified in 11.3(2)*"i,"* the board will accept successful completion of a national specialty examination in lieu of 11.2(2)*"d."*

k. The fee for licensure by credentials verification as specified in 650—Chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners. Applications considered by the board are nonrefundable.

11.3(3) Applicant shall appear for a personal interview if requested to do so by the board.

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

11.3(5) Applications must be signed and verified as to the truth of the statements contained therein. The license, if issued, may be revoked upon evidence of misinformation or substantial omission. All information given will be investigated for verification. A minimum of 60 days will be required for the investigation.

650—11.4(153) Examination required for licensure to practice dental hygiene. Any person desiring to take the examination to qualify for licensure to practice dental hygiene in this state must make an application to the Central Regional Dental Testing Service, Inc. (CRDTS), 1725 Gage Blvd., Topeka, Kansas 66604, and meet such other requirements as CRDTS may establish for purposes of the examination.

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

650—11.5(153) Application to practice dental hygiene.

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

11.5(2) Applications for licensure must be filed with the dental hygiene committee along with:

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

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

c. Evidence of successful completion of the examination, with resulting scores, administered by the Joint Commission on National Dental Examinations.

d. Evidence of successful completion of the examination, with resulting scores, administered by the Central Regional Dental Testing Service, Inc.

e. The fee as specified in 650—Chapter 15 is nonrefundable to applicants whose applications are considered by the dental hygiene committee. A statement of reasons for rejection shall be sent to the applicant.

f. Successful completion of the jurisprudence examination administered by the dental hygiene committee.

g. Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

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

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

11.5(5) Following review by the dental hygiene committee, the committee shall make recommendation to the board regarding the issuance or denial of any license to practice dental hygiene. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.

This rule is intended to implement Iowa Code sections 147.3, 147.80 and chapter 153.

650—11.6(153) Application for dental hygiene licensure by credentials. The following requirements must be satisfied prior to licensure to practice dental hygiene in Iowa through the procedure of licensure by credentials:

11.6(1) Applications of licensure by credentials to practice dental hygiene in this state shall be made to the dental hygiene committee on the form provided by the dental hygiene committee and must be completely filled out.

11.6(2) Applications must be filed with the dental hygiene committee along with:

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

b. Evidence of successful completion of the examination of the Joint Commission on National Dental Examinations with resulting scores, or evidence of having passed a written examination that is comparable to the examination given by the Joint Commission on National Dental Examinations.

c. Evidence that the applicant has not failed the clinical examination of Central Regional Dental Testing Service or comparable state board examination within the last three years.

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

e. Certification by the state board of dentistry, or equivalent authority, from a state in which applicant has been licensed for at least three years immediately preceding the date of application and evidence of having engaged in the practice of dental hygiene in that state for three years immediately preceding the date of application or evidence of practice satisfactory to the dental hygiene committee.

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

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

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

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

j. The fee for licensure by credentials as specified in 650—Chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners. Applications considered by the dental hygiene committee are nonrefundable.

k. Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

11.6(3) Applicant shall appear for a personal interview conducted by the dental hygiene committee or the board by request only.

11.6(4) The dental hygiene committee may also require such examinations as necessary to evaluate the applicant for licensure by credentials, including jurisprudence examination.

11.6(5) Applications must be signed and verified as to the truth of the statements contained therein. The license, if issued, may be revoked upon evidence of misinformation or substantial omission. All information given will be investigated for verification. A minimum of 60 days will be required for the investigation.

11.6(6) Following review by the dental hygiene committee, the committee shall make a recommendation to the board regarding issuance or denial of a dental hygiene license. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.

This rule is intended to implement Iowa Code section 147.80 and chapter 153.

650—11.7(153) Character references. The board or the dental hygiene committee may require any applicant to submit two character references from persons who are not licensed members of the profession.

This rule is intended to implement Iowa Code section 147.3.

650—11.8(153) Felonies. The board or the dental hygiene committee may consider the past felony record of any applicant if the felony conviction relates to the practice of dentistry or dental hygiene.

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

650—11.9(147) Licensure denied—appeal procedure. An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of the appeal and request for hearing upon the executive director not more than 30 days following the date of the mailing of the notification of licensure denial to the applicant or not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service of an original notice. The hearing and subsequent procedures shall be considered a contested case hearing and shall be governed by the procedures outlined in 650—Chapter 51.

This rule is intended to implement Iowa Code sections 147.3, 147.4 and 147.29.

650—11.10(153) Application for authority of a dental hygienist to administer local anesthesia. A licensed dental hygienist may administer local anesthesia provided the following requirements are met:

1. The dental hygienist holds a current local anesthesia permit issued by the board of dental examiners.
2. The local anesthesia is prescribed by a licensed dentist.
3. The local anesthesia is administered under the direct supervision of a licensed dentist.

11.10(1) *Application for permit.* The licensed dental hygienist shall make application for issuance of a permit to administer local anesthesia on the form approved by the board and meet the following requirements:

a. The fee for a permit to administer local anesthesia as specified in 650—Chapter 15; and

b. Evidence that formal training in the administration of local anesthesia has been completed within 12 months of the date of application. The formal training shall be approved by the board and conducted by a school accredited by the American Dental Association Commission on Dental Education; or

c. Evidence of completion of board-approved formal training in the administration of local anesthesia and documented evidence of ongoing practice in the administration of local anesthesia.

11.10(2) *Permit renewal.* The permit shall expire on the date the dental hygienist's license expires.

a. At the time of renewal, the dental hygienist holding the permit shall document evidence of ongoing practice in the administration of local anesthesia.

b. The application fee for renewal of permit shall include a renewal fee specified in 650—Chapter 15.

c. Failure to supply the documentation referred to in 11.10(1)"*c*" at the time of renewal shall cause the permit to lapse.

d. The permit may be reinstated upon documentation that the dental hygienist has successfully completed a certification course approved by the board.

This rule is intended to implement Iowa Code sections 147.10 and 147.80 and chapter 153.

650—11.11(261) Receipt of certificate of noncompliance. The board shall consider the receipt of a certificate of noncompliance from the college student aid commission pursuant to Iowa Code sections 261.121 to 261.127 and 650—Chapter 34 of these rules or receipt of a certificate of noncompliance of a support order from the child support recovery unit pursuant to Iowa Code chapter 252J and 650—Chapter 33 of these rules. License denial shall follow the procedures in the statutes and board rules as set forth in this rule.

This rule is intended to implement Iowa Code sections 261.121 to 261.127.

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CHAPTER 12
EXAMINATIONS
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—12.1(153) Examination procedure for dentistry.

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

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

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

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

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

12.1(6) The examinee must attain an average grade of not less than 70 percent on each clinical portion of the examination and 70 percent on the written portion of the examination. Effective April 1, 1995, the examinee must attain an average grade of not less than 75 percent on each clinical portion of the examination and 75 percent on the written portion of the examination. Effective April 1, 1997, the written portion of Central Regional Dental Testing Service will be eliminated from the examination.

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

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

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

650—12.2(153) System of retaking dental examinations.

12.2(1) *Second examination.*

a. On the second examination attempt, a dental examinee shall be required to take only those sections of the examination in which the examinee did not achieve a score of at least 70 percent. If the second examination attempt was taken after April 1, 1995, the dental examinee shall be required to take only those sections of the examination in which the examinee did not achieve a score of at least 75 percent.

b. A dental examinee who fails the second examination will be required to complete remedial education requirements set forth in 12.2(2).

12.2(2) *Third examination.*

a. Prior to the third examination attempt, a dental examinee must submit proof of additional formal education or clinical experience approved in advance by the board.

b. At the third examination, the dental examinee will be required to complete only those sections failed on the second attempt.

12.2(3) *Fourth examination.*

a. Prior to the fourth examination, a dental examinee must submit proof of satisfactory completion of the equivalent of an additional senior year of an approved curriculum in dentistry at a university or school with an approved curriculum.

b. At the fourth examination, the dental examinee shall be required to retake all sections of the examination.

12.2(4) *Subsequent failures.* For the purposes of additional study prior to retakes, the fifth examination will be considered the same as the third.

12.2(5) *Failures.* If a dental examinee applies for the Central Regional Dental Testing Service, Inc. examination after having failed any other state or regional examination, the failures shall be considered Central Regional Dental Testing Service, Inc. failures for the purposes of retakes.

650—12.3(153) Examination procedure for dental hygiene.

12.3(1) The examinee must attain an average grade of 70 percent on the examination.

12.3(2) Each examinee shall be required to perform such practical demonstrations as may be required by the Central Regional Dental Testing Service, Inc. for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dental hygiene.

12.3(3) The examinee must furnish the examinee's own patients, all needed materials, supplies and instruments. The director of the clinic at the school of dental hygiene may aid in the procurement of patients.

650—12.4(153) System of retaking dental hygiene examinations.

12.4(1) *Second examination.*

a. On the second examination attempt, a dental hygiene examinee shall be required to achieve a score of at least 70 percent.

b. A dental hygiene examinee who fails the second examination will be required to complete the remedial education requirements set forth in subrule 12.4(2).

12.4(2) *Third examination.* Prior to the third examination attempt, a dental hygiene examinee must submit proof of additional formal education or clinical experience approved in advance by the dental hygiene committee.

12.4(3) *Fourth examination.* Prior to the fourth examination, a dental hygiene examinee must submit proof of satisfactory completion of an approved curriculum in dental hygiene at a university or school with an approved curriculum.

12.4(4) *Subsequent failures.* For purposes of additional study prior to retakes, the fifth examination will be considered the same as the third.

12.4(5) *Failures.* If a dental hygiene examinee applies for the Central Regional Dental Testing Service, Inc. examination after having failed any other state or regional examination, the failures shall be considered Central Regional Dental Testing Service, Inc. failures for the purposes of retakes.

650—12.5(153) Additional requirements. Examinees for dentistry or dental hygiene shall be required to meet such other requirements as may be imposed by the Central Regional Dental Testing Service, Inc.

This chapter is intended to implement Iowa Code section 147.36.

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CHAPTER 13
SPECIAL LICENSES
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—13.1(153) Resident dentist license.

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

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

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

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

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

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

13.1(3) Application for the resident dentist license shall be on official board forms and shall be filed with the board together with the appropriate fee as specified in 650—Chapter 15 of these rules.

13.1(4) The resident dentist license shall be valid for one year and may be renewed annually during such period of time as the dental resident is continuously enrolled in a graduate dental education program.

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

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

This rule is intended to implement Iowa Code section 153.22.

650—13.2(153) Dental college and dental hygiene program faculty permits.

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

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

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

13.2(4) The appropriate fee as specified in 650—Chapter 15 of these rules shall be paid by the applicant for issuance and renewal of the faculty permit.

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

13.2(6) Beginning with the renewal period July 1, 1996, through June 30, 1997, faculty permit holders will be required to meet continuing education requirements for renewal of faculty permits. The faculty permit holder will be required to submit with the application for renewal a report of continuing education hours earned in the previous fiscal year and every year thereafter. A minimum of 15 hours of continuing education will be required. The continuing education hours must meet the continuing education guidelines set forth in 650—Chapter 25.

13.2(7) Application for issuance of a dental hygiene program faculty permit shall be made to the dental hygiene committee for consideration and recommendation to the board pursuant to 650—Chapter 5.

This rule is intended to implement Iowa Code section 153.37.

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CHAPTER 14
RENEWAL
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—14.1(153) Renewal of license to practice dentistry or dental hygiene. A license to practice dentistry or a license to practice dental hygiene must be renewed biennially.

14.1(1) Application for renewal must be made in writing to the board at least 30 days before the current license expires.

14.1(2) The appropriate fee as specified in 650—Chapter 15 of these rules shall accompany the application for renewal of a license at least 30 days before the current license expires. A penalty shall be assessed by the board for late renewal.

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

14.1(4) In order to renew a license as a dental hygienist the licensee shall be required to furnish evidence of a valid annual certification in a nationally recognized course in cardiopulmonary resuscitation.

14.1(5) The dental hygiene committee may, in its discretion, review any applications for renewal of a dental hygiene license and make recommendations to the board. The board's review is subject to 650—Chapter 5.

This rule is intended to implement Iowa Code section 147.10 and chapters 153 and 272C.

650—14.2(153) Notice of renewal. The board will notify each licensee by mail of the expiration of the license. A penalty may be assessed by the board for late renewal.

This rule is intended to implement Iowa Code section 147.10.

650—14.3(153) Grounds for nonrenewal of license to practice dentistry or dental hygiene. The board may refuse to renew, after proper notice and hearing, a license on the following grounds:

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

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

14.3(3) Failure to obtain required continuing education.

This rule is intended to implement Iowa Code section 153.23 and chapter 272C.

650—14.4(153) Late fee. Failure to renew the license prior to August 1 following June 30 expiration shall result in a late fee of $50 being assessed by the board in addition to the renewal fee. Failure to renew prior to September 1 following expiration shall result in a late fee of $100 being assessed. Failure to renew prior to October 1 following expiration shall result in a late fee of $150 being assessed. The maximum late fee shall be $150.

14.4(1) No renewal application shall be considered timely and sufficient until received by the board and accompanied by the material required for renewal and all applicable renewal and late fees.

14.4(2) Failure of a licensee to renew a license prior to November 1 following its expiration shall cause the license to lapse and become invalid. A licensee whose license has lapsed and become invalid is prohibited from the practice of dentistry or dental hygiene until the license is reinstated in accordance with rule 14.5(153).

This rule is intended to implement Iowa Code sections 147.10, 147.11, 153.30 and 272C.2.

650—14.5(153) Reinstatement of a lapsed license. Application for reinstatement of a lapsed license does not preclude the board from taking other disciplinary action as provided in this chapter.

14.5(1) Licensees who allow their license to lapse by failing to renew such license may be reinstated at the discretion of the board by submitting the following:

a. A completed application for reinstatement of a lapsed license to practice dentistry or dental hygiene. The reinstatement fee of $150 shall accompany the application.

b. Name and address of applicant.

c. Dates and places of practice.

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

e. Character references from persons who are not licensed in the profession concerned and such other information as the board may require to evaluate the applicant.

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

g. Payment of all renewal fees then due plus reinstatement fee.

h. Evidence of completion of a total of 15 hours of continuing education for each lapsed year or part thereof in accordance with 650—Chapter 25.

i. If licensed in another state, the licensee shall provide certification by the state board of dentistry or equivalent authority of such state that the licensee has not been the subject of final or pending disciplinary action.

j. Statement as to any investigations, claims, complaints, judgments or settlements made with respect to the licensee arising out of the alleged negligence or malpractice in rendering professional services as a dentist or dental hygienist.

14.5(2) The board may require a licensee applying for reinstatement to successfully complete an examination designated by the board prior to reinstatement if necessary to ensure the licensee is able to practice dentistry or dental hygiene with reasonable skill and safety.

14.5(3) When the board finds that a practitioner applying for reinstatement is or has been subject to disciplinary action taken against a license held by the applicant in another state of the United States, District of Columbia, or territory, and the violations which resulted in such actions would also be grounds for discipline in Iowa in accordance with rule 650—30.4(153), the board may deny reinstatement of a license to practice dentistry or dental hygiene in Iowa or may impose any applicable disciplinary sanctions as specified in rule 650—30.2(153) as a condition of reinstatement.

14.5(4) The dental hygiene committee may, in its discretion, review any applications for reinstatement of a lapsed dental hygiene license and make recommendations to the board. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.

This rule is intended to implement Iowa Code sections 147.10, 147.11, 153.30 and 272C.2.

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CHAPTER 15
FEES
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—15.1(153) License application fees. Applications considered by the board or dental hygiene committee are nonrefundable.

15.1(1) The fee for a license application to practice dentistry shall be $100.

15.1(2) The fee for a license application to practice dental hygiene shall be $50.

15.1(3) The fee for a resident dentist license application shall be $40.

15.1(4) The fee for a faculty permit application shall be $50.

15.1(5) The fee for a reciprocal license application to practice dentistry issued on the basis of credentials shall be $275.

15.1(6) The fee for a reciprocal license application to practice dental hygiene issued on the basis of credentials shall be $100.

15.1(7) The fee for a reinstatement application for inactive practitioners shall be $50.

15.1(8) The fee for a reinstatement application for a lapsed license is $150.

15.1(9) The fee for an application for issuance of a general anesthesia permit shall be $100.

15.1(10) The fee for an application for issuance of a conscious sedation permit shall be $100.

15.1(11) The fee for an application for issuance of a permit to authorize a dental hygienist to administer local anesthesia shall be $35.

650—15.2(153) Renewal fees. All fees are nonrefundable.

15.2(1) The fee for renewal of a license to practice dentistry for a biennial period shall be $240 for an active practitioner and $240 for an inactive practitioner.

15.2(2) The fee for renewal of a license to practice dental hygiene for a biennial period shall be $120 for an active practitioner and $120 for an inactive practitioner.

15.2(3) The fee for renewal of a general anesthesia permit shall be $100.

15.2(4) The fee for renewal of a conscious sedation permit shall be $100.

15.2(5) The fee for renewal of a permit to authorize a dental hygienist to administer local anesthesia shall be $20.

650—15.3(153) Late renewal fees. All fees are nonrefundable. A licensee who fails to renew a license to practice following expiration shall be subject to late renewal fees pursuant to 650—Chapter 14.

650—15.4(153) Miscellaneous fees.

15.4(1) The fee for issuing a duplicate license shall be $10.

15.4(2) The fee for a certification of the Iowa license shall be $10.

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

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e. The fee as specified in these rules.

f. Additional information the board may require relating to character, education and experience as may be necessary to pass upon the applicant's qualification.

22.7(2) Any person who does not meet the requirements of subrule 22.7(1) may apply for student status as defined in subrule 22.4(3).

650—22.8(153) Renewal requirements.

22.8(1) Commencing in 1993, certificates shall be renewed biennially.

22.8(2) The renewal application shall be made in writing to the board at least 30 days before the current certificate expires.

22.8(3) Attendance once every four years at an updating seminar in dental radiography approved by the board shall be required for renewal. At the time of renewal the dental assistant shall be required to sign a statement that the dental assistant has attended the required course during the previous four-year period. Proof of attendance at such course of study shall be retained by the dental assistant and submitted to the board as further proof of compliance at the request of the board.

22.8(4) All certificates shall expire on June 30, 1993, and every two years thereafter.

22.8(5) The appropriate fee as specified in this chapter shall accompany the application for renewal. A penalty shall be assessed by the board for failure to renew within 30 days after expiration as specified in this chapter.

22.8(6) Failure to renew a certificate prior to November 1 following expiration shall cause the certificate to lapse and become invalid. A certificate holder whose certificate has lapsed and become invalid is prohibited from taking radiographs until the procedures for reinstatement are met.

22.8(7) The board may require recertification, qualification and clinical evaluation of a dental assistant holding a certificate of qualification in dental radiography if the board, in its discretion, believes such action is necessary for the protection of the public.

650—22.9(136C) Certification of qualification in dental radiography—fees.

22.9(1) The fee for application for a certificate of qualification or student status leading to qualification shall be $35.

22.9(2) The fee for renewal of a certificate shall be $60.

22.9(3) Failure to renew the certificate prior to August 1 following June 30 expiration shall result in a late fee of $15 being assessed by the board in addition to the renewal fee. Failure to renew prior to September 1 following expiration shall result in a late fee of $30 being assessed. Failure to renew prior to October 1 following expiration shall result in a late fee of $60 being assessed. The maximum late fee shall be $60.

22.9(4) The fee for reinstatement of a lapsed certificate of qualification in dental radiography shall be $60.

650—22.10(153) Responsibilities of certificate holder.

22.10(1) The dental assistant holding a certificate of qualification issued by the board shall conspicuously display the certificate in the office of employment.

22.10(2) The dental assistant holding a certificate of qualification issued by the board shall notify the office of the board of any address change within 60 days.

650—22.11(153) Enforcement.

22.11(1) Any individual except a licensed dentist or a licensed dental hygienist who participates in dental radiography in violation of this chapter or Iowa Code chapter 136C shall be subject to the criminal and civil penalties set forth in Iowa Code sections 136C.4 and 136C.5.

22.11(2) Any licensed dentist who permits a person to engage in dental radiography contrary to this chapter or Iowa Code chapter 136C shall be subject to discipline by the board pursuant to 650—Chapter 30.

650—22.12(153) Reinstatement of lapsed certificate of qualification in dental radiography.

22.12(1) Certificate holders who allow their certificates to lapse by failing to renew such certificate may be reinstated by submitting the following:

a. A completed application for reinstatement of a lapsed certificate to engage in dental radiography.

b. Payment of reinstatement fee and current renewal fee.

c. Proof of attendance of an updating seminar in dental radiography taken within the previous four-year period from the date of application.

d. A dental assistant who ceases to participate in dental radiography for more than two years shall be required to successfully complete the examination and proficiency evaluation pursuant to rule 22.6(153).

e. A dental assistant who has current certification issued by another state is exempt from the examination requirement.

22.12(2) Reserved.

These rules are intended to implement Iowa Code section 136C.3 and chapter 153.

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CHAPTERS 23 and 24
Reserved

650—25.7(153) Waivers, extensions and exemptions. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application shall be made on forms provided by the board and signed by the licensee and a physician licensed by the board of medical examiners. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of the waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by methods prescribed by the board.

Extensions or exemptions of continuing education requirements will be considered by the board on an individual basis.

A dentist or dental hygienist licensed to practice in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person practices dentistry or dental hygiene in another state or district having a continuing education requirement for dentistry or dental hygiene and meets all requirements of that state or district for practice therein, or for periods that the dentist or dental hygienist is a government employee working in the person's licensed specialty and assigned to duty outside the United States, or for other periods of active practice and absence from the state approved by the board.

650—25.8(153) Exemptions for inactive practitioners. A licensee who is not engaged in the practice in the state of Iowa, residing in or out of the state of Iowa, may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of dentistry or dental hygiene in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

650—25.9(153) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of dentistry or dental hygiene in the state of Iowa, satisfy the following requirements for reinstatement:

25.9(1) Submit written application for reinstatement to the board upon forms provided by the board; and

25.9(2) Furnish in the application evidence of one of the following:

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

b. Completion of a total number of hours of accredited continuing education computed by multiplying 15 by the number of years a certificate of exemption shall have been in effect for such applicant; or

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

d. The licensee may petition the board to determine the continuing education credit hours required for reinstatement of their Iowa license.

25.9(3) Applications must be filed with the board along with the following:

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

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

650—25.10(153) Noncompliance with continuing dental education requirements. It is the licensee's personal responsibility to comply with these rules. The license of individuals not complying with the continuing dental education rules may be subject to disciplinary action by the board.

Inquiries relating to acceptability of continuing dental education activities, approval of sponsors, or exemptions should be directed to: Advisory Committee on Continuing Dental Education, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

650—25.11(153) Dental hygiene continuing education. The dental hygiene committee, in its discretion, shall make recommendations to the board for approval or denial of requests pertaining to dental hygiene education. The dental hygiene committee may utilize the continuing education advisory committee as needed. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5. The following items pertaining to dental hygiene shall be forwarded to the dental hygiene committee for review.

1. Dental hygiene continuing education requirements and requests for approval of programs, activities and sponsors.
2. Requests by dental hygienists for waivers, extensions and exemptions of the continuing education requirements.
3. Requests for exemptions from inactive dental hygiene practitioners.
4. Requests for reinstatement from inactive dental hygiene practitioners.
5. Appeals of denial of dental hygiene continuing education and conduct hearings as necessary.

These rules are intended to implement Iowa Code section 147.10.

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CHAPTER 27
PRINCIPLES OF PROFESSIONAL ETHICS

650—27.1(153) General.

27.1(1) *Dental ethics.* The following principles relating to dental ethics are compatible with the Code of Professional Ethics and advisory opinions published in August 1998 by the American Dental Association. These principles are not intended to provide a limitation on the ability of the board to address problems in the area of ethics but rather to provide a basis for board review of questions concerning professional ethics. The dentist's primary professional obligation shall be service to the public with the most important aspect of that obligation being the competent delivery of appropriate care within the bounds of the clinical circumstances presented by the patient, with due consideration being given to the needs and desires of the patient. Unprofessional conduct includes, but is not limited, to any violation of these rules.

27.1(2) *Dental hygiene ethics.* The following principles relating to dental hygiene ethics are compatible with the Code of Ethics of the American Dental Hygienists' Association published in 1995. Standards of practice for dental hygienists are compatible with the Iowa dental hygienists' association dental hygiene standards of practice adopted in May 1993. These principles and standards are not intended to provide a limitation on the ability of the dental hygiene committee to address problems in the area of ethics and professional standards for dental hygienists but rather to provide a basis for committee review of questions regarding the same. The dental hygienist's primary responsibility is to provide quality care and service to the public according to the clinical circumstances presented by the patient, with due consideration of responsibilities to the patient and the supervising dentist according to the laws and rules governing the practice of dental hygiene.

650—27.2(153) Patient acceptance and records.

27.2(1) Dentists, in serving the public, may exercise reasonable discretion in accepting patients in their practices; however, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, sex or national origin.

27.2(2) Dentists shall preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or the patient's new dentist, the dentist shall furnish, either gratuitously or for nominal cost, the dental records or copies or summaries of them, including dental radiographs or copies of them, as will be beneficial for the future treatment of that patient.

27.2(3) Patient records shall be maintained for a period of no less than five years following the last date of entry. Proper safeguards shall be provided to ensure safety of these records from destructive elements.

650—27.3(153) Emergency service. Emergency services in dentistry are deemed to be those services necessary for the relief of pain or to thwart infection and prevent its spread.

27.3(1) Dentists shall make reasonable arrangements for the emergency care of their patients of record.

27.3(2) Dentists shall, when consulted in an emergency by patients not of record, make reasonable arrangements for emergency care.

650—27.4(153) Consultation and referral.

27.4(1) Dentists shall seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those practitioners who have special skills, knowledge and experience.

27.4(2) The specialist or consulting dentist upon completion of their care shall return the patient, unless the patient expressly states a different preference, to the referring dentist or, if none, to the dentist of record for future care.

27.4(3) The specialist shall be obliged, when there is no referring dentist and upon completion of the treatment, to inform the patient when there is a need for further dental care.

27.4(4) A dentist who has a patient referred for a second opinion regarding a diagnosis or treatment plan recommended by the patient's treating dentist, should render the requested second opinion in accordance with these rules. In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a vested interest in the ensuing recommendation.

650—27.5(153) Use of auxiliary personnel. Dentists shall protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall supervise the work of all auxiliary personnel working under their direction and control.

650—27.6(153) Evidence of incompetent treatment.

27.6(1) Dentists shall report to the board instances of gross or continual faulty treatment by other dentists.

27.6(2) Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

650—27.7(153) Representation of care and fees.

27.7(1) Dentists shall not represent the care being rendered to their patients or the fees being charged for providing the care in a false or misleading manner.

27.7(2) A dentist who accepts a third-party payment under a copayment plan as payment in full without disclosing to the third-party payer that the patient's payment portion will not be collected is engaging in deception and misrepresentation by this overbilling practice.

27.7(3) A dentist shall not increase a fee to a patient solely because the patient has insurance.

27.7(4) Payments accepted by a dentist under a governmentally funded program, a component or constituent dental society sponsored access program, or a participating agreement entered into under a program of a third party shall not be considered as evidence of overbilling in determining whether a charge to a patient or to another third party on behalf of a patient not covered under any of these programs, constitutes overbilling under this rule.

27.7(5) A dentist who submits a claim form to a third party reporting incorrect treatment dates is engaged in making unethical, false or misleading representations.

27.7(6) A dentist who incorrectly describes a dental procedure on a third party claim form in order to receive a greater payment or incorrectly makes a noncovered procedure appear to be a covered procedure is engaged in making an unethical, false or misleading representation to the third party.

27.7(7) A dentist who recommends or performs unnecessary dental services or procedures is engaged in unprofessional conduct.

27.7(8) Recommending removal of restorations or removing said restorations from the nonallergic patient for the alleged purpose of removing toxic substances from the body, when such activity is initiated by the dentist, is an improper and unacceptable treatment regimen.

650—27.8(153) General practitioner announcement of services. General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. General dentists shall also state that the services are being provided by a general dentist.

650—27.9(153) Unethical and unprofessional conduct.

27.9(1) Licensee actions determined by the board to be verbally abusive, coercive, intimidating, harassing, untruthful or threatening in connection with the practice of dentistry shall constitute unethical or unprofessional conduct.

27.9(2) A treatment regimen shall be fully explained and patient authorization obtained before treatment is begun.

27.9(3) A dentist or dental hygienist determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel as defined in Iowa Code section 139C.1, established by the Iowa department of public health under subsection 139C.2(3), or if the dentist or dental hygienist works in a hospital setting, the licensee may elect either the expert review panel established by the hospital or the expert review panel established by the Iowa department of public health for the purpose of making a determination of the circumstances under which the dentist or dental hygienist may perform exposure-prone procedures. The licensee shall comply with the recommendations of the expert review panel. Failure to do so shall constitute unethical and unprofessional conduct and is grounds for disciplinary action by the board.

650—27.10(153) Retirement or discontinuance of practice.

27.10(1) A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon leaving or moving from a community, shall notify all active patients in writing, or by publication once a week for three consecutive weeks in a newspaper of general circulation in the community, that the licensee intends to discontinue the practice of dentistry in the community, and shall encourage patients to seek the services of another licensee. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. "Active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to retirement, discontinuation of the practice of dentistry, or leaving or moving from a community.

27.10(2) Nothing herein provided shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed dentist who is assuming a practice, provided that written notice is furnished to all patients as hereinbefore specified.

These rules are intended to implement Iowa Code sections 153.34(7), 153.34(9), 272C.3 and 272C.4(1f).

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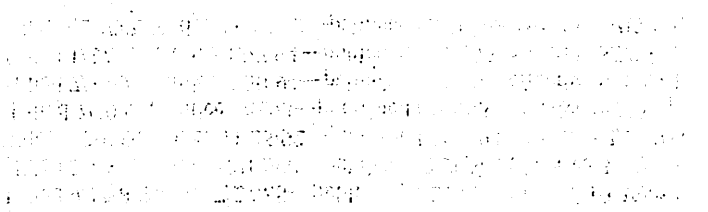

27. Employing any person to obtain, contract for, sell or solicit patronage, or make use of free publicity press agents except as is expressly authorized by rules of the board.

28. Any violation of any provision of Iowa Code chapter 153, or for being a party to or assisting in any violation of any provision of Iowa Code chapter 153.

29. Any willful or repeated violations of Iowa Code chapter 153, or for being a party to or assisting in any violation of any provision of Iowa Code chapter 153.

30. Knowingly submitting a false continuing education reporting form or failure to meet the continuing education requirements for renewal of an active license.

31. Failure to notify the board of change of address within 60 days.

32. Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or country within 30 days of the final action by the licensing authority. A stay by an appellate court shall not negate this requirement; however, if the disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board when the board is so notified.

33. Failure to comply with a subpoena issued by the board.

34. Engaging in the practice of dentistry or dental hygiene with an expired or inactive renewal.

35. Failure to comply with the recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures issued by the Centers for Disease Control of the United States Department of Health and Human Services.

36. Failure to comply with the recommendations of the expert review panel established pursuant to Iowa Code subsection 139C.2(3) and applicable hospital protocols established pursuant to subsection 139C.2(1).

37. Failure to comply with the infection control standards which are consistent with the standards set forth in 347—Chapters 10 and 26.

38. Failure to fully and promptly comply with office inspections conducted at the request of the board to determine compliance with sanitation and infection control standards.

39. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

40. Habitual intoxication or addiction to the use of drugs.

41. Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code chapter 252J and Iowa Administrative Code 650—Chapter 33.

42. Receipt of a certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code sections 261.121 to 261.127. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code sections 261.121 to 261.127 and Iowa Administrative Code 650—Chapter 34.

650—30.5(153) Impaired practitioner review committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the board establishes the impaired practitioner review committee.

30.5(1) *Definitions.*

"Impaired practitioner program contract" or *"contract"* means the written document establishing the terms for participation in the impaired practitioner program prepared by the impaired practitioner review committee.

"Impairment" means an inability to practice dentistry or dental hygiene with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

"IPP" or *"program"* means the impaired practitioner program.

"IPRC" or *"committee"* means the impaired practitioner review committee.

"Self-report" means the licensee providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging an impairment prior to the date of self-report.

30.5(2) *Purpose.* The IPRC evaluates, assists, monitors and, as necessary, makes reports to the board on the recovery or rehabilitation of dentists or dental hygienists who self-report impairments. Reports on the activities of the IPRC shall be made to the board on a quarterly basis.

30.5(3) *Composition of the committee.* The chairperson of the board shall appoint the members of the IPRC. The membership of the IPRC may include, but is not limited to:

a. Executive director of the board or the director's designee from the board's staff;

b. One licensee who has remained free of addiction for a period of no less than two years since successfully completing a recovery program for drug or alcohol dependency, addiction, or abuse;

c. One physician/counselor with expertise in substance abuse/addiction treatment programs;

d. One physician with expertise in the diagnosis and treatment of neuropsychological disorders and disabilities; and

e. One public member.

30.5(4) *Eligibility.* To be eligible for participation in the IPP, a licensee must self-report an impairment or suspected impairment directly to the office of the board. A licensee is deemed ineligible to participate in the program if the board or committee finds evidence of any of the following:

a. The licensee engaged in the unlawful diversion or distribution of controlled substances or illegal substances;

b. At the time of the self-report, the licensee is already under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;

c. The licensee has caused harm or injury to a patient;

d. There is currently a board investigation of the licensee that concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

e. The licensee has been subject to a civil administrative or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or a foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of dentistry or dental hygiene; or

f. The licensee failed to provide truthful information or to fully cooperate with the board or committee.

g. There is currently a complaint before the board.

30.5(5) *Type of program.* The IPP is an individualized recovery or rehabilitation program designed to meet the specific needs of the impaired practitioner. The committee shall meet with the licensee and, upon the recommendation of an IPRC-approved evaluator, shall determine the type of recovery or rehabilitation program required to treat the licensee's impairment. The committee shall prepare a contract, to be signed by the licensee, that shall provide a detailed description of the goals of the program, the requirements for successful completion, and the licensee's obligations therein.

30.5(6) *Terms of participation.* A licensee shall agree to comply with the terms for participation in the IPP established in the contract. Terms of participation specified in the contract shall include, but are not limited to:

a. Duration. The length of time a licensee shall participate in the program shall be determined by the committee in accordance with the following:

(1) Participation in the program for licensees impaired as a result of chemical dependency or alcohol or substance abuse or addiction is set at a minimum of four years.

(2) Length of participation in the program for licensees with impairments resulting from neuro psychological or physical disorders or disabilities will vary depending upon the recommendations for treatment provided by a qualified evaluator designated by the committee to establish an appropriate treatment protocol.

b. Noncompliance. A licensee participating in the program is responsible for notifying the committee of any instance of noncompliance including, but not limited to, a relapse. Notification of noncompliance made to the IPRC by the licensee, any person responsible for providing or monitoring treatment, or another party shall result in full review by the board for the filing of formal charges or other action the board deems appropriate.

c. Practice restrictions. The IPRC may impose restrictions on the license to practice dentistry or dental hygiene as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restrict practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

30.5(7) *Limitations.* The IPRC establishes the terms and monitors a participant's compliance with the program specified in the contract. The IPRC is not responsible for participants who fail to comply with the terms of or successfully complete the IPP. Participation in the program under the auspices of the IPRC shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of dentistry or dental hygiene by a participant shall be referred to the board for appropriate action.

30.5(8) *Confidentiality.* The IPRC is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the IPP under the auspices of the IPRC is not a matter of public record.

This chapter is intended to implement Iowa Code sections 153.34(9), 252H.10, 272C.3(1)*"k,"* 272C.3(2)*"e,"* 272C.4, 272C.5, 272C.10, 598.21(4)*"e,"* and 598.21(8) and Iowa Code chapter 252J.

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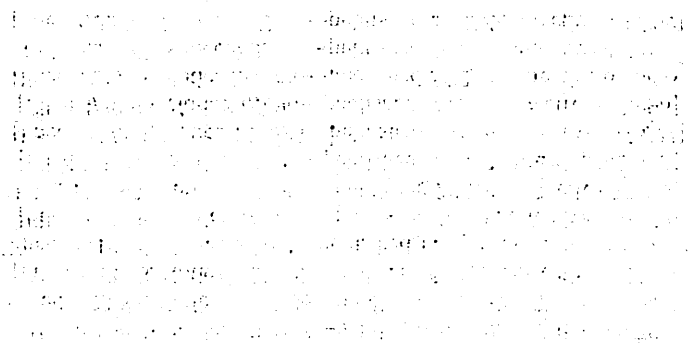

CHAPTER 31
COMPLAINTS
[Prior to 5/18/88, Dental Examiners, Board of [320]]

650—31.1(272C) Complaint review. The board shall, upon receipt of a complaint, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline. All complaints regarding the practice of dental hygiene will be initially directed to the dental hygiene committee. The committee shall review the complaint and make a recommendation to the board.

650—31.2(153) Form and content. A written complaint should include the following facts:

1. The full name, address, and telephone number of the complainant.
2. The full name, address, and telephone number of the licensee.
3. A statement of the facts concerning the alleged acts or omissions.

650—31.3(153) Address. The written complaint may be delivered personally or by mail to the executive director of the board. The current office address is Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

650—31.4(153) Investigation. In order for the board to determine if probable cause exists for a hearing on the complaint, the executive director or authorized designee shall cause an investigation to be made into the allegations of the complaint.

650—31.5(153) Peer review. A complaint may be assigned to a peer review committee for review, investigation and report.

31.5(1) The board shall determine which peer review committee will review a case involving a dentist and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board. The board may use the peer review committee system organized under the dental care programs council of the Iowa dental association or a specifically constituted peer review committee designated by the board for matters involving dentists.

31.5(2) The dental hygiene committee shall determine which peer review committee will review a case involving a dental hygienist and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the dental hygiene committee. The dental hygiene committee may use the peer review system organized under the ethics committee of the Iowa dental hygienists' association or a specifically constituted peer review committee designated by the dental hygiene committee for matters involving dental hygienists.

31.5(3) The Iowa dental association and the Iowa dental hygienists' association shall register yearly and keep current their peer review systems with the board. Board- or dental hygiene committee-appointed peer review committee members shall be registered with the board when appointed.

31.5(4) Members of the peer review committees shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, immunity from civil liability shall not apply if the act is done with malice.

650—31.6(272C) Duties of peer review committees.

31.6(1) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

31.6(2) The board may provide investigatory and related services to peer review committees.

31.6(3) A peer review committee shall thoroughly investigate a complaint as assigned and make written recommendations to the board in accordance with the board's direction.

31.6(4) Written recommendations shall contain a statement of facts, the recommendation for disposition and the rationale supporting the recommendation. The peer review should consider relevant statutes, board rules, ethical standards and standards of care in making its recommendations.

31.6(5) Written recommendations shall be signed by the members of the peer review committee concurring in the report.

31.6(6) Upon completion all investigative reports prepared by peer review committees or staff together with any recommendations shall be submitted to the board.

650—31.7(272C) Board review. The board shall review all investigative reports and proceed pursuant to 650—Chapter 51.

650—31.8(272C) Confidentiality of investigative files. Complaint files, investigation files, all other investigation reports, and other investigative information in the possession of the board or peer review committee acting under the authority of the board or its employees or agents which relate to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the board, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

650—31.9(272C) Reporting of judgments or settlements. Each licensee shall report to the board every adverse judgment in a malpractice action to which the licensee is a party and every settlement of a claim against the licensee alleging malpractice. The report together with a copy of the judgment or settlement must be filed with the board within 30 days from the date of said judgment or settlement.

650—31.10(272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers and licensees involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of complaints.

650—31.11(272C) Reporting acts or omissions. Each licensee having knowledge of acts or omissions set forth in rule 650—30.4(153) shall report to the board those acts or omissions when committed by another person licensed by the board. The report shall include the name and address of the licensee and the date, time and place of the incident.

650—31.12(272C) Failure to report licensee. Upon obtaining information that a licensee failed to file a report required by rule 31.11(272C) within 30 days from the date the licensee acquired the information, the board may initiate a disciplinary proceeding against the licensee who failed to make the required report.

650—31.13(272C) Immunities. A person shall not be civilly liable as a result of filing a report or complaint with the board, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of the board. However, immunity from civil liability shall not apply if the act is done with malice.

These rules are intended to implement Iowa Code sections 153.33, 272C.3, and 272C.4.

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TITLES VII to X

CHAPTER 33
CHILD SUPPORT NONCOMPLIANCE

650—33.1(252J,598) Definitions. For the purpose of this chapter the following definitions shall apply:

"Act" means Iowa Code sections 252J.1 to 252J.9.

"Board" means the Iowa board of dental examiners.

"Certificate" means a document known as a certificate of noncompliance which is provided by the child support unit certifying that the named licensee is not in compliance with a support order or with a written agreement for payment of support entered into by the child support unit and the licensee.

"Child support unit" means the child support recovery unit of the Iowa department of human services.

"Denial notice" means a board notification denying an application for the issuance or renewal of a license as required by the Act.

"License" means a license to practice dentistry or dental hygiene.

"Revocation or suspension notice" means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by the Act.

"Withdrawal certificate" means a document known as a withdrawal of a certificate of noncompliance provided by the child support unit certifying that the certificate is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license.

650—33.2(252J,598) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon the receipt of a certificate from the child support unit. This rule shall apply in addition to the procedures set forth in the Act.

33.2(1) *Service of denial notice.* Notice shall be served upon the licensee or applicant by certified mail, return receipt requested; by personal service; or through authorized counsel.

33.2(2) *Effective date of denial.* The effective date of the denial of issuance or renewal of a license, as specified in the denial notice, shall be 60 days following service of the denial notice upon the licensee or applicant.

33.2(3) *Preparation and service of denial notice.* The executive director of the board is authorized to prepare and serve the denial notice upon the licensee or applicant.

33.2(4) *Licensee or applicant responsible to inform board.* Licensees and applicants shall keep the board informed of all court actions, and all child support unit actions taken under or in connection with the Act and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawal of certificates issued by the child support unit.

33.2(5) *Reinstatement following license denial.* All board fees required for application, license renewal, or license reinstatement shall be paid by licensees or applicants before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to the Act.

33.2(6) *Effect of filing in district court.* In the event a licensee or applicant files a timely district court action following service of a board notice, the board shall continue with the intended action described in the denial notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

33.2(7) *Final notification.* The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the licensee or applicant if the license is issued or renewed following the board's receipt of a withdrawal certificate.

650—33.3(252J,598) Suspension or revocation of a license. The board shall suspend or revoke a license upon the receipt of a certificate from the child support unit according to the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

33.3(1) *Service of revocation or suspension notice.* Revocation or suspension notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

33.3(2) *Effective date of revocation or suspension.* The effective date of the suspension or revocation of a license, as specified in the revocation or suspension notice, shall be 60 days following service of the revocation or suspension notice upon the licensee.

33.3(3) *Preparation and service of revocation or suspension notice.* The executive director of the board is authorized to prepare and serve the revocation or suspension notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

33.3(4) *Licensee responsible to inform board.* The licensee shall keep the board informed of all court actions, and all child support unit action taken under or in connection with the Act and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawal certificates issued by the child support unit.

33.3(5) *Reinstatement following license suspension or revocation.* A licensee shall pay all board fees required for license renewal or license reinstatement before a license will be reinstated after the board has suspended a license pursuant to the Act.

33.3(6) *Effect of filing in district court.* In the event a licensee files a timely district court action pursuant to the Act and following service of a revocation or suspension notice, the board shall continue with the intended action described in the revocation or suspension notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

33.3(7) *Final notification.* The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee if the license is reinstated following the board's receipt of a withdrawal certificate.

These rules are intended to implement Iowa Code sections 252J.1 to 252J.9 and chapter 598.

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CHAPTER 34
STUDENT LOAN DEFAULT/NONCOMPLIANCE WITH AGREEMENT FOR PAYMENT OF OBLIGATION

650—34.1(261) Definitions. For the purpose of this chapter, the following definitions shall apply:

"Board" means the board of dental examiners.

"Certificate of noncompliance" means written certification from the college student aid commission to the licensing authority certifying that the licensee has defaulted on an obligation owed to or collected by the commission.

"Commission" means the college student aid commission.

650—34.2(261) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to those procedures, this rule shall apply.

34.2(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

34.2(2) The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

34.2(3) The board's executive director is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or licensee.

34.2(4) Applicants and licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

34.2(5) All board fees required for application, license renewal or license reinstatement must be paid by applicants or licensees, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

34.2(6) In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

34.2(7) The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee when the license is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

650—34.3(261) Suspension or revocation of a license. The board shall suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to those procedures, the following shall apply:

34.3(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

34.3(2) The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee.

34.3(3) The executive director is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event a license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

34.3(4) Licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

34.3(5) All board fees required for license renewal or reinstatement must be paid by licensees, and all continuing education requirements must be met before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

34.3(6) In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

34.3(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee when the license is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code sections 261.121 to 261.127.

[Filed 1/22/99, Notice 12/2/98—published 2/10/99, effective 3/17/99]

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51.2(6) All proposed settlements are subject to approval of a majority of the full board. If the board fails to approve a proposed settlement, it shall be of no force or effect to either party. The proposed settlement shall be binding if approved by the board and signed by both the chairperson or the chairperson's designee and the respondent.

51.2(7) A board member who participates in the negotiation of a proposed settlement is not disqualified from participating in the adjudication of the contested case.

51.2(8) Consent to settlement negotiations by the respondent constitutes a waiver of any objection to the participation in the adjudication of the contested case of any board member who participated in the review of a settlement agreement which was not approved by the board.

650—51.3(153) Prehearing conference. A prehearing conference(s) may be held prior to the commencement of a contested case hearing but no later than 20 days prior to the hearing date. It may be held upon the request of the hearing panel, board, prosecuting attorney, executive director or the respondent. The prehearing conference may be held by telephone. The parties shall exchange witness and exhibit lists in advance of a telephone prehearing conference.

51.3(1) The executive director or designee shall set the date, time, and location of the prehearing conference and shall notify the respondent.

51.3(2) The executive director may request the assistance of an administrative law judge at the prehearing conference.

51.3(3) The parties shall be prepared to discuss the following subjects at the prehearing conference and the executive director or administrative law judge may issue appropriate orders concerning:

a. Possibility of a settlement.

b. Entry of a scheduling order to include deadlines for completion of discovery.

c. Stipulations of law or fact.

d. Stipulations on the admissibility of exhibits.

e. Submission of expert and other witness lists.

f. Submission of exhibit lists.

g. Identification of matters which the parties intend to request be officially noticed.

h. Any other matter which may aid, expedite, or simplify the hearing or determination of any issue.

650—51.4(153) Hearings.

51.4(1) *Hearing by members.* A hearing may be conducted before the board or a panel of not less than three members of the board at least two of whom are licensed by the board.

51.4(2) *Hearing by the dental hygiene committee.* In the event the licensee who is the subject of the contested case is a dental hygienist, the hearing shall be held before the dental hygiene committee, which shall constitute a panel of the board. The dental hygiene committee may in its discretion recommend to the board that the hearing be held instead before a panel of the board or the full board.

51.4(3) *Panel of nonboard member specialists.* When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

51.4(4) *Presiding officer.* The board chairperson or a person designated by the chairperson shall serve as the presiding officer. The presiding officer shall conduct the hearing and shall have authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. Either the board or a three-member panel may be assisted by an administrative law judge.

51.4(5) *Immunity.* The presiding officer shall have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

51.4(6) *Examination of witnesses by board.* The presiding officer and board members have the right to question a witness. Examination of witnesses by board members is subject to objections properly raised in accordance with the rules of evidence set forth in 650—51.6(153).

51.4(7) *Public hearing.* The hearing shall be open to the public unless the licensee or attorney for the licensee requests that the hearing be closed.

650—51.5(153) Record of proceedings. Hearings shall be recorded by a certified shorthand reporter. Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

650—51.6(153) Evidence.

51.6(1) Admissibility of evidence at the hearing shall be governed by Iowa Code section 17A.14.

51.6(2) Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies may also be furnished to members of the board or hearing panel.

650—51.7(153) Final decision.

51.7(1) When five or more members of the board preside over the reception of the evidence at the hearing, the decision is a final decision.

51.7(2) When a panel of three specialists presides over the hearing, a transcript of the proceedings, together with exhibits presented and the findings of fact of the panel, shall be considered by the board at the earliest practicable time. The parties or the parties' attorneys shall, upon notice prescribed by the board, have the opportunity to appear personally to represent their positions and arguments to the board. The decision of the board is a final decision.

51.7(3) When a panel of three board members or the dental hygiene committee presides over the hearing, the panel's decision is a proposed decision. A proposed decision becomes a final decision without further proceedings unless appealed in accordance with the following procedures:

a. A proposed decision may be appealed to the board by a party to the decision who is adversely affected.

b. The board may initiate review of a proposed decision on its own motion at any time within 30 days of the issuance of the proposed decision.

c. If an appeal is commenced within 7 days after service of the notice of appeal, the appellant shall serve nine copies of its brief in support of the appeal on the executive director and shall furnish an additional copy to each appellee by first-class mail. Any appellee shall have 14 days following service of appellant's exceptions and brief to file its brief. Except for the notice of appeal, the time requirements set forth in this rule may be extended by stipulation of the parties or may be extended upon application approved by a member of the board.

d. Oral argument of the appeal is discretionary, but may be required by the board upon its own motion. At the times designated for filing briefs and arguments, either party may request oral argument. If a request for oral argument is granted, or if required by the board, the executive director shall notify all parties of the date, time, and place. The board chairperson or designee shall preside at the oral argument.

e. The record on appeal shall be the entire record made before the hearing panel. Cost associated with the appeal shall be paid by the appealing party.

51.13(4) Fees and costs collected by the board pursuant to subrule 51.13(2) shall be allocated to the expenditure category of the board in which the hearing costs were incurred. The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

51.13(5) Failure of a licensee to pay the fees and costs assessed herein in the time specified in the board's final disciplinary order shall constitute a violation of a lawful order of the board.

These rules are intended to implement Iowa Code chapter 17A and sections 272C.5 and 272C.6.

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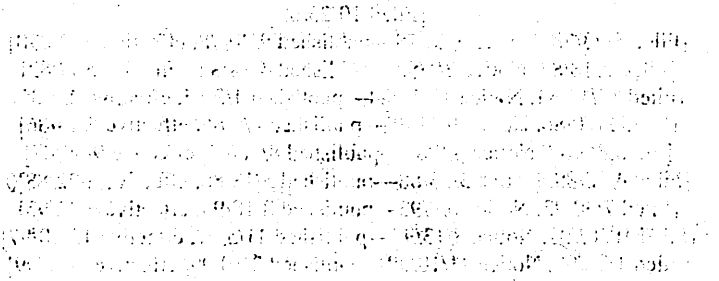
◊Two ARCs



TRANSPORTATION DEPARTMENT[761]

Rules transferred from agency number [820] to [761] to conform with the reorganization numbering scheme in general IAC Supp. 6/3/87. Railway Finance Authority[765] is a division under this "umbrella." See also Table of Corresponding Numbers.

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CHAPTER 40
RECOVERY OF DAMAGES TO HIGHWAYS OR HIGHWAY STRUCTURES

761—40.1(321) Scope. This chapter of rules is limited to recovery of damages to highways or highway structures in two situations:

40.1(1) As a result of any illegal operation, driving, or moving of a vehicle, object, or contrivance; or

40.1(2) As a result of operation, driving, or moving any vehicle, object, or contrivance weighing in excess of the maximum weight in Iowa Code chapter 321 but authorized by a special permit issued pursuant to Iowa Code chapter 321.

761—40.2(321) Definitions.

"Department" means the Iowa department of transportation.

"Highway" means any segment of the primary road system or a municipal extension and includes but is not limited to the pavement surface, shoulder, median, earth fill, ditches and vegetation.

"Highway structure" means all the appurtenances of a highway including but not limited to guardrails, culverts, bridges, signs, light poles, attenuators, traffic control devices, or buildings at rest areas, information sites, commercial vehicle inspection and enforcement sites, or other appurtenances adjacent to the highway.

"Labor additive" means the labor additive rate approved annually by the Federal Highway Administration. This rate includes indirect labor costs, such as sick leave, vacation, holidays, other leaves with pay and departmental training. The labor additive rate produces an accurate charge for labor costs.

"Traffic control" means the labor, materials and equipment used to control traffic through or around the site of an accident on or adjacent to the highway, including but not limited to signs, barricades, signals, pavement markings, and lighting, channelizing, or hand signaling devices.

761—40.3(321) Information. Information about the recovery of damages to highway facilities may be obtained from: Bureau of Transportation Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1671.

761—40.4(321) Accident scene. The department shall exclude from recoverable damages the cost of traffic control at the scene of an accident during the period required to conduct the initial investigation, arrange for care of the injured, and either perform cleanup required to return traffic flow to normal conditions or establish a detour.

761—40.5(321) Repair of facilities.

40.5(1) When notified of a damaged highway or highway structure, the department shall arrange for its repair or replacement by department personnel or by a contractor.

40.5(2) The department shall document all of the repair or replacement cost incurred including, but not limited to:

a. Disposal of remaining debris.
b. Review and inspection of damaged facility.
c. Preparation of design plans.
d. Material and equipment used by the department.
e. Costs paid to private contractors.
f. Costs paid to another jurisdiction for a detour route when a highway closure is required.
g. Traffic control costs incurred during the inspection, repair or replacement.
h. Labor costs incurred by the department, including labor additive.

40.5(3) The costs for the repair or replacement shall be documented.

761—40.6(321) Recovery of damages.

40.6(1) The department shall investigate to determine the person(s) responsible for the damages pursuant to Iowa Code section 321.475.

40.6(2) The department shall summarize the repair or replacement costs and submit the claim to the person(s) responsible for the damage.

40.6(3) The department may seek recovery through civil court action.

40.6(4) Collections for recovery of damages shall be deposited in the primary road fund.

These rules are intended to implement Iowa Code section 321.475.

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CHAPTERS 41 to 99
Reserved

HIGHWAYS

CHAPTER 100
FUNCTIONAL CLASSIFICATION OF HIGHWAYS

[Prior to 6/3/87, Transportation Department[820]—(08,C)Ch3]
Rescinded IAB 12/16/98, effective 1/20/99

*Effective date of 761—40.6(321) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1992.

CHAPTER 101
FARM-TO-MARKET REVIEW BOARD

761—101.1(306) Purpose. The purpose of these procedural rules is to formalize the process by which the farm-to-market review board, created by Iowa Code section 306.6, will administer its duties.

101.1(1) Iowa Code section 306.6 requires the farm-to-market review board to make final administrative decisions based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

101.1(2) Iowa Code section 306.6A requires the farm-to-market review board to adopt procedural rules for modifications to the existing farm-to-market road system and designation of farm-to-market routes on new alignment. These rules implement this requirement.

101.1(3) Iowa Code section 306.5 states that the farm-to-market road system shall be a continuous, interconnected system and that provision shall be made for continuity by the designation of extensions within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas.

761—101.2(306) Definitions.

"Area service roads" or *"local roads"* or *"local road system"* means those secondary roads that are not a part of the farm-to-market road system.

"Board" means the farm-to-market review board.

"Executive board" means the Iowa county engineers association executive board.

"Farm-to-market extensions" means extensions of the farm-to-market road system within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of these extensions of the system shall be included in the total mileage of the farm-to-market road system.

"Farm-to-market roads" or *"farm-to-market road system"* means those county jurisdiction intracounty and intercounty roads which serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market and area service roads, and includes those secondary roads which are federal aid eligible. The farm-to-market road system shall not exceed 35,000 miles.

"President" means the president of the Iowa county engineers association.

761—101.3(306) Composition and membership of the farm-to-market review board.

101.3(1) The farm-to-market review board shall be composed of 12 county engineers selected by the Iowa county engineers association. Two members shall be selected from each district to serve staggered terms. After the first complete term rotation as shown below, the members shall serve six-year terms. Rotations shall be staggered so that no more than one-sixth of the membership is rotated off the board in any one year. The rotation of board members shall further provide that two members from one district will not be rotated off the board in the same year, and that their rotations will be varied by three years. Initial board rotation shall be as follows and shall be extended in future years in the same pattern:

Year	Rotation	
2000	District 1 Representative A	District 4 Representative A
2001	District 2 Representative A	District 5 Representative A
2002	District 3 Representative A	District 6 Representative A
2003	District 1 Representative B	District 4 Representative B
2004	District 2 Representative B	District 5 Representative B
2005	District 3 Representative B	District 6 Representative B

101.3(2) Members shall be nominated by their districts and approved by the executive board. A county engineer may serve multiple, consecutive terms if so nominated by the county engineer's district. If a county engineer is unable to complete a term for any reason, the president shall select another county engineer within the district to serve the balance of the term.

101.3(3) The farm-to-market review board shall select from its membership a chair and a vice-chair to serve one-year terms. The chair serves at the pleasure of the board and may be elected to multiple terms as deemed appropriate by the board. The vice-chair shall preside at a meeting in the absence of the chair.

761—101.4(306) Collection of system modification requests and frequency of meetings.

101.4(1) The department of transportation will collect applications for modifications to the farm-to-market road system. The board chair shall schedule meetings of the board. In general, the farm-to-market review board shall meet in conjunction with statewide meetings of the Iowa state association of counties and Iowa county engineers association to review accumulated applications for farm-to-market road system modifications. Applications must be filed no less than 30 days prior to each scheduled board meeting. Additional board meetings shall be called as determined by the chair.

101.4(2) The farm-to-market review board is required to follow the provisions of Iowa Code chapter 21 with regard to open meetings. The chair shall post a meeting agenda on the "Service Bureau Bulletin Board" and send copies of the agenda to all counties.

101.4(3) Minutes of each meeting shall be kept; the chair shall be responsible for the minutes. Meetings may be tape recorded to facilitate the preparation of meeting minutes, but any tapes made shall not be retained after the minutes have been completed.

761—101.5(306) Procedure for requesting modifications to the farm-to-market road system. To apply for a modification to the farm-to-market road system, a county must file an application through the department of transportation.

101.5(1) The application must include the following:

a. A copy of a resolution of the county board of supervisors requesting the modification to the existing farm-to-market road system. Farm-to-market modifications may include proposed roads, redesignation of area service roads, or transfers of jurisdiction.

b. A report of the county engineer explaining and justifying the addition of new mileage to the farm-to-market road system or the change in the route or farm-to-market classification proposed by the county.

101.5(2) In the case of intercounty routes, joint applications may be filed. Resolutions shall be required of each county.

761—101.6(306) Review criteria for determining eligibility for inclusion of additional roads into the farm-to-market road system.

101.6(1) The farm-to-market review board shall make final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

101.6(2) The board shall consider the following factors in making decisions to modify the farm-to-market road system:

a. Intracounty and intercounty continuity of systems.
b. Properly integrated systems.
c. Existing and potential traffic.
d. Land use.
e. Location of the route.
f. Equitable distribution of farm-to-market mileage.

761—101.7(306) Voting and approval of requested modifications. Each member is a voting member and is eligible to vote at every meeting at which that member is in attendance. Attendance may include members being present at the meeting through a conference telephone call, Iowa communications network connection, or other electronic means deemed appropriate by the chair.

101.7(1) *Determination of a quorum.* A minimum of eight board members is required for a quorum. If a quorum is not present at a meeting, the meeting shall be rescheduled.

101.7(2) *Number of votes needed to approve or deny a modification.* For a requested modification to the farm-to-market road system to be approved, it must receive a minimum of seven affirmative votes; in other words, a majority of the entire board. A motion to deny a requested modification need only receive six votes for the denial to be approved.

761—101.8(306) Report of board decision to applicant county. Within 30 calendar days after a board meeting, the chair shall send a letter to each county whose request was acted upon by the board at the meeting. The letter shall apprise each applicant of the decision of the farm-to-market review board, briefly explain the reasons for the board's decision, and explain the reapplication and judicial review processes.

761—101.9(306) Reapplication for modification. A county may reapply for a modification to the farm-to-market road system if its initial request is denied. The county must again follow all provisions for requesting a modification and should be prepared to present additional information in support of the requested change. Any requested system modification that receives two denials may not be resubmitted for consideration for a minimum of three years.

761—101.10(306) Judicial review. Any county that is aggrieved or adversely affected by a decision of the farm-to-market review board may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

761—101.11(306) Adoption and modification of rules. The chair shall direct the board to review these rules annually. Board members may recommend changes to these rules.

761—101.12(306) Severability clause. If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication shall not affect the validity of these rules as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

These rules are intended to implement Iowa Code sections 306.6 and 306.6A.

[Filed 1/21/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]

CHAPTERS 102 to 104
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761—600.12(321) Private and commercial driver education schools. The department licenses private and commercial driver education schools as follows:

600.12(1) *Instructor and course approval.*

a. To be licensed to teach driver education, the school's course and classroom and laboratory instructors must be approved by the department of education. Street or highway driving instruction must be provided either by the instructors approved by the department of education or persons certified by the department of transportation. Written evidence of these approvals and certifications must be submitted to the department of transportation upon application for a license, upon renewal of a license, and upon reinstatement of a license following cancellation.

b. To be licensed to teach motorized bicycle education, the school's course and instructors must be approved by the department of transportation.

c. To be licensed to teach motorcycle rider education, the school's course and instructors must be approved by the department of transportation in accordance with 761—Chapter 635.

600.12(2) *Issuance and renewal.*

a. A license to teach driver education shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 but remains valid for an additional 30 days after the expiration date. The license shall be renewed within 30 days of the expiration date.

b. A license to teach motorized bicycle education or motorcycle rider education shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 and shall be renewed annually.

600.12(3) *Application and fees.* Application for license issuance or renewal shall be made to the department of transportation on forms provided by the department. The license and renewal fees are $25.

600.12(4) *Cancellation.* A license shall be canceled if the course or instructors are no longer approved or the persons providing only behind-the-wheel instruction are no longer certified. Also, a license to teach motorcycle rider education shall be canceled if the school does not comply with 761—Chapter 635.

This rule is intended to implement Iowa Code sections 321.178 and 321.189 and 1998 Iowa Acts, chapter 1112, section 5.

***761—600.13(321) Behind-the-wheel instructor's certification.** The following applies to departmental certification of persons qualified to provide the street or highway driving component of an approved driver education course.

600.13(1) *Qualifications.*

a. To qualify for certification, an individual must:

(1) Be 25 years of age.

(2) Hold a valid Iowa driver's license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.

*Effective date delayed 70 days from 12/23/98 by the Administrative Rules Review Committee at its meeting held December 9, 1998. At its meeting held January 5, 1999, the Committee delayed the effective date until adjournment of the 1999 Session of the General Assembly.

(3) Have a clear driving record for the previous four years. A clear driving record means the individual has:

1. Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).
2. No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.
3. Not committed an offense which would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.
4. No record of an accident for which the individual was convicted of a moving traffic violation.

(4) Have successfully completed the instructor preparation requirements of this rule, as evidenced by written attestations on forms provided by the department from both the classroom instructor and behind-the-wheel observer.

b. An individual is disqualified for any of the following reasons:

(1) The individual has been convicted of child abuse or sexual abuse of a child.

(2) The individual has been convicted of a felony.

(3) The individual's application is fraudulent.

(4) The individual's teaching license or behind-the-wheel instructor's certification from another state is suspended or revoked.

c. The department may investigate an applicant for a behind-the-wheel instructor's certification to determine if the applicant meets the requirements for certification. The investigation may include but is not limited to an inquiry of the applicant's criminal history from the department of public safety.

600.13(2) *Certification.*

a. To obtain certification, an individual meeting the qualifications shall apply to the department on forms provided by the department for a behind-the-wheel instructor's certification. The certification shall be issued for a calendar year or remainder of a calendar year. The certification expires on December 31 but remains valid for an additional 30 days after the expiration date. The certification shall be renewed within 30 days of the expiration date.

b. To renew a behind-the-wheel instructor's certification, a person meeting the qualifications must:

(1) Provide behind-the-wheel instruction for a minimum of 12 clock hours during the previous calendar year.

(2) Participate in at least one state-sponsored or state-approved behind-the-wheel instructor refresher course.

600.13(3) *Instructor preparation requirements.* Instructor preparation shall consist of 24 clock hours of classroom instruction and 12 clock hours of observed behind-the-wheel instruction. The curriculum shall be developed by the department in consultation with the Iowa driver education teacher preparation programs approved by the board of educational examiners and in consultation with the American Driver and Traffic Safety Education Association.

a. At a minimum, classroom instruction shall focus on topics such as the psychology of the young driver, behind-the-wheel teaching techniques, and route selection. Classroom instruction shall be delivered by staff from a driver education teacher preparation program approved by the board of educational examiners. A classroom session shall last no longer than four hours. Video conferencing may be used for course delivery.

b. Observation of behind-the-wheel instruction shall be provided by a person licensed to teach driver education who is specially trained by a driver education teacher preparation program approved by the board of educational examiners to observe, coach, and evaluate behind-the-wheel instructor candidates. A behind-the-wheel session shall last no longer than four hours. A dual-control motor vehicle must be used.

600.13(4) *Cancellation.* The department shall cancel the behind-the-wheel instructor's certification of an individual whose driver's license is suspended, revoked, denied, canceled, or barred; who is disqualified from operating a commercial motor vehicle; who is convicted of a moving traffic violation as a result of an accident; or who no longer meets the qualifications for a behind-the-wheel instructor's certification.

600.13(5) *Approved driver education course.* To provide the street or highway driving component of an approved driver education course, an individual holding a behind-the-wheel instructor's certification must be employed by a public or licensed commercial or private provider of the approved driver education course and work under the supervision of a person licensed to teach driver education.

This rule is intended to implement Iowa Code section 321.178 as amended by 1998 Iowa Acts, chapter 1112, section 2, and 1998 Iowa Acts, chapter 1112, section 5.

761—600.14(321) Payment of fees. License and certification fees under this chapter shall be paid by cash, money order or check. A money order or check shall be for the exact amount and shall be made payable to Treasurer, State of Iowa.

This rule is intended to implement Iowa Code section 321.178 as amended by 1998 Iowa Acts, chapter 1112, section 2, and section 321.189 and 1998 Iowa Acts, chapter 1112, section 5.

761—600.15 Rescinded, effective 3/16/88.

761—600.16(321) Seat belt exemptions.

600.16(1) A person who is unable to wear a safety belt or safety harness for physical or medical reasons may obtain a form to be signed by the person's health care provider licensed under Iowa Code chapter 148, 150, 150A or 151. Form No. 432017, "Iowa Medical Safety Belt Exemption," is available from the office of driver services at the address in rule 600.2(17A).

600.16(2) Iowa Code section 321.445, subsections 1 and 2, shall not apply to the front seats and front seat passengers of motor vehicles owned, leased, rented or primarily used by a person with a physical disability who uses a collapsible wheelchair.

This rule is intended to implement Iowa Code section 321.445.

761—600.17 Rescinded, effective 7/8/87.

761—600.18 Rescinded, effective 1/26/83.

761—600.19(321) Driver improvement interview. Rescinded IAB 1/8/92, effective 2/12/92.

761—600.20(321) Hearing and appeal process. Rescinded IAB 1/8/92, effective 2/12/92.

761—600.21(321) Service of denial, cancellation, suspension or revocation notice. Rescinded IAB 1/8/92, effective 2/12/92.

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◊Two ARCs
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WORKFORCE DEVELOPMENT DEPARTMENT[871]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345] under the "umbrella" of Department of Employment Services by 1986 Iowa Acts, chapter 1245]
[Prior to 3/12/97 see Job Service Division[345], renamed Department of Workforce Development by 1996 Iowa Acts, chapter 1186]

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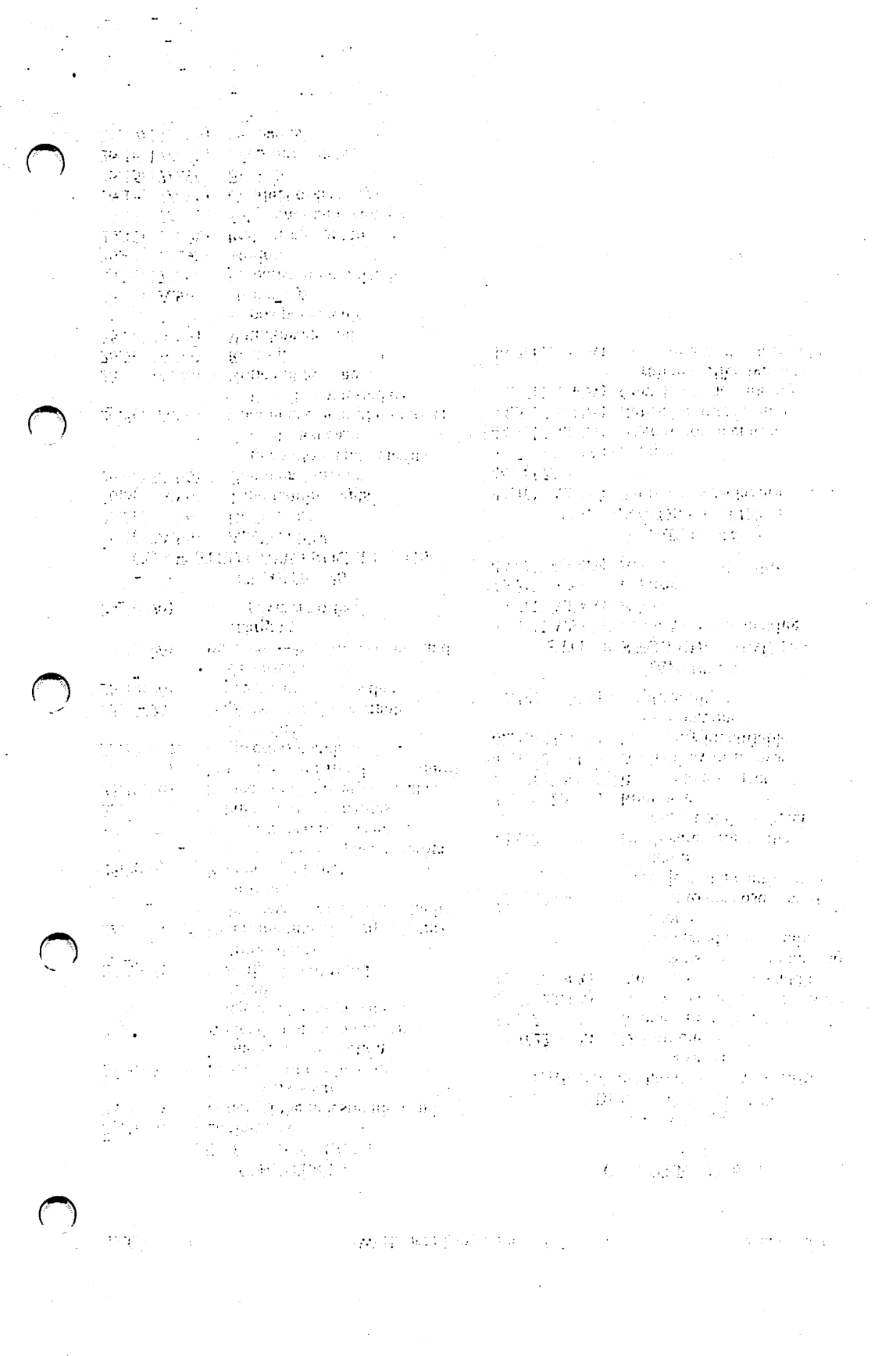

CHAPTER 12
FORMS AND INFORMATIONAL MATERIALS

871—12.1(96) Federal restriction—forms. The research and information services division uses many federally prepared and supplied forms that contain an office of management and budget (OMB) number and an approved expiration date. The department, which receives and uses in its normal operations such federal forms through a federally appointed special agent, is subject to all of the provisions, restrictions, sanctions and penalties imposed by the Federal Reports Act of 1942 and subsequent amendments.

Form No. Name and description of form.

12.1(1) *Federal forms.*

a. BLS 790, Bureau of Labor Statistics Report on Employment, Payroll and Hours. A research and information services division shuttle schedule sent each month, to a sample of Iowa employers, to collect employment, payroll and hours worked information.

b. BLS 3020, Multiple Worksite Report (65-5519) [reference 345—2.3(96)]. A research and information services division form required each quarter of Iowa employers subject to the unemployment insurance law.

c. BLS 3023VS, Industry Verification Statement (single worksite). A research and information services division form required of employers on a periodic basis to verify the products or services, or both, provided by an employer to ensure that the correct standard industrial classification code is assigned to the employer's unemployment insurance account.

d. BLS 3023VM, Industry Verification Statement (multiple worksites). A research and information services division form required of employers on a periodic basis to verify the products or services, or both, provided at each worksite by an employer to ensure that the correct standard industrial classification code is assigned to each employer location.

e. BLS 2877, Occupational Employment Survey. Sent once a year to a sample of employers. Voluntary. Used to obtain confidential information on occupational employment and occupational wages by industry. Forms differ by industry.

12.1(2) *State forms.*

a. E-Z Form—for Occupational Employment Survey. Short form for collecting confidential occupational employment and occupational wages. Sent once a year to a sample of employers. Voluntary. Forms differ by industry.

b. Fringe Benefit Survey. Sent once a year to a sample of employers. Voluntary. Used to collect confidential information on employee fringe benefits.

c. Prevailing Wage Request Form. Used by employers to request prevailing wage determinations from the department of workforce development.

This rule is intended to implement Iowa Code chapter 96.

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CHAPTER 21
UNEMPLOYMENT INSURANCE SERVICES DIVISION

871—21.1(96) Unemployment insurance services division.

21.1(1) The primary responsibility of this division is to administer the provisions of the Iowa employment security law and related federal programs in accordance with pertinent laws, regulations, and policies. Attorneys who report to the administrator of the unemployment insurance services division perform the legal services for the division pursuant to Iowa Code section 96.17 which empowers the division to employ attorneys to represent it and give advice on all matters coming before it in conjunction with the administration of Iowa Code chapter 96. The division administers the payment of job insurance benefits to eligible individuals, determines which employers are subject to the state and federal laws enacted in this area, supervises the collection of taxes from these employers, and oversees a program to control the quality of benefit payment and revenue collection. These functions are performed by the following bureaus:

a. Claims case bureau. The claims case bureau determines the eligibility of individuals claiming unemployment insurance. In addition to the Iowa unemployment insurance benefits, the bureau also processes unemployment insurance for Federal Employees Compensation Act (FECA), Unemployment Insurance for Ex-service Members (UCX), claims for Trade Readjustment Act and Expansion Act (TRA and TEA), Voluntary Shared Work (VSW), and Disaster Unemployment Assistance (DUA). It is also responsible for payments of other special federal unemployment insurance benefits as agreed to by the United States Department of Labor and the state of Iowa.

(1) Claims resolution and consultation section. The claims resolution and consultation section is responsible for screening all employer protests and issuing special investigation reports to the local workforce development centers. This section investigates all labor dispute protests and issues appropriate decisions. This section determines individuals' eligibility on disputed claims for unemployment insurance benefits which are not adjudicated at the local office level. This section reviews decisions that determine which employers will receive charges on claims for unemployment insurance benefits and investigates claims for missing wages. The section also responds to communications involving technical matters related to unemployment insurance and corrects necessary records and database due to subsequent appeal decisions which reverse the prior decision issued on a claim.

(2) Special claims section. The special claims section is responsible for processing claims for FECA, UCX, TRA, VSW, DUA, and any other federal unemployment insurance programs. This section determines eligibility, computes and authorizes payments due, maintains needed records, and makes adjustments or redeterminations as applicable. This section is also responsible for processing initial interstate claims, assisting claimants in calling in their continued claims for payment, notifying employer of claim filing, processing overpayments and underpayments, adjudicating issues, processing interstate appeals, and processing combined wage claims.

b. Benefit control bureau. The benefit control bureau is responsible for overseeing the determination of eligibility for individuals claiming unemployment insurance benefits, processing and adjusting benefit payments, document control, and division support. The functions are performed by two sections.

(1) Information control section. The information control section is responsible for the control and conversion of all paper documents compiled during the normal course of business for unemployment insurance claims and taxes. The section converts paper documents to imaged objects or microfilm copies. The section assigns document control information to each paper document which provides automated electronic workflow routing, document retention criteria, document locating information, and computer updates. The section is also responsible for the retrieval of micrographic documents for internal and external customers. The section prepares documents and computer records for release to the public under subpoena or waiver provisions and collects record processing fees. The section is responsible for the child support intercept program in which unemployment insurance benefits are withheld and paid to the child support recovery unit. The section is responsible for the voluntary income tax withholding program in which state and federal taxes are withheld from unemployment insurance benefits. The section is responsible for reporting tax withholdings and taxable unemployment insurance benefits to the Internal Revenue Service, Iowa department of revenue and finance, and claimants.

(2) Payment control section. The payment control section is responsible for determining eligibility of individuals for unemployment insurance benefits. The section performs fact-finding interviews with claimants and employers to resolve issues discovered by recording the responses the claimant provides to questions asked in the weekly continued claim certification process. The section allows or denies benefits based on Iowa employment security law and Iowa administrative rules and issues a determination. The section computes and issues overpayment determinations and underpayment supplemental benefit payments due to misreported earnings or eligibility disqualifications. The section is responsible for all overpayment billing activity which results in an overpayment setup or refund, overpayment decision letter, or overpayment billing notice. The section is responsible for overpayment recovery programs which include withholding of Iowa income tax refunds, Iowa lottery prizes, Iowa vendor payments, and the Interstate Reciprocal Overpayment Recovery Arrangement. The section is responsible for the issuance of duplicate benefit payments for lost, stolen, outdated, or returned payments. The section authorizes and issues replacement warrants or direct deposit transactions. The section verifies financial institution corrections of direct deposit routing and account numbers and updates the database records.

c. Tax bureau. The tax bureau is responsible for the maintenance and control of all records of unemployment insurance tax paid by liable employers in the state of Iowa. Taxes collected are deposited in a fund to be subsequently used for benefit payments. This section maintains financial records on employers; assigns rates each year to employers; makes all necessary adjustments to ensure proper charging to employers of benefits chargeable to them; maintains records of employer overpayments and refunds; and maintains the necessary contacts with employers' accountants, attorneys, and the general public to ensure the proper and timely submission of all the required reports to the division of unemployment insurance. The collection section is responsible for the collection of delinquent tax contributions, benefit reimbursements, and unpaid interest and penalty assessments from all Iowa employers who file job insurance reports. Staff instigates routine legal actions such as the filing of liens, garnishments, and bankruptcies. Employers are contacted by mail, telephone, or personally to initiate the collection process. The deposition section thoroughly reviews contribution reports against payroll reports for matching totals and verifies the amount of the check against the employer's report. The section is responsible for depositing all money received for contribution reports, benefit reimbursements, and interest and penalties with the state treasurer's office. The information on the contribution reports is keypunched and the proof sheets are checked to see that they have been correctly punched. The adjustment/chargeback section assigns contribution rates to employers, handles the accounting work on partial changes of ownership, adjusts the amounts owed by employers, and audits the taxable wages reported by the employer in accordance with state and federal requirements. The chargeback unit removes erroneous charges when employers are charged in error. This unit is also responsible for corrections on employee charge notices which could affect employee contribution tax rates.

d. Field audit bureaus. These bureaus are responsible to contact Iowa and out-of-state employers who do business in Iowa to establish taxpayers' liability under the law; explain the law's provisions; secure information and make determinations pertaining to new accounts, successorships and terminating tax liability; collect delinquent contributions; give information and assistance to ensure compliance in the preparation of tax reports and in securing refunds of overpaid taxes; conduct investigations on FUTA discrepancy problems, contractor registration issues, business closings, and claimant requests for omitted wage credits; determine employer/employee and independent contractor relationship issues; assist in fraud investigations; conduct payroll and financial audits; and appear as an expert witness at employer liability hearings. The bureaus also provide services to other states who request assistance in their unemployment insurance enforcement with Iowa-based employers who conduct business in their states. The bureaus also assign all field audit work. Information is entered into the automated system which generates materials to be utilized by the field audit staff in conducting an employer inquiry and audit.

e. Investigation and recovery bureau. The investigation and recovery bureau is responsible for aggressive action to prevent, detect, investigate and penalize fraudulent actions on the part of employing units and individuals claiming unemployment insurance benefits. The bureau also recovers overpayments and files liens and garnishments to assist with recovery of overpayments. The bureau verifies that aliens are entitled to unemployment insurance and investigates and disqualifies those that are not eligible. The bureau conducts the fictitious employer detection program to discover employers set up for the purpose of fraudulent activities. The bureau also prosecutes violations of the Iowa employment security law including fraudulent receipt of unemployment insurance benefits in conjunction with each county attorney in Iowa. The bureau also investigates and determines whether an unemployment insurance warrant has been forged and whether it should be reissued.

f. Quality control bureau. The quality control bureau is responsible for the collection and analysis of data pertaining to both the accuracy of payments as well as the effectiveness of revenue collection processes for the unemployment insurance program. Quality control reports directly to the division administrator as it works to support the development and execution of corrective action plans for the improvement of the program. In addition, quality control is responsible for validation of the unemployment insurance data reports, identification and analysis of risk factors which could threaten the unemployment insurance program, and maintenance of the data processing capabilities to store and transmit various agency-required reports to the federal government.

21.1(2) Reserved.

This rule is intended to implement Iowa Code chapter 96.

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CHAPTER 22
EMPLOYER RECORDS AND REPORTS

[Prior to 9/24/86, Employment Security [370] Ch 2]
[Prior to 3/12/97, Job Service Division [345] Ch 2]

871—22.1(96) Records to be kept by the employer.

22.1(1) Each employing unit having employment performed for it shall maintain records to show the information hereinafter indicated. Such records shall be kept in such form and manner that it will be possible from an inspection thereof to obtain the facts necessary to determine what remuneration was made by the employing unit and what remuneration is reportable to the department. Such records shall be open to inspection and be subject to be copied by the department and its authorized representatives at any reasonable time. Such records shall be kept for a period of five years after the calendar year in which the remuneration to which they relate was paid or, if not paid, was due.

22.1(2) Such records shall show with respect to each employee, unless the department has ruled that the particular service does not constitute employment:

a. Name of worker.

b. Social security account number.

c. Date on which employee was hired, rehired, or returned to work after a temporary layoff, and the date separated from work and the reason therefor.

d. Scheduled hours except for workers without a fixed schedule of hours, such as those working outside of the employer's establishment in such a manner that the employer has no definite knowledge of their working hours.

e. Total wages paid for employment in each period and the date of payment. For all pay periods ending in each quarter show separately: money wages, the cash value of other remuneration such as any special payment for services such as wages in lieu of notice, bonuses, gifts, prizes, and the nature of payments such as accounts paid to employees as allowance or reimbursement for traveling and other business expenses, and the amounts of such expenditures actually incurred and accounted for by the employees.

f. The state or states in which the services are performed; and if any of such services are performed outside of this state and are not incidental to the service within the state, the base of operations (or if there is no base of operations then the place from which such services are directed or controlled) and the residence (by state), and the name of the county in Iowa in which services were performed.

g. When the pay period covers services performed both in covered employment and in excluded work, show the hours and wages for covered employment under the Iowa employment security law, hereinafter referred to as the "Act," and also show hours and wages for excluded work.

h. The physical work site at which each employee worked during each pay period which includes the twelfth of each month. If an employee worked at more than one work site, the work site at which the majority of the work was performed should be the one of record.

22.1(3) Such payroll records may be preserved by the employer in microfilm form, provided the employer:

a. Keeps a microfilm viewer available, and

b. Is willing to transcribe any information that may be required by the department.

22.1(4) Maintenance of records by out-of-state employing units. Any employing unit having its principal place of business outside of Iowa shall maintain payroll records in this state with respect to wages paid to employees who perform some service in this state; provided, however, that an out-of-state employing unit may, with the approval of the department, maintain such payroll records outside the state upon its understanding that it will, when requested so to do, furnish the department with a true and correct copy of such payroll records. Failure to maintain said records in Iowa as required may result in estimated reports and payroll listings being made by the department. See 871—subrule 23.59(2).

871—22.2(96) Reports. Each employing unit shall make such reports at such times as the department may require, and shall comply with the instructions printed upon any report form issued by the department pertaining to the preparation and return of such report.

871—22.3(96) Filing of Employer's Contribution and Payroll Report, 65-5300 and Employer's Payroll Continuation Sheet, 60-0103.

22.3(1) Each employer shall, not later than the due date required for the payment of quarterly contributions, file a 65-5300, Employer's Contribution and Payroll Report, for such quarter on a form prescribed by the department based upon wages paid with respect to all the employer's business maintained within this state and computed in accordance with the Code and these rules. The 60-0103, Employer Payroll Continuation Sheet, shall be used for the additional payroll information which cannot be entered on the 65-5300.

22.3(2) Failure to receive report forms shall not relieve the employer from responsibility for filing required forms on or before the due date or to pay any contribution due.

22.3(3) A copy of each such report shall be preserved by each such employer for a period of at least five years from the end of the calendar year in which the report was due.

22.3(4) Employer to file report even when no payroll. Every qualified or subject employer is required to send in an Employer's Contribution and Payroll Report, Form 65-5300, each quarter. Even though an employer finds that for some particular quarter no contributions are due, or they have no employees during the period covered, a report must be filed with the department.

22.3(5) Combined reports, leased employees, and concurrently employed individuals.

a. Consolidated or combined reports of parent and subsidiary corporations or other employing units, whether or not the employing units are related, shall not be allowed.

b. Employees of parent and subsidiary corporations or other employing units, whether or not they are related, shall be reported on the quarterly reports of the employing unit for which the services are performed regardless of which employing unit actually issues the employees' paychecks.

c. Leased employees:

(1) Except as described in subparagraphs (2), (3), (4), and (5) below, individuals leased from an employee leasing company, by the client of the employee leasing company, shall be considered to be employed by the client and shall be reported on the quarterly reports of the client, at the contribution rate of the client, unless and until it is shown to the satisfaction of the department that the individuals are and will continue to be under the exclusive direction and control of the employee leasing company, both under a written contract and in fact.

In order for a contract to be considered evidence that individuals are the employees of the employee leasing company it shall:

1. Specify the service to be performed by the individuals, on behalf of the employee leasing company, for the client.
2. Specify the fee the client must pay for this service. The fee must be large enough to cover the actual cost of the individuals' wages and fringe benefits plus provide a reasonable profit on the service performed for the client.
3. Specify that the employee leasing company has the exclusive right to determine the number of individuals needed to provide the service for the client and to direct and control the individuals in the performance of the service.

4. Specify that the employee leasing company has the exclusive right to hire, fire, discipline, and reassign any of the individuals to another position or to another client without the consent of the client.

(2) If an individual is leased to fill a temporary need from a company whose business is primarily to provide workers to fill temporary needs, the individual shall be considered to be the employee of the leasing company.

(3) If an individual is a truck driver leased from a company that leases truck tractors with drivers to trucking companies, the individual shall be considered to be the employee of the leasing company unless and until it is shown to the satisfaction of the department that the trucking company has the exclusive right to hire, fire, discipline, reassign, and direct and control the services performed by the individual, both under a written contract and in fact.

(4) If an individual leased from an employee leasing company is a corporate officer of the client, the individual shall always be considered the employee of the client and not the employee of the leasing company.

22.18(3) This document shall be presented to the supervisor of the tax section before an authorization will be granted to the agent or representative to inspect the employer's record or to receive information from such account.

This rule is intended to implement Iowa Code section 96.11(7).

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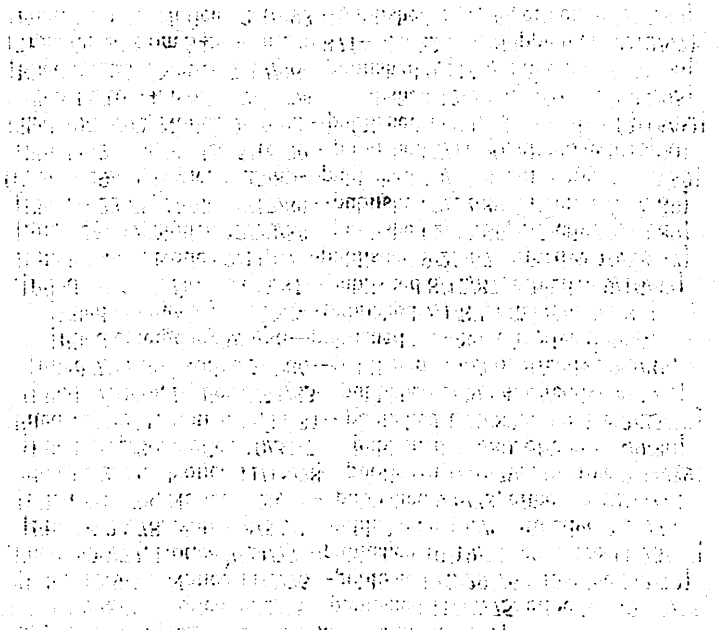

871—23.8(96) Due date of quarterly reports and contributions.

23.8(1) *Receiving date.*

a. Contributions shall become due and be payable quarterly on the last day of the month next following the calendar quarter for which the contributions have accrued. Provided that if the department finds that the collection of any contributions from a particular employer will be jeopardized by delay the department may declare such contributions due and payable as of the date of the finding.

b. If any due date prescribed in this rule falls on a Saturday or Sunday, or a legal holiday, the due date shall be the next following business day. Quarterly reports, contributions, and payments in lieu of contributions, if mailed, shall be considered as received on the date shown on the postmark of the envelope in which they are received by the department.

23.8(2) *Regular due date.* Each employing unit which is a covered employer subject to Iowa Code section 96.7, shall file with the department quarterly reports on or before the due date, and any employer failing to file a quarterly report when due shall be delinquent. Except as otherwise provided in this rule, quarterly contribution and wage reports are due and contributions are due and payable on or before the last day of the month following the close of each calendar quarter in which the wages were paid. Payments in lieu of contributions are due and payable on or before the thirtieth day after notification of the amount due is mailed to the last-known address of the employer. Quarterly notification of the amount of payments in lieu of contributions due from an employer shall be mailed to the last-known address following the end of each calendar quarter.

23.8(3) *Due date for new employer.* The first contribution payment of any employer who becomes newly liable for contributions in any year shall become due and payable on the last day of the month next following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of one or more workers were employed on any one day, or the last day of the month next following that calendar quarter in which a total of $1500 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

23.8(4) *Due date for elective coverage.* The first contribution payment of any employing unit which elects with the written approval of such election by the department, to become an employer, or to have nonsubject services performed for it deemed employment, shall become due and payable on the last day of the month next following the close of the calendar quarter in which the conditions of becoming an employer by election are satisfied, and shall include contributions with respect to all wages paid for employment occurring on and after the date stated in such approval (as of which such employing unit becomes an employer), up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

23.8(5) *Due date for newly liable employer.* The first contribution payment of an employer who becomes newly liable for contributions in any year in any other manner shall become due and be payable on the last day of the month next following the quarter wherein such individual or employing unit became an employer. The first payment of such an employer shall include contributions with respect to all wages paid for employment for such individual or employing unit since the first day of the calendar year.

23.8(6) *Delinquent date and penalty and interest.*

a. A quarterly report or contribution payment or payment in lieu of contributions which is not received on or before the due date is delinquent. An employer who fails to file on or before the due date a contribution and wage report shall pay to the department for each such delinquent report, subject to waiver for good cause shown, a penalty as provided in Iowa Code section 96.14(2). No penalty shall apply to delinquent reports when the employer proves to the satisfaction of the department that no wages were paid.

b. An employer who has not paid contributions or payments in lieu of contributions on or before the due date shall pay interest on the whole or part thereof remaining unpaid at the rate of 1 percent per month, or 1/30 of 1 percent for each day or fraction thereof, from and after the due date until payment is received by the department unless good cause is shown why such interest shall be waived.

23.8(7) *Due date upon demand.* If the department finds that the collection of any contribution or payment in lieu of contributions will be jeopardized by delaying the collection thereof until the date otherwise described, upon written demand by the department, such contribution or payment in lieu of contribution shall become immediately payable, and shall become delinquent.

23.8(8) *Extension of time.* Upon written request filed with the department before the due date of any contribution report, the department may, for good cause shown, grant an extension in writing of the time for filing of the report and the payment of the contributions, but no extension shall exceed 30 days and no extension shall postpone payment beyond the last day for filing tax returns under the Federal Unemployment Tax Act. If an employer who has been granted an extension fails to pay the contribution on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

This rule is intended to implement Iowa Code section 96.7(1).

871—23.9(96) Delinquency notice. Within 20 days from the delinquent date for filing Form 65-5300, Employer's Quarterly Contribution and Payroll Report, a Delinquency Notice, Form 65-5313, will be sent to all employers from whom no report has been received. Such notice shall state the employer's name, account number, experience rate, and the quarter for which the report needs to be made. The notice will be sent to the employer's last-known address or place of business. If the employer has sold or dissolved the business, the employer shall fill out the reverse side of the notice, Form 65-5313 RVS, showing the date of the last wages paid and the date of last employment. If the business was sold or transferred, the employer shall show the name and address of the successor, and the employer's future mailing address. Such notice shall then be returned to the department for a change of status determination.

871—23.10(96) Payments in lieu of contributions.

23.10(1) An employer, who has qualified for reimbursement payments or has had an election to become a reimbursable employer approved, shall pay to the department for the unemployment trust fund an amount equal to the amount of regular benefits paid including payments which are based on wage credits transferred to this employer from another employer, and if extended benefits are in effect, one-half of the extended benefits paid; except, governmental entities will pay 100 percent of extended benefits after January 1, 1979.

23.10(2) At the end of each calendar quarter, the department shall bill each reimbursable employer on Form 65-5324, Notice of Reimbursable Benefit Charges. This statement shall be sent to the employer within 30 days of the quarter for which the benefits are charged and shall set out the social security number, name and amount of benefits charged to the employer for each such claimant together with the amount of any previous charges remaining unpaid and interest to the end of the quarter for which the statement is rendered. Payment of each quarter's charges shall be due within 30 days of the date the statement is sent. If the employer fails to reimburse the department within the period prescribed by these rules the department may attempt collection of the amount due including any of the following methods:

a. Issuance of Notice of Assessment and Lien, Form 68-0043.

b. Issuance of Notice of Jeopardy Assessment, Form 68-0138.

c. Any other actions as prescribed by the law or these rules including collection by distress warrant.

Interest on delinquent reimbursable benefits shall be charged at the rate of 1 percent per month or one-thirtieth of 1 percent per day from the date payment was due until the date of payment.

This rule is intended to implement Iowa Code section 96.7(8).

871—23.51(96) Payments in lieu of contributions.

23.51(1) That each nonprofit organization which has been approved to make payments in lieu of contributions shall be billed each quarter for benefits paid during such quarter.

23.51(2) The money payments to the unemployment fund which are required by Iowa Code section 96.7 for those employers who elect to reimburse the department shall be in an amount equal to the regular benefits and one-half of the extended benefits paid, and charged to such employer's account. Government reimbursable employers will be charged all of the extended benefits paid.

This rule is intended to implement Iowa Code section 96.8(5).

871—23.52(96) Employer liability appeal.

23.52(1) An initial employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker's status, and all questions regarding coverage of a worker or group of workers may be appealed to the department of workforce development for a hearing before an administrative law judge.

23.52(2) The appeal shall be in writing stating:

a. The name, address and Iowa employer account number of the employer.

b. The name and official position of the person filing the appeal.

c. The decision which is being appealed.

d. The grounds for the appeal and the relief sought.

23.52(3) The appeal shall be addressed to: Department of Workforce Development, Tax Section, 1000 East Grand Avenue, Des Moines, Iowa 50319. The employer shall provide adequate postage.

23.52(4) Unless otherwise required, all determinations by the tax section will be sent by regular mail to the last-known address of the employer. The determination will be dated and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a notice of reimbursable benefit charges, Form 65-5324.

23.52(5) If the department concludes, upon reviewing an appeal, that the original determination is correct, the tax section may write to the employer and further explain the decision. If the employer still desires a hearing before a representative of the department, the employer should notify the department within 30 days of the date of the letter from the department.

23.52(6) Upon receipt of a request for hearing, the tax section will ask the administrative law judge to schedule a hearing for the employer. A copy of the request will be mailed to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the administrative law judge. Documents that may be sent to the administrative law judge include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the department, and the employer's letter requesting a hearing. All employer liability appeals shall be heard by an administrative law judge and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 871—26.5(17A,96).

23.52(7) In those cases in which the department finds that a genuine controversy exists or has existed regarding an employing unit's liability for contributions on all or a part of its employees or, a rate appeal or other employer liability question and the case has been resolved against such employing unit, then no interest or penalty will accrue from the date of such controversy between the department and the employing unit until 30 days after the decision becomes final.

871—23.53(96) Rate appeal and eligibility decision reversal.

23.53(1) An employer who appeals a rate notice or corrected rate notice within 30 days following the procedures outlined in rule 23.52(96) may have its rate recomputed based upon the reversal of a benefit eligibility decision under the following circumstances:

a. An employer may appeal on the grounds that benefit charges against the employer's account have been reversed by a decision issued subsequent to the rate computation date. The department will investigate and remove benefit charges, which have been reversed by a subsequent decision, from the computation and will issue a corrected rate notice to the employer.

b. The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer, in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. The employer must pay any contributions that become due at the disputed rate prior to the receipt of the decision reversing the benefit charges; however, a refund of any overpayment of contributions and interest paid by the employer as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5).

c. The employer's payment of contributions at the disputed rate in the circumstances described in 23.53(1)*"b"* will not be an acquiescence of the disputed rate.

d. The employer, in the circumstances described in 23.53(1)*"b,"* must file a separate appeal of each rate notice received that contains the disputed benefit charges. If the employer does not file a timely appeal of each affected rate notice, any appeal filed following receipt of a decision reversing the allowance of benefits will be considered as applying only to rate notices that were timely appealed and to the next rate notice.

e. If the employer appeals on the grounds that the benefits charged against the employer's account were paid to an employee who was still working for the employer in the same employment as in the base period of the claim, the department will remove the charges and will issue a corrected rate notice. However, the employer's appeal must have been made within 30 days of the date on the first rate notice received that included any of the disputed charges. Provided further that the issue of charging of benefits had not been previously adjudicated in either an appeal of the original claim notice or an appeal of a quarterly benefit charge statement.

23.53(2) Reserved.

871—23.54(96) Payment of disputed assessments.

23.54(1) Payment of a disputed assessment is held to be an acquiescence in the assessment only when a timely appeal is not filed.

23.54(2) An employing unit which has appealed a determination of liability, or a payment of contributions due, shall file Form 65-5300, Employer's Contribution and Payroll Report, for all quarters for which the employer is held liable regardless of any appeal. Such reports are to be marked by the employer "Appeal Filed" and submitted with full payment of the disputed assessment, without payment or with a payment in the amount estimated to be owed by the employing unit.

871—23.55(96) Burden of proof.

23.55(1) The burden of proof in all employer liability cases shall rest with the employer.

23.55(2) The burden of proof shall rest with an employing unit which employs any individual during any calendar year but which considers itself not an employer subject to the Act, to establish that it is not an employer subject to the Act by presenting proper records, including a record of the identity of the employees, number of individuals employed during each week, and the particular days of each week on which services have been performed, and the amount of wages paid to each employee.

23.66(3) If, at the time of service of a jeopardy assessment, the employer protests or disputes the correctness of the assessment, the employer may furnish to the department and the department may accept a bond in an amount the department deems necessary but not to exceed double the amount of contributions due, provided the department is satisfied as to the security of the bond. So long as the bond remains in force and the assessment remains in dispute, the department shall not issue a distress warrant. If, after final adjudication of the jeopardy assessment, the employer fails to pay the assessed amount in full, the bond shall be forfeited to the extent necessary to satisfy the jeopardy assessment plus any accrued interest. Any overage shall be refunded to the employer by warrant or credit. If the bond is insufficient to pay the jeopardy assessment in full, the department may issue a distress warrant as provided in rule 23.67(96).

23.66(4) After a lien has been filed and the amount or any portion of the amount assessed and any additional accrued interest remains unpaid, the department may at any time issue a distress warrant instructing a sheriff or peace officer to levy upon and seize or attach any real or personal property of the employer in satisfaction of the amount assessed and secured by the lien.

This rule is intended to implement Iowa Code section 96.7(7).

871—23.67(96) Distress warrants.

23.67(1) In addition to and as an alternative to any other remedy provided by the Iowa Code and these rules, the department may proceed to enforce its lien by issuing to the sheriff of any county or to any civil officer of the state of Iowa having proper jurisdiction a distress warrant commanding said sheriff or civil officer to levy upon and sell any real or personal property which may be found within its jurisdiction belonging to an employer who has defaulted in the payment of any sum determined by the department to be due from such employer, and to pay the proceeds of such sale over to the clerk of district court in and for the county in which such property is found. All costs of such execution shall be charged to the employer.

23.67(2) Such sale shall be held after the property has been levied upon, the period of redemption has expired, and the department has petitioned for and been granted a condemnation order in the district court in and for the county in which such property was levied upon, in accordance with the Iowa Code and the rules of civil procedure.

23.67(3) No property belonging to said employer shall be exempt from execution.

23.67(4) Whenever a warrant is returned not satisfied in full, the department may proceed to issue a new warrant in the amount remaining unsatisfied, together with any additional interest, penalties, and costs, as provided above.

871—23.68 Reserved.

871—23.69(96) Injunction for nonpayment or failure to report.

23.69(1) In addition or as an alternative to any other remedy provided in Iowa Code chapter 96 and this rule, the department may proceed to enjoin an employer who has refused or failed to pay any contributions, interest, or penalty or who has failed to file any reports required by the department.

23.69(2) Discretion as to whether or not to seek an injunction rests with the department.

23.69(3) When the department determines that an injunction should be obtained, the department will send by certified mail or by personal service to the employer at the last-known address for the employer a notice which shall provide the following information:

a. That the department plans to seek an injunction against the employer.

b. The period(s) for which there are delinquent contributions, interest, and penalty due or for which returns have not been filed.

c. The amount of indebtedness.

d. That the injunction will enjoin the employer from operating any businesses in the state of Iowa until one of the following conditions is met:

(1) The entire indebtedness is paid.

(2) The employer files a full and sufficient bond.

(3) The employer has entered into a court-approved plan providing for payment of the indebtedness.

e. That the employer has ten days in which to respond to the department.

23.69(4) Upon expiration of the ten days following the notice, if the employer has not responded satisfactorily, the department shall file with the district court for the county in which the employer resides a petition requesting a hearing and an order granting the injunction.

23.69(5) Upon the issuance of a court order granting the injunction, the department shall proceed to periodically check to ensure that the employer is complying with the injunction order. Should the department find that the employer is not in compliance, it will ask the court for a finding of contempt and will ask the court to impose appropriate punishment.

23.69(6) Upon payment in full of the delinquent contributions, interest, and penalty, and the filing of all delinquent reports, the department shall have the injunction dissolved.

23.69(7) If the employer, as the result of a court-approved payment plan, is relieved by the court of the injuction and the employer fails to perform strictly as set out in the plan, the department may, at its discretion, ask the court to reinstate the injunction upon notice and hearing.

23.69(8) Any costs of these actions shall be borne by the employer.

871—23.70(96) Nonprofit organizations.

23.70(1) Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7. The election to reimburse the fund shall be filed in duplicate on Form 68-0463, Election to Make Payments in Lieu of Contributions, with the department for its consideration.

23.70(2) Election to Make Payments in Lieu of Contributions, Form 68-0463, must be signed by an authorized official of the nonprofit organization and shall be accompanied by:

a. A letter of intent indicating the organization's desire to be considered for reimbursable status.

b. A copy of the organization's letter of 501(c)(3) exemption from the Internal Revenue Service. If the organization does not have a 501(c)(3) letter at the time of the filing of its election to become a reimbursable employer, it may file a written request with the department for an extension of time setting forth the reason for the request, and the department may grant such extension not to exceed 180 days. Included with this request for extension of time should be a copy of the application for exemption, Election to Make Payments in Lieu of Contributions, or evidence that the request for 501(c)(3) exemption has been made.

c. A corporate charter or other documents that brought the organization into being.

23.70(3) All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's 501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the field audit unit. The request for reimbursable status will be examined by a field auditor or other authorized representative.

23.70(4) and **23.70(5)** Rescinded IAB 2/10/99, effective 3/17/99.

23.70(6) An organization not possessing a 501(c)(3) nonprofit tax exemption at the time its election is submitted shall be granted reimbursable status provided that the exemption is obtained and a copy is filed with the department within 180 days of the date the election is submitted. Should the organization fail to obtain an exemption within 180 days, the election shall be invalid and the organization shall be required to pay contributions upon all taxable wages paid during the period covered by the invalid election at the contribution rate it would have had if the invalid election had not been made. A new election may not be made by the organization until it has obtained a 501(c)(3) nonprofit tax exemption and has filed a new election. Such new election shall not be retroactive to cover the period of the invalid election. Benefits reimbursed during the invalid election shall be used to offset the contributions due and any excess shall be refunded to the organization.

23.70(7) to **23.70(9)** Rescinded IAB 2/10/99, effective 3/17/99.

23.70(10) The department may for good cause extend the period within which a notice of election to become a reimbursable employer or a notice to terminate reimbursable status must be filed and permit an election to be retroactive.

23.70(11) Any nonprofit organization that terminates its election to reimburse the fund shall continue to be liable to reimburse the fund for benefits which are paid based on wages earned during the effective period of the employer's Election to Make Payments in Lieu of Contributions. All benefits charges based on wages paid after the date of the approval of the change of status to a contributory employer shall be charged to the employer's contributory account.

a. A nonprofit organization terminating its election to reimburse the fund shall be treated as a newly covered employer for the purpose of establishing a contribution rate, except as provided in paragraph *"b."*

b. Separate accounts will be maintained for the period of time that a nonprofit organization is reimbursable and for the period of time for which the nonprofit organization is contributory. The experience of these accounts will not be combined for rate computation purposes unless the department finds or has reason to believe that the nonprofit organization changing from a reimbursable status to a contributory status is unable to reimburse the fund for benefits outstanding at the time of the change in status plus any benefits paid after the change in status that are based on wages paid while the nonprofit organization was still in a reimbursable status. The department may then, at its own option, use the unreimbursed benefits in the computation of the nonprofit organization's contribution rate and transfer any contributions collected, above what the nonprofit organization would have paid as a newly covered employer, from the nonprofit organization's contributory account to the reimbursable account to apply against the unreimbursed benefits.

23.70(12) Any nonprofit organization which elects to change its status from contributory to reimbursable shall continue to be liable for charges on all benefits based on wages paid when the nonprofit organization was a contributory employer. These charges will be charged to the nonprofit organization's contributory account. The experience of the contributory account will not be merged with the nonprofit organization's reimbursable account.

23.70(13) In the event that a reimbursable nonprofit organization succeeds to a business entity, such successor employer shall not receive a transfer of account balance from the predecessor account. The account balance shall remain with the predecessor account and be used as an offset against any claims attributable to that account. If an employer, whether or not the employer may elect to be reimbursable, becomes a successor to a reimbursable nonprofit organization, the successor employer shall become obligated for the reimbursable nonprofit organization's unpaid benefit charges in the event that the reimbursable nonprofit organization cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the reimbursable nonprofit organization prior to the date of the sale or transfer.

23.70(14) In the event a reimbursable nonprofit organization discontinues business, the reimbursable nonprofit organization will continue to be liable to reimburse the fund in an amount equivalent to the amount of regular unemployment benefits and one-half of the extended benefits paid to an individual that is attributable to wages paid by the reimbursable nonprofit organization prior to the discontinuance of business.

This rule is intended to implement Iowa Code section 96.7(9).

871—23.71(96) Governmental entity—definition.

23.71(1) The definition of a governmental entity is a state, a state instrumentality, a political subdivision or a political subdivision instrumentality, or a combination of one or more of the preceding. An instrumentality of one or more states or political subdivisions may be a part of a state or a political subdivision or it may be independent of political entities and thereby a separate governmental entity. The definition of a governmental entity is held to include but not be limited to:

a. An organization or any division, department, agency, commission, or board of a state or political subdivision made by proper authorities thereof, authorized and created under constitutional provisions or statutes, for the purpose of carrying out a portion of the function of government, including both governmental and proprietary functions.

b. An instrumentality is one which is organized to carry on some function or purpose of government for a state or a political subdivision. There is expressed or implied statutory or other authority creating it. It is an independent legal entity, with power to hire, supervise, and discharge its own employees. Generally, it can sue or be sued in its own name, to hold, convey real and personal property and borrow money.

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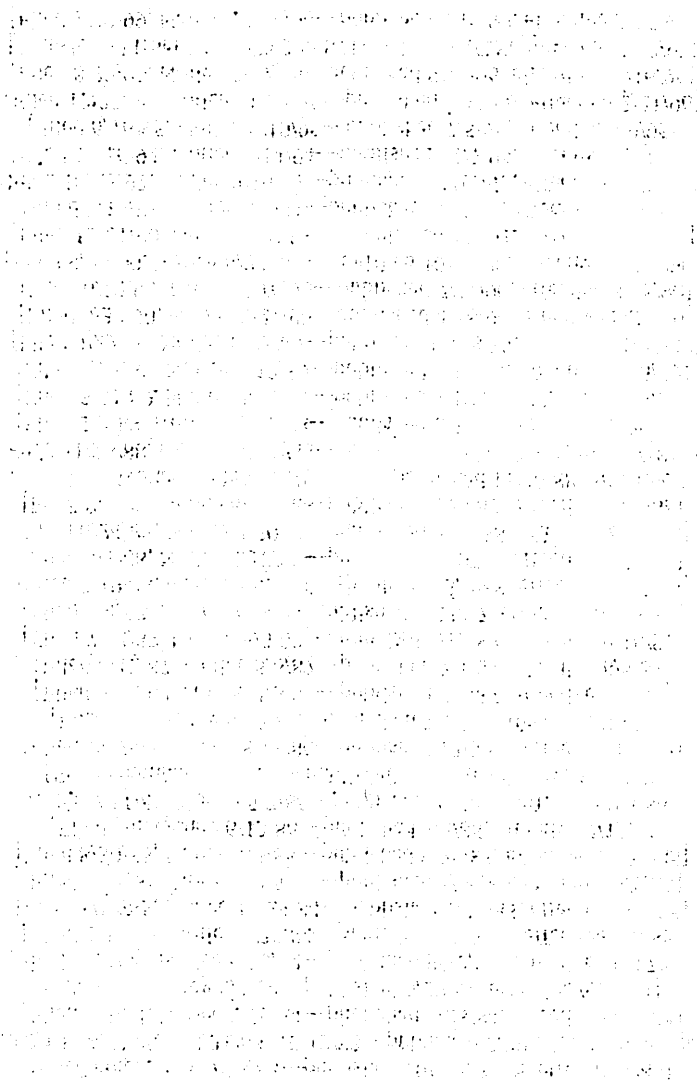
◊ Two ARCs



CHAPTER 24
CLAIMS AND BENEFITS

[Prior to 11/17/75, Ch 3]
[Prior to 9/24/86, Employment Security[370]]
[The filed emergency amendments were rescinded and the amendments to Chapter 4 were adopted following Notice, 12/31/86 IAB, effective 2/4/87]
[Prior to 3/12/97, Job Service Division [345] Ch 4]

871—24.1(96) Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in chapter 96 of the Code shall be construed in the sense in which they are defined.

24.1(1) *Additional claim.* An application for determination of eligibility for benefits which certifies to the beginning date of a period of unemployment and which would fall within a benefit year previously established for which a continued claim or claims may be filed and which follows a period of employment which occurred subsequent to the date of filing the last new, additional, reopened or continued claim.

24.1(2) *Administrative office (state).* Same as central office.

24.1(3) *Agent state.* The state in which a worker claims benefits against another (liable) state through the facilities of the state employment security agency. See also liable state.

24.1(4) *Area claims office.* Rescinded IAB 2/10/99, effective 3/17/99.

24.1(5) *Annual benefit amount.* See maximum annual benefits under benefits.

24.1(6) *Appeals.* See rule 871—26.1(96).

a. Administrative appeal. A request for a review by an appeals authority of a state employment security agency's determination on a claim for benefits, on a status report, or on an employer's contribution rate, or a request for a review by a higher appeals authority of a decision made by a lower appeals authority.

b. Employment appeal board of the department of inspections and appeals. The employment appeal board of the department of inspections and appeals is established to hear and decide disputed claims. The employment appeal board of the department of inspections and appeals will consist of three members appointed by the governor with the approval of two-thirds of the members of the senate. One member will represent the general public, one member will represent employers, and one member will represent employees.

This subrule is intended to implement Iowa Code section 96.6(4).

24.1(7) *Applicant.* Any individual applying for work at a workforce development center.

24.1(8) *Application card.* Rescinded IAB 2/10/99, effective 3/17/99.

24.1(9) *Active application card.* Rescinded IAB 2/10/99, effective 3/17/99.

24.1(10) *Average weekly wages.* See wages.

24.1(11) *Base period.* The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or

b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

24.1(12) Base period employer and chargeable employer.

a. Base period employer. An employer who paid wages for employment to a claimant during the claimant's base period or an employer who is responsible for an individual's wages pursuant to Iowa Code section 96.3, subsection 5, pertaining to workers' compensation benefits.

b. Chargeable employer. An employer who has had base period wages transferred to their account due to a requalification decision.

24.1(13) *Benefit amount.*

a. Maximum weekly benefit amount. The highest weekly benefit amount provided in a state employment security law.

b. Minimum weekly benefit amount. The lowest weekly benefit amount for a week of total unemployment provided in a state employment security law.

c. Weekly benefit amount. The full amount of benefits a claimant is entitled to receive for a week of total unemployment.

24.1(14) *Benefit decision.* The decision reached by a lower or higher appeals authority with respect to an appealed claim. See also benefit determination, under determination.

24.1(15) *Benefit determination.* See determination.

24.1(16) *Benefit eligibility conditions.* Statutory requirements which must be satisfied by an individual with respect to each week of unemployment before benefits can be received.

24.1(17) *Benefit formula.* The combination of mathematical factors specified in the state employment security law as the basis for computing an individual's weekly benefit amount and maximum benefit amount.

a. Annual wage formula. A benefit formula which uses the claimant's total wages in insured work for a one-year period for computing the claimant's maximum benefit amount.

b. High quarter formula. A benefit formula which uses, for determining a claimant's weekly benefit amount, the quarter of the base period in which the claimant's wages in insured work were highest.

24.1(18) *Benefits.* Money payments to an individual with respect to unemployment.

a. Regular benefits. Benefits payable to an individual under this or any other state law (including benefits payable to federal civilian employees and ex-servicemembers pursuant to 5 U.S.C., chapter 85) other than extended benefits.

b. Extended benefits. Benefits payable to an individual (including benefits payable to federal civilian employees pursuant to 5 U.S.C., chapter 85) for weeks of unemployment which begin in an extended benefit period, which is a period when extended benefits are paid in this state.

24.1(19) *Benefit wages.* See wages.

24.1(20) *Benefit year.* That period to which the limitation of maximum duration of benefits is applicable, a year or approximately a year.

24.1(21) *Benefit year, individual.* The benefit year is a period of 365 days (366 in a leap year) beginning with and including the starting date of the benefit year. The starting date of the benefit year is always on Sunday and is usually the Sunday of the current week in which the claimant first files a valid claim unless the claim is backdated as allowed under subrule 24.2(1), paragraph *"h."*

24.1(22) *Calendar week.* See week.

24.1(23) *Central office.* The state administrative office of the division of unemployment insurance services of the department of workforce development.

24.1(24) Reserved.

c. Determination of insured status. A determination as to whether an individual meets the employment requirements necessary for the receipt of benefits; and, if so, such individual's weekly benefit amount and maximum benefit amount.

d. Initial determination. The first determination with respect to a claim or a request for determination of insured status.

e. Monetary determination. Same as determination of insured status.

f. Nonmonetary determination. A determination as to whether a claimant is barred from receiving benefits for reasons other than those affecting the claimant's insured status.

g. Reconsidered determination. Same as redetermination.

h. Redetermination. A determination made with respect to a claimant after reconsideration by the initial determining authority.

i. Status determination. A determination as to whether an employing unit whose status is not known is a subject employer.

24.1(39) *Disqualification provisions.* Those provisions of a state employment security law that set forth the conditions that bar an individual from receiving benefits for a specified period or cancel or reduce the individual's benefits or credits.

24.1(40) *Duration of benefits.* The number of weeks for which benefits are paid or payable for total unemployment in a benefit year. Because there may be deductible wages and other compensation, duration is often described in terms of the total amount of benefits arrived at by multiplying the weekly benefit amount by the number of weeks of total unemployment.

a. Actual duration. The number of full weeks of benefits received by an individual, or the equivalent thereof expressed in terms of dollars.

b. Maximum duration. The highest number of weeks of total unemployment for which benefits are payable to any individual in a benefit year under a state employment security law.

24.1(41) *Earnings limit.* An amount equal to the weekly benefit amount plus $15.

24.1(42) *Eligibility requirements.* Same as benefit eligibility conditions.

24.1(43) *Employment interview.* A conversation between an applicant and an interviewer directed toward obtaining and recording information pertinent to classification and selection, and giving information pertinent to job seeking.

24.1(44) *Employment office.* An office maintained by the department of workforce development in accordance with Iowa Code sections 96.12 and 96.25.

24.1(45) *Employment security administration fund.* See funds.

24.1(46) *Employment security law.* A body of law which establishes a free public employment service, or a system of unemployment insurance, or both and which may also establish other systems compensating for wage loss, such as temporary disability insurance in Iowa Code chapter 96.

24.1(47) *Employment security program.* The federal-state program comprising public employment services and unemployment insurance.

24.1(48) *Fact-finding interview.* A face-to-face or telephonic discussion between interested parties and a department representative for the purpose of obtaining from the claimant a statement containing information on a specific eligibility or disqualification issue. This differs from an eligibility review interview in that a specific issue must exist as a result of a statement made by either the claimant, the liable state, an employer, or the staff of the department.

24.1(49) *First UI, UCFE, or UCX payment.* A payment issued to a claimant for the first compensable week of unemployment in a benefit year.

24.1(50) *Full-time week.* See week.

24.1(51) *Funds.*

a. Administrative funds. Funds made available from federal, state, local and other sources to meet the cost of state employment security administration.

b. Contingency fund. An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state employment security agencies arising from increases in workload or other specified causes.

c. Special employment security contingency fund. A contingency fund established pursuant to Iowa Code section 96.13(3) into which all interest, fines, and penalties are paid.

d. Employment security administration fund. A special fund in the state treasury, established by state law, in which are deposited moneys granted by the manpower administration and monies from other sources, for the purpose of paying the cost of administering the state employment security program.

e. Title V funds. Funds appropriated by Congress to pay unemployment insurance benefits under Title V of the United States Code to federal, civilian and military employees.

f. Unemployment fund. A special fund established under a state employment security law for the receipt and management of contributions and the payment of unemployment account, clearing account, and unemployment trust fund account.

g. Unemployment trust fund. A fund established in the treasury of the United States which contains all moneys deposited with the treasury by state employment security agencies to the credit of their unemployment fund accounts and by the railroad retirement board to the credit of the railroad unemployment insurance account.

24.1(52) *Handbook.* The handbook for interstate claims-taking published by the manpower administration.

24.1(53) *High quarter formula.* See benefit formula.

24.1(54) *Identification card, applicant.* Rescinded IAB 2/10/99, effective 3/17/99.

24.1(55) *Inactive application card.* Rescinded IAB 2/10/99, effective 3/17/99.

24.1(56) *Inactive file.* Rescinded IAB 2/10/99, effective 3/17/99.

24.1(57) *Individual base period.* See base period.

24.1(58) *Individual benefit year.* See benefit year.

24.1(59) *Initial claim.* See claim.

24.1(60) *Initial determination.* See determination.

24.1(61) *Insured unemployment.* Unemployment during a given week for which benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

24.1(62) *Insured work.* Employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act.

24.1(63) *Insured worker.* An individual who has had sufficient insured work in such individual's base period to meet the employment requirements for receipt of benefits under a state employment security law.

24.1(64) *Interstate agreement.*

a. Interstate benefit payment plan. The plan under which each state acts as an agent for every other state in taking claims for individuals who are not in the state in which they earned their base period wages.

b. Interstate reciprocal coverage agreement. An administrative interstate agreement, permitted under most state employment security laws, which provides for the election of coverage of services under specified conditions which may or may not constitute an exception to the mandatory coverage provisions of the state law.

c. Wage-combining agreements. An interstate agreement which allows workers who lack qualifying wages in any one state, or who qualify for less than maximum benefits in one or more states, to qualify or to increase benefits by combining wages from all states.

24.1(65) *Interstate claim.* See claim.

24.1(66) *Interstate claimant.* An individual who files a claim for benefits in an agent state on the basis of employment covered by the employment security law of a liable state.

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

d. Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance which was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim must be filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) The Iowa wages are erroneous and are deleted and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

e. If a claim is canceled and becomes final with no appeal being filed, a valid claim with Iowa as the paying state shall not be reestablished with the same effective date.

f. Voiding a claim. If it is determined a claim has been filed under an incorrect social security number, the claim shall be voided rather than canceled.

g. All unemployment insurance claims canceled shall be clearly identified as such and the administrative record of the individual's file shall be destroyed three years after final action.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(4), 96.4(1), 96.4(3), 96.5(1)*"h,"* 96.5(3), 96.6(1), 96.6(2), 96.15, 96.16, 96.19(4), 96.19(24), and 96.20.

871—24.3(96) Social security number needed for filing.

24.3(1) The claims taker must enter the social security number on the Form 60-0330, Application for Job Placement Assistance and/or Job Insurance. The correct social security number is essential in the processing of the claim. Therefore, if the claimant has a social security card, the number must be taken from that card. If the claimant has two or more social security numbers, the claim shall be held until the claimant ascertains which number is correct. The Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, will be held for such information for 30 days after which the claim shall be submitted without a number. If the social security card is illegible, or has been lost or destroyed, the number taken from a prior inactive claim or W-2 form will be acceptable.

24.3(2) When a claimant does not have a social security card and no other record of the claimant's social security number is available the claims taker shall advise the claimant that the number may be available from the claimant's employer.

24.3(3) In all such instances, the claims taker shall take the claim and hold it in the workforce development center pending receipt of the social security number for a period not to exceed 30 days. The Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, will be placed in the numerical hold file for release 30 days later. If no number is provided by the claimant within 30 days, the claims taker shall submit the claim without a number. Such claims will be determined as ineligible (no wage credits).

24.3(4) If the claimant produces a social security number the claims taker shall submit Form 60-0196, Office Memo, to the claims section. Under social security number the claims taker shall enter none and in the body of the form enter the social security number with the notation previously filed without social security number.

24.3(5) If the claimant produces a social security number after the no wage credits determination has become final, the claims taker shall take a new claim effective on Sunday of the week the new claim is taken.

24.3(6) The department desires that workforce development centers assist the claimant in every reasonable manner so that the claim may be processed in the shortest possible time.

871—24.4(96) Benefit rights interview.

24.4(1) *Intrastate benefits.* A benefit rights interview is given by a workforce development representative to each individual filing an initial claim for benefits to review with the individual those provisions in the law and rules which govern the individual's monetary eligibility, rights and responsibilities under Iowa's unemployment insurance program. The benefit rights interview may be given by an individual or group type interview. Each individual's signature on Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, confirms that the individual received the Form 70-6200, Facts About Unemployment Insurance, and understood the information contained in its Claimant Confirmation Statement, which explains the individual's rights, benefits, and responsibilities under Iowa's unemployment insurance program.

24.4(2) *Interstate benefits.* A benefit rights interview is not required for each individual who files an initial claim for interstate benefits; however, at the time of filing of the initial claim for interstate benefits, the individual is given Form 60-0134, Information for Interstate Claimants, and is advised on how to complete Form 60-1004 (IB-2), Continued Interstate Claim, and that the liable state will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.

24.4(3) *Federal benefits.* Each individual who files an initial unemployment compensation for ex-servicemembers (UCX) or unemployment compensation for federal employees (UCFE) claim is given the appropriate federal pamphlet explaining the individual's rights, benefits, and responsibilities under the UCX or UCFE program.

871—24.5(96) Mass separation—definition and procedure.

24.5(1) *Mass separation.* A mass separation is a layoff of all or a large number of workers, either permanently, indefinitely, or for an expected duration of seven or more days, by one or more employers in the same area, at approximately the same time, and for the same common reason. The Form 60-0331, Claim for Job Insurance, shall be used to take claims for benefits from individuals involved in a mass separation.

a. The special procedures for mass claims taking shall be applied only if the usual methods would overtax the facilities of the workforce development center or sufficient staff is not available to handle the load efficiently.

b. If other facilities must be obtained for a mass layoff, the order of precedence for obtaining such facilities will be as follows:

(1) Interested employer involved.

(2) Bona fide union which represents the workers.

(3) Public facility (i.e., courthouse, city hall).

24.5(2) *Cooperation of employers.* To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. This information should include:

a. The number of workers to be separated.

b. The date of separation and, if staggered, the number on each date.

c. Reason for layoff.

e. Specify whether the wages determined to be in the individual's base period were or were not received for working in insured work during the base period.

24.7(6) The department will mail the redetermined initial claim to the individual. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the indemnity insurance benefits shall be notified of the redetermination and shall be responsible for the charges on the redetermined claim which are solely due to wage credits considered to be in the individual's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or indemnity insurance benefits shall have the right to protest as provided in rule 24.8(96).

871—24.8(96) Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(1) Mailing of a notice of the filing of an initial claim or a request for wage and separation information to employing units.

a. The Form 65-5317, Notice of Claim, the Form 68-0221, Request for Wage and Separation Information, or the Form 68-0615, Wage Verification Request, shall be addressed to:

(1) The address or addresses as requested by the employing unit and agreed to by the department; or

(2) The business office of the employing unit where the records of the individual's employment are maintained; or

(3) The employing unit's place of business where the individual claiming benefits was most recently employed.

b. A notice of the filing of an initial claim or a request for wage and separation information shall be mailed to an owner, partner, executive officer, departmental manager or other responsible employee of the employing unit or to an agent designated to represent the employing unit in unemployment insurance matters.

(1) An agent who has been authorized to represent an employing unit in unemployment insurance matters may be furnished information from the files of the department to the extent designated in the authorization and in the same manner and to the same extent that the information would be furnished to the employing unit.

(2) The appointment of an agent to act for the employing unit and to receive documents and reports in no way abrogates the right of department representatives to deal directly with the employing unit when it appears that this will best serve the interest of the parties.

24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, a Form 68-0221, Request for Wage and Separation Information, or a Form 68-0615, Wage Verification Request, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit also has the option to mail a Form 60-0154, Notice of Separation, to the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

(2) Rescinded IAB 2/10/99, effective 3/17/99.

24.8(3) Completing and signing of forms by an employing unit which may affect the benefit rights of an individual.

a. A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be accomplished by properly completing the form provided by the department.

b. A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be executed by the employing unit on the form provided by the department under the signature of an individual proprietor, a partner, an executive officer, a department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment.

c. Failure by an employing unit or its authorized agent to properly complete or sign any form provided by the department relating to the adjudication of a claim shall result in the return of the form to the employing unit or its authorized agent for proper completion or signature; however, an extension of any notice or response period to allow for the return of the form shall not be granted.

d. Failure by an employing unit or its authorized agent to timely submit any notice or response requested by the department shall result in the department representative's making a determination of the individual's rights to benefits based on the information available.

24.8(4) Mailing of determinations, redeterminations and decisions to employing units.

a. An employing unit which has filed a timely response or protest to the notice of the filing of an initial claim shall be notified in writing of the determination as to the individual's rights to benefits. If an employing unit of the individual has submitted timely information affecting the individual's rights to benefits, including facts which disclose that the individual voluntarily quit without good cause attributable to the employing unit or was discharged for misconduct in connection with employment, the employing unit shall be notified in writing of the department's decision as to the cause of termination of the individual's employment.

b. Any notice of determination or decision shall contain a statement setting forth the employing unit's right of appeal.

c. Determinations as to an individual's right to benefits, decisions as to the cause of termination of the individual's employment, decisions as to an employing unit's experience record and correspondence related thereto shall be sent to:

(1) The address of the employing unit to which the notice of the filing of an initial claim was mailed; or

(2) The address requested by the employing unit on the document filed with the department in response or protest to the notice of the filing of an initial claim;

(3) If the employing unit in its response or protest to the notice of the filing of an initial claim furnishes the address of an agent for the employing unit and requests that further documents and correspondence be sent to the agent, the department representative shall comply, provided there is on file with the department an approved authorization (power of attorney) designating the agent to represent the employing unit.

24.23(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

24.23(19) Availability for work is unduly limited because the claimant is not willing to accept work in such claimant's usual occupation and has failed to establish what other types of work that can and will be performed at the wages most commonly paid in the claimant's locality.

24.23(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer and will not consider suitable work with other employers.

24.23(21) Where availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers.

24.23(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

24.23(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

24.23(24) When a claimant is receiving from the Veterans Administration an educational assistance allowance under the War Orphans Educational Assistance Act of 1956, which is disqualifying under the Social Security Act.

24.23(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

24.23(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

24.23(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

24.23(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

24.23(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.23(30) Failure to attend the major portion of the scheduled workweek for department approved training.

24.23(31) Where the claimant spent the major portion of the period traveling while relocating.

24.23(32) The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.19(9)*"c"* are met.

24.23(33) Where the claimant left employment prior to a scheduled date of layoff when such claimant could have remained in employment during this period. No disqualification may be imposed in accordance with Iowa Code section 96.5(1)*"g"* for the period subsequent to the date of the scheduled layoff if such claimant is otherwise eligible. The claimant will be disqualified for the period between the last day worked and the date of the scheduled layoff because of voluntary unemployment.

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

24.23(36) An individual who files a transient or courtesy claim while traveling and does not establish residence or is not available for job offers in the locality where the transient or courtesy claim is filed, is not considered available for work unless it can be shown that the claimant had a legitimate job interview for which previous arrangements had been made and that the individual was not merely traveling or vacationing in the area.

24.23(37) An individual shall be deemed to have failed to make an effort to secure work if the individual has followed a course of action designed to discourage prospective employers from hiring such individual in suitable work.

24.23(38) An individual who requests and is granted a written release from employment by the employer shall be considered as voluntarily unemployed and would not meet the availability requirements of Iowa Code section 96.4(3).

24.23(39) Where the work search form or the Eligibility Review Form has been deliberately falsified for the purpose of obtaining unemployment insurance benefits. The general guide for disqualifications for falsification of work search is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the representative because each case must be decided on its own merits. The administrative penalty recommended for falsification is:

a. First offense—six weeks penalty.

b. Second offense—nine weeks penalty.

c. Third offense—total disqualification for the remainder of the benefit year plus consideration of the possibility of filing fraud charges depending on the circumstances.

24.23(40) Reserved.

24.23(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499, Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.19(38)*"c"* and 96.29.

871—24.24(96) Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.24(1) *Bona fide offer of work.*

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

b. Upon notification of a job opening for a claimant a representative of the department shall notify such claimant by mail to report to the local workforce development center for the purpose of a job referral. If such claimant fails to report as directed without good cause such claimant shall be disqualified until such time as such claimant reports to the local workforce development center.

24.24(2) *Job within claimant's capabilities.*

a. The job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable.

b. If the claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department, such failure shall constitute a refusal of suitable work. In such a situation said claimant shall be disqualified for failure to apply for or accept an offer to work until such time as the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.24(3) *Each case decided on its own merits.* Based upon the facts found by the department through investigation it shall then be determined whether the work was suitable and whether the claimant has good cause for refusal. Each case shall be determined on its own merits as established by the facts. A reason constituting good cause for refusal of suitable work may nevertheless disqualify such claimant as being not available for work.

24.26(11) The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

24.26(12) When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

24.26(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

24.26(14) The individual left employment due to workplace or domestic violence perpetrated against the individual at, around or in connection with the work. The individual must make all reasonable efforts to continue in the employment and be forced to quit in order to protect the individual's own safety.

24.26(15) Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

24.26(16) The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

24.26(17) Reserved.

24.26(18) Reserved.

24.26(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

24.26(20) The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

24.26(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

24.26(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

24.26(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

24.26(24) Reserved.

24.26(25) Temporary active military duty. A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service, shall be entitled to a leave of absence during the period of such duty. The employer shall restore such person to the position held prior to such leave of absence, or employ such person in a similar position; provided, that such person shall give evidence to the employer of satisfactory completion of such training or duty, and further provided that such person is still qualified to perform the duties of such position.

24.26(26) Reserved.

24.26(27) Refusal to exercise bumping privilege. An individual who has left employment in lieu of exercising the right to bump or oust a fellow employee with less seniority shall be eligible for benefits.

24.26(28) The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account shall immediately become chargeable for the benefits paid which are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification shall be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.19(38).

871—24.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)*"g."*

871—24.28(96) Voluntary quit requalifications and previously adjudicated voluntary quit issues.

24.28(1) The claimant shall be eligible for benefits even though having voluntarily left employment, if subsequent to leaving such employment, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.28(2) The claimant shall be eligible for benefits even though having been previously disqualified from benefits due to voluntary quit, if subsequent to the disqualification, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.28(3) Reserved.

24.28(4) Reserved.

24.28(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

24.28(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

24.28(7) The claimant voluntarily left employment. However, there shall be no disqualification under section 96.5(1) if a decision on this same separation has been made on a prior claim by the administrative law judge and such decision has become final.

24.28(8) The claimant voluntarily left employment. However, there shall be no disqualification under section 96.5(1) if a decision on this same separation has been made on a prior claim by the appeal board and such decision has become final.

This rule is intended to implement Iowa Code section 96.5(1)*"a."*

24.38(2) *Exception to combining wage credits.* Under the following circumstances, wages and employment are not transferable to the paying state:

a. Any employment and wages which have been transferred to any other paying state and not returned unused.

b. Wages that have been used by the transferring state as the basis of a monetary determination which established a benefit year.

c. Any employment and wages that have been canceled or are unavailable as a result of a transferring state determination made prior to the request for transfer.

24.38(3) The claimant will be told that if there was a previous election to file a combined wage claim, the claimant may withdraw the combined wage claim any time, up to the date the paying state's monetary determination becomes final. However, if the claimant withdraws a combined wage claim and benefits have been paid, the claimant will be required to repay any such benefits. This repayment may be done by cash or by an authorization to the state(s) from which such claimant next claims benefits to reimburse the combined wage paying state for any benefits which said claimant will be paid.

871—24.39(96) Department-approved training or retraining program. The intent of department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

24.39(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

a. The educational establishment at which the claimant would receive training.

b. The estimated time required for such training.

c. The occupation which the training is allowing the claimant to maintain or pursue.

24.39(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

24.39(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code section 96.4(6).

871—24.40(96) Department-approved training (DAT), state tuition—procedure.

24.40(1) For those individuals who are otherwise eligible, but who are financially incapable of paying tuition and related course fees, the department may provide up to $1,000 per individual in a 24-calendar-month period. The criteria are:

a. Funds must be available.

b. Approval of department-approved training must be received prior to payment to the educational institution.

c. Individuals must certify financial need to qualify for DAT tuition and fees. An individual cannot have income of more than 125 percent of the individual's weekly unemployment insurance benefit amount. Income is defined as unemployment insurance benefits and wages.

d. Financial assistance shall be defined as grants and scholarships for tuition and fees.

e. Tuition and fees can be approved for the length of the course up to the 24-month maximum, even if the unemployment insurance benefits subsequently exhaust or the claimant becomes ineligible.

f. Tuition and fees cannot be approved for a person who is currently attending class.

g. Any obligation to the training institution from the department-approved training assistance fund combined with other financial aid, which is awarded to the student and can only be used for tuition and fees, may not exceed the total cost of tuition and fees at the training institution.

h. Any DAT funds which are not used by the educational institution, due to whatever the reason, shall be returned to the department within 90 days of completion of the course.

24.40(2) Reserved.

This rule is intended to implement Iowa Code section 96.13(3) and 1986 Iowa Acts, chapter 1246, section 623.

871—24.41(96) Unemployed parents program (FIP/UP). Under Public Law 94-566, an unemployed parent who is eligible for both unemployment insurance and family investment program/unemployed parent (FIP/UP) shall be required to collect any unemployment insurance to which the individual is entitled before receiving any payments under the FIP/UP program.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

871—24.42(96) Retention of DSS referral form. When an unemployed parent presents the DSS referral Form PA-2138-5 to the workforce development center representative, the representative will take the form, sign it and complete a Form 60-0330, Application for Job Placement Assistance and/or Job Insurance.

24.42(1) The weekly benefit amount and maximum benefit amount of the claimant will be entered in job service comments on Form PA-2138-5. If the person is not monetarily eligible, that notation will be entered and the form mailed to social services.

24.42(2) A FIP/UP claimant may have the claim protested which can affect eligibility. Social services may request additional information on a subsequent Form PA-2138-5 concerning nonmonetary allowances or disqualifications on the claim, which will be furnished in the comments section of the form.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

871—24.43 and **24.44** Reserved.

871—24.45(96) Trade Act of 1974. Unemployment benefits payable to claimants under the Trade Act of 1974 (P.L. 93-618), shall be determined in accordance with the rules of the United States department of labor as published in the Code of Federal Regulations, chapter 29, parts 70 and 91. The Trade Act of 1974 is designed to pay unemployment benefits to workers who become unemployed due to foreign production of goods replacing domestic production.

871—24.46(96) Extended benefits.

24.46(1) *Purpose.* Extended benefits are benefits paid to an eligible individual during periods of high unemployment in a state under the Federal-State Extended Unemployment Compensation Act of 1970 as amended and the Extended Benefit Program Regulations under 20 Code of Federal Regulations Part 615. The purpose of extended benefits is to extend the period of time for which an individual may receive benefits to allow the individual additional time to locate employment in recognition of the likelihood that employment is more difficult to locate during periods of high unemployment in a state. The cost of extended benefits is shared between the federal and state governments.

24.57(2) As used in Iowa Code section 96.5(9), "participating in sports or athletic events" means any services performed in an athletic activity by an individual as:

a. A regular player or team member.

b. An alternate player or team member.

c. An individual in training to become a regular player or team member.

d. An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

24.57(3) The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons shall be determined by the department after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

24.57(4) For the purposes of Iowa Code section 96.5(9), a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

a. The individual has an express or implied multiyear contract which extends into the subsequent sport season, or,

b. The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and

c. There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season, and

d. The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

24.57(5) Benefits which will be paid with respect to weeks of unemployment during a sports season shall be based on all wage credits of the individual. Wage credits would include those earned in sports as well as in other employment covered by an employment security law. With respect to weeks of unemployment that begin during a period between sports seasons (or similar periods) no benefits are payable on the basis of any athletic or nonathletic wages if substantially all (see subrule 24.57(1)) of the services performed by the individual during the base period were in sports or athletic events.

24.57(6) When a professional athlete is denied benefits because there is a reasonable assurance that the individual will again perform services as a professional athlete in the next ensuing season but the assurance fails to materialize, the denial of benefits is effective until the date established that the assurance is ineffective. Following the ineffective date, benefits can be paid if the individual is otherwise eligible. If an assurance given to an individual is found to be not a bona fide assurance, benefits are payable if the individual is otherwise eligible.

24.57(7) Benefits will be paid with respect to weeks of unemployment between sports seasons (or similar periods) based on wage credits of the individual, paid in other employment covered by employment security law except those in sports or athletic events or training, or preparing to so participate.

24.57(8) Athletes—denial of benefits. An individual (athlete) will be denied benefits between seasons based on services performed by such individual (athlete).

This rule is intended to implement Iowa Code section 96.5(9).

871—24.58(96) Voluntary shared work. The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of employees in an affected unit and those employees will receive a portion of their regular unemployment insurance benefits. The program is designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment insurance benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer may apply to participate in the program by completing a shared work plan application which must be approved by the department. The employer shall submit the plan to the department 30 days prior to the proposed implementation date. The employer will administer the program in cooperation with the department. Participating employees will complete the employee information form and biweekly claim cards and return them to the employer who will submit them to the department. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and unemployment insurance overpayments will be offset as they are for regular unemployment insurance benefits.

24.58(1) A shared work plan will last no longer than 26 weeks from the date on which the plan is first effective. The minimum length of a plan is four weeks. An employing unit is eligible for only one plan during a 24-month period.

24.58(2) Employment is considered seasonal if the production or service provided by the employment is curtailed by at least 45 percent or ceases for a four-month or longer period on an annual basis due to climatic conditions.

24.58(3) A plan which has been approved may be modified at the discretion of the department. An employer seeking modification of an approved plan must demonstrate good cause as to why the modification is necessary and must demonstrate that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

24.58(4) Approval of a plan may be denied or approval of a plan may be revoked at the discretion of the department if the plan and its actual operation do not meet all the requirements stated in Iowa Code section 96.40 including, but not limited to, the providing of false or misleading information to the department, unequal treatment of any employee in the affected unit, a reduction in fringe benefits resulting from participation in the program, or failure by the employer to monitor and administer the program.

24.58(5) The employer may file in writing an appeal of a denial of approval of a plan or revocation of approval by the department within 30 days from the date the decision is issued. The employer's appeal will be forwarded to the appeals section so that a hearing may be scheduled before an administrative law judge.

24.58(6) If the employer provides as part of the plan a training program that will provide a substantive increase in the workplace and employability skills of the employee so as to reduce the potential for future periods of unemployment, the department shall consider the employee to be attending department-approved training and shall relieve the employer of charges for benefits paid to the individual attending training under the plan.

This rule is intended to implement Iowa Code section 96.40.

871—24.59(96) Child support intercept. An individual who owes a child support obligation and who has been determined to be eligible for unemployment insurance benefits under Iowa Code chapter 96, shall have this information furnished to the child support recovery unit. The department of workforce development shall deduct and withhold from benefit payments the amount which is specified by the child support recovery unit. The term "benefits" for child support intercept purposes shall be defined as meaning any compensation payable under Iowa Code chapter 96, including any amounts payable pursuant to any workforce development agreement under any federal law administered by the department.

24.59(1) *Information furnished to child support recovery unit.* The department of workforce development shall furnish information to the child support recovery unit concerning all new claims filed that are monetarily eligible for benefits under any state or federal program administered by the department.

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871—25.12(96) Wage cross match audit procedure.

25.12(1) Each quarter, cross match audit Forms 65-5321 are mailed to selected employers requesting wage information on specific claimants as it concerns benefit payments.

25.12(2) The form, upon completion by the employer is sent to the investigation and recovery bureau for entering in the Iowa workforce development database system. If the form is not completed properly, it is sent to the employing unit for correct information and then returned for processing. Any potential cases of conflict generated by the computer program will result in an investigation assignment and investigation packet. Claimants will be notified by means of Form 65-5332 (Preliminary Audit Notice 214-B) and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031 on which the amount, weeks, type, and reason for the overpayment are identified. Claimants are notified of the determination on Form 65-5323.

25.12(3) An employer may choose to participate in the automated crossmatch procedure by following the magnetic media submission guidelines.

This rule is intended to implement Iowa Code section 96.11(1).

871—25.13(96) Duplicate benefit warrants.

25.13(1) *Undelivered warrant.* If any warrant issued in payment of benefits is returned undelivered to the department by the postmaster, such warrant will be canceled 90 days after the original issue date unless it can be mailed to the new correct address. If a warrant remains outstanding beyond a period of six months from the date of issuance after the end of the quarter in which the warrant was issued, this warrant will be canceled when the records management section receives notification from the state comptroller's office.

25.13(2) *Canceled warrant.* On a quarterly basis, the comptroller shall cause to be canceled each benefit warrant which, at this time, has been outstanding six months or longer. Any individual who has an outdated warrant less than five years old may contact any local office for assistance. They will be instructed to return the outdated warrant to the records management section with a request that a duplicate warrant be issued. If the outdated warrant is more than five years old, miscellaneous claim Form 60-0224 should be used to request reissuance of the warrant. The miscellaneous claim form shall be transmitted to the state board of appeals for determination, at their regular monthly meeting, as to payment or nonpayment of the warrant.

25.13(3) *Lost and uncashed warrant.*

a. In the event that a warrant issued in payment of benefits is lost, stolen, mutilated, destroyed, or canceled under conditions cited in subrules 25.13(1) and 25.13(2), the payee shall contact the local office representative of the workforce development center for assistance. The local office will forward the necessary information to the administrative office.

b. The administrative office will ascertain whether the warrant has been cashed and take the following action:

(1) If the warrant has been cashed, the procedure in subrule 25.13(4) of this rule shall be followed.

(2) If the warrant has not been cashed, the administrative office shall issue a stop payment order on the warrant and a Form 68-0163, Affidavit and Agreement for Issuance of Duplicate Warrant, will be mailed to the local office for completion by the individual. The affidavit is a sworn statement that the original warrant was not received and that the warrant will be surrendered voluntarily if received by the claimant. The claimant should be warned by the local office that the warrant cannot be cashed after the stop payment order is in effect.

c. The affidavit shall be personally prepared in duplicate by the claimant and the claimant's signature on the affidavit must be notarized. The affidavit shall then be transmitted in duplicate to the administrative office.

d. The administrative office will then request that the state comptroller reissue a duplicate warrant and this warrant will be mailed to the claimant by the administrative office.

e. If the claimant should cash the original warrant after the stop payment order is in place, an overpayment shall be set up and possible prosecution considered, if warranted.

f. If the claimant should find the original warrant after the duplicate warrant has been issued, the original warrant shall be sent to the administrative office.

25.13(4) *Forged warrants.*

a. In the event that the original warrant has been endorsed by and paid to someone allegedly not authorized to receive payment, the payee whose endorsement was forged will be given the opportunity to examine the endorsement on the copy of the warrant.

b. If the payee determines that the endorsement is a forgery, the following action shall be taken:

(1) The Form 68-0320, affidavit as to forged endorsement, shall be personally prepared in duplicate by the claimant and the claimant's signature on the affidavit must be notarized.

(2) The claimant shall be required to file a police report with the local law enforcement agency and return a copy of the police report to the local office.

(3) The local office will forward the copy of the original warrant, the notarized affidavit and the copy of the police report to the administrative office for action. The local office will explain to the claimant that the documents will be reviewed by the administrative office and that a handwriting analysis will be completed.

c. The investigation and recovery section will make a handwriting analysis to determine if the warrant was forged. If the handwriting is determined to be a forgery, a duplicate warrant will be issued to the payee only after the state comptroller has recouped the money.

25.13(5) *Employer account credit.* At the time of cancellation of any outstanding benefit warrant(s), the employer account shall be credited with the amount of the warrant(s) so canceled. The reissuance of any benefit warrant canceled in subrule 25.13(1) or 25.13(2) shall be charged to the employer account.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.14(96) Payments of benefits due deceased person.

25.14(1) Benefits due deceased claimants. An eligible week for a deceased claimant will be one where the week is claimed by the individual prior to death. If benefits are due a deceased person, the benefits shall be paid to the person or persons who have been issued letters testamentary or of administration pursuant to an application filed within 30 days after the claimant's death.

25.14(2) In the event that no application for letters testamentary or of administration has been filed within 30 days after the claimant's death, the benefits which were due shall be paid to the decedent's surviving spouse, if any; or, if no spouse survives the decedent and the decedent is survived by an unmarried minor child or children, the benefits shall, at the discretion of the department, be paid:

a. To the guardian or guardians of unmarried minor child or children for their benefit; or

b. To the person or institution who or which the department finds shall have assumed the obligation of providing support for or maintenance of such minor child or children; or

c. To any person who the department finds has furnished to such child or children necessaries of a value equaling or exceeding the amount of benefits; or

d. To any person who the department finds has paid expenses of the claimant's last illness or burial expenses in an amount equaling or exceeding the amount of benefits.

25.14(3) The comptroller shall cause any unredeemed warrant or warrants payable to a deceased person to be surrendered and voided and shall issue a new warrant or warrants bearing the same dates and numbers and made payable to the entitled person or persons under the provisions of this rule. The issuance of the new warrant or warrants shall fully discharge the department of its obligation in respect to the claims covered thereby and no other person shall claim or assert any right to them.

25.14(4) Any person claiming entitlement to the payment of benefits under this regulation shall present said claim in writing within 60 days after the death of the claimant and shall offer proof thereof in such form as the department may require; however, the department may, upon good cause shown, extend the time for presentation of said claim. In the event no claim is made for the payment of such benefits within the time limit specified above or any extension thereof, the benefits shall not be paid but shall remain in the unemployment compensation fund.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.15(96) Back pay—benefit recovery and charging.

25.15(1) When an individual receives benefits for a period of unemployment and subsequently receives a payment in the form of or in lieu of back pay for the same period from the individual's employer, the department shall recover the benefits in the following manner:

a. The department shall first attempt to reach an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer and to remit that amount to the unemployment compensation fund.

b. If the department fails to reach an agreement with the individual and the employer as provided in paragraph *"a,"* then the department shall either deduct an amount equal to the benefits received by the individual from any future benefits received by the individual or have the individual pay the department an amount equal to the benefits received by the individual.

c. The burden of proof shall rest with the employer to establish the dollar amount of the back pay award which is remuneration for lost wages and the specific period of time to which the remuneration applies.

25.15(2) If the department reaches an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer, then the employer's account shall be relieved of benefit charges in an amount equal to the amount remitted by the employer to the unemployment compensation fund; however, if the department fails to reach an agreement, then the benefit charges shall not be relieved until the benefits paid to the individual are recovered either by deducting that amount from any future benefits received by the individual or by having the individual pay that amount to the department.

871—25.16(96) State payment offset. An individual who is owed a payment from the state of at least $50 and owes an overpayment of benefits of at least $50 is subject to an offset against the individual's payment from the state to recover all or a part of the individual's overpayment of benefits and to reimburse the department of revenue and finance for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

25.16(1) If the individual has made no attempt to repay the overpayment of benefits within the preceding six months, the individual's name and social security number are given to the department of revenue and finance.

25.16(2) The department of revenue and finance notifies the department that an overpaid individual is owed a payment from the state. The department then notifies the overpaid individual of the potential offset against the individual's payment from the state.

25.16(3) In the case of a joint or combined income tax filing, the individual has ten days from the postmark date on the decision to request a split of the refund to ensure the other party's portion of the refund is not offset. When a request is made, the department notifies the department of revenue and finance to make the split. The department then notifies the overpaid individual of the amount of the offset. If the request for split of the refund is not made timely, the entire income tax refund becomes subject to offset.

25.16(4) Any appeal by the individual is limited to the validity of job service's authority to recoup the overpayment through offset.

25.16(5) In the event that the amount of the offset exceeds the remaining overpayment, the department shall issue to the individual a special check equal to the amount of the excess.

This rule is intended to implement Iowa Code sections 96.11 and 421.17(26,29).

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