State of Iowa

Iowa Administrative Code Supplement

Biweekly
April 7, 1999

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

The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement pages to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement pages incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement pages may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index and for the preliminary sections of the IAC: General Information about the IAC, Chapter 17A of the Code of Iowa, Style and Format of Rules, Table of Rules Implementing Statutes, and Uniform Rules on Agency Procedure.

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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[Previous Supplement dated 3/24/99]

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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*]

*Effective date of Chapter 4 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.

CHAPTER 59
ENTERPRISE ZONES

261—59.1(15E) Purpose. The purpose of the establishment of an enterprise zone in a county or city is to promote new economic development in economically distressed areas. Eligible businesses (including eligible housing businesses) locating or located in an enterprise zone are authorized under this program to receive certain tax incentives and assistance. The intent of the program is to encourage communities to target resources in ways that attract productive private investment in economically distressed areas within a county or city.

261—59.2(15E) Definitions.

"Act" means Iowa Code Supplement sections 15E.191 through 15E.196 as amended by 1998 Iowa Acts, House Files 2164, 2395, section 17, and 2538.

"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 department of workforce development. 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 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.

"Board" means the Iowa department of economic development board.

"Commission" or *"enterprise zone commission"* means the enterprise zone commission established by a city or county to review applications for incentives and assistance for businesses located within or requesting to locate within certified enterprise zones over which the enterprise zone commission has jurisdiction under the Act.

"Contractor" or *"subcontractor"* means a person who contracts with an eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development zone, of the eligible business.

"Department" means the Iowa department of economic development.

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

"DRF" means the Iowa department of revenue and finance.

"Enterprise zone" means a site or sites certified by the department of economic development board for the purpose of attracting private investment within economically distressed counties or areas of cities within the state.

"Full-time" means the employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave, or
2. The number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Project jobs" means all of the new jobs to be created by the location or expansion of the business in the enterprise zone. For the project jobs, the business shall pay an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business for the project jobs shall not be less than $7.50 per hour.

261—59.3(15E) Enterprise zone certification. An eligible county or a city may request the board to certify an area meeting the requirements of the Act and these rules as an enterprise zone. Zone designations will remain in effect for a period of ten years from the date of the board's certification as a zone. A county or city may request zone designation at any time prior to July 1, 2000.

59.3(1) *County—eligibility.*

a. Requirements. To be eligible for enterprise zone designation, a county must meet at least two of the following criteria:

(1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 1995 annual average weekly wage for employees in private business.

(2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 1990 census.

(3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1990 and 1995.

(4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 1990 census.

b. Zone parameters. Up to 1 percent of a county area may be designated as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land designated as enterprise zones under subrules 59.3(1) and 59.3(2) shall not exceed in the aggregate 1 percent of the total county area (excluding any area which qualifies as an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993). An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to Iowa Code chapter 28E regarding the establishment of the enterprise zone.

59.3(2) *City—eligibility.*

a. Requirements. To be eligible for enterprise zone designation, a city (population of 24,000 or more as shown by the 1990 certified federal census) must meet at least two of the following criteria:

(1) The area has a per capita income of $9,600 or less based on the 1990 census.

(2) The area has a family poverty rate of 12 percent or higher based on the 1990 census.

(3) Ten percent or more of the housing units are vacant in the area.

(4) The valuations of each class of property in the designated area is 75 percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

(5) The area is a blighted area, as defined in Iowa Code section 403.17.

b. Population limits. A city with a population of 24,000 or more, as shown by the 1990 certified federal census, may request enterprise zone certification by the board. The zone shall consist of one or more contiguous census tracts, as determined in the most recent federal census, or alternative geographic units approved by the department, for that purpose. In creating an enterprise zone, an eligible city may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units otherwise meet the criteria on their own and the contiguous city agrees to be included in the enterprise zone.

c. Zone parameters. A city may establish more than one enterprise zone. Up to 1 percent of the county in which the city is located may be designated as enterprise zones. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated by the state as an enterprise zone. (The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the 1 percent aggregate area limitation for enterprise zones.)

261—59.11(15E) Department action on eligible applications. The department may approve, deny, or defer applications from qualified businesses. In reviewing applications for incentives and assistance under the Act, the department will consider the following:

59.11(1) *Compliance with the requirements of the Act and administrative rules.* Each application will be reviewed to determine if it meets the requirements of the Act and these rules. Specific criteria to be reviewed include, but are not limited to: medical and dental insurance coverage; wage levels; number of jobs to be created; and capital investment level.

59.11(2) *Competition.* The department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives and assistance under this program, to ensure an overall economic gain to the state.

59.11(3) *Displacement of workers.* The department will make a good-faith effort to determine the probability that the proposed incentives will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

59.11(4) *Violations of law.* The department will review each application to determine if the business has a record of violations of law. If the department finds that an eligible business, alternative eligible business, or an eligible housing business has a record of violations of the law including, but not limited to, environmental and worker safety statutes, rules, and regulations over a period of time that tends to show a consistent pattern, the business shall not qualify for incentives or assistance under 1998 Iowa Acts, House Files 2164 and 2538 or Iowa Code Supplement section 15E.196, unless the department finds that the violations did not seriously affect public health or safety or the environment, or if they did that there were mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department in assessing the nature of any violation.

59.11(5) *Commission's recommendations and additional criteria.* For each application from a business, the department will review the local analysis (including any additional local criteria) and recommendation of the enterprise zone commission in the zone where the business is located, or plans to locate.

59.11(6) *Other relevant information.* The department may also review an application using factors it reviews in other department-administered financial assistance programs which are intended to assess the quality of the jobs pledged.

261—59.12(15E) Agreement. The department and the city or county, as applicable, shall enter into agreement with the business. The term of the agreement shall be ten years from the agreement effective date plus any additional time necessary for the business to satisfy the job maintenance requirement. This three-party agreement shall include, but is not limited to, provisions governing the number of jobs to be created, representations by the business that it will pay the wage and benefit levels pledged and meet the other requirements of the Act as described in the approved application, reporting requirements such as an annual certification by the business that it is in compliance with the Act, and the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of the Act and these rules. In addition, the agreement will specify that a business that fails to maintain the requirements of the Act and these rules shall not receive incentives or assistance for each year during which the business is not in compliance.

261—59.13(15E) Compliance; repayment requirements; recovery of value of incentives.

59.13(1) *Annual certification.* A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department its compliance with the requirements of the Act and these rules.

59.13(2) *Repayment.* If a business has received incentives or assistance under 1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 15E.196 and fails to meet and maintain any one of the requirements of the Act or these rules to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

59.13(3) *Calculation of repayment due.* If a business fails in any year to meet any one of the requirements of the Act or these rules to be an eligible business, it is subject to repayment of all or a portion of the amount of incentives received.

a. Failure to meet/maintain requirements. If a business fails in any year to meet or maintain any one of the requirements of the Act or these rules, except its job creation requirement which shall be calculated as outlined in paragraph *"b"* below, the business shall repay the value of the incentives received for each year during which it was not in compliance.

b. Job creation shortfall. If a business does not meet its job creation requirement, repayment shall be calculated as follows:

(1) If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

(2) More than 50 percent, less than 75 percent. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.

(3) More than 75 percent, less than 90 percent. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.

59.13(4) *DRF; county/city recovery.* Once it has been established, through the business's annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and finance and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under 1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 15E.196. The value of state incentives provided under 1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 15E.196 includes applicable interest and penalties.

These rules are intended to implement Iowa Code Supplement sections 15E.191 through 15E.196 as amended by 1998 Iowa Acts, House Files 2164, 2395, section 17, and 2538.

[Filed emergency 6/20/97—published 7/16/97, effective 7/1/97]
[Filed emergency 9/19/97 after Notice 7/16/97—published 10/8/97, effective 9/19/97]
[Filed 6/22/98, Notice 5/6/98—published 7/15/98, effective 8/19/98]
[Filed 9/17/98, Notice 8/12/98—published 10/7/98, effective 11/11/98]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

CHAPTER 72
USE OF MARKETING LOGO
[Prior to 7/19/95, see 261—Ch 55]

261—72.1(15) Purpose and limitation.

72.1(1) *Purpose.* The purpose of the marketing logo program is to aid in the promotion and marketing of Iowa products and services. The IDED board has approved the following logo to market and promote Iowa products and services: A Taste of Iowa. A person shall not use this mark or advertise it or attach it to any promotional literature, manufactured article, or agricultural product without the approval of the department. The department will consult, as appropriate, with the advisory committee concerning program design, promotion and administration.

72.1(2) *Limitation.* By authorizing eligible applicants to use the marketing logo, the department, the IDED board and the state do not provide any guarantee or warranty regarding the product or service or its quality. Businesses that use the marketing logo expressly agree not to represent that the logo suggests any department, IDED board or state approval of the product or service.

261—72.2(15) Definitions.

"Advertisement" means any written, printed, verbal or graphic representation, or combination thereof, of any product with the purpose of influencing consumer opinion as to the characteristics, qualities or image of the commodity, food, feed, or fiber except labeling information as required by any government.

"Advisory committee" means the advisory committee appointed by the director to advise the department on how to promote and administer the A Taste of Iowa program.

"A Taste of Iowa program" or *"program"* means the promotional certification program authorized by these rules.

"Director" means the director of IDED.

"Label" means any written, printed, or graphic design that is placed on, or in near proximity to, any product whether in the natural or processed state or any combination thereof.

"License" means the written agreement through which IDED grants authorization to use the A Taste of Iowa logo.

"Person" means any natural person, corporation, partnership, association, or society.

"Processed" means any significant change in the form or identity of a raw product through, by way of example but not limited to, breaking, milling, shredding, condensing, cutting or tanning.

"Produced in Iowa" means:

1. For processed products, 50 percent or more of the product by weight or wholesale value was grown, raised or processed in Iowa.
2. For raw products, 100 percent of the product by weight, if sold by weight, by measure, if sold by measure, by number, if sold by count, was grown or raised in Iowa.

"Product" means any agricultural commodity, processed food, feed, fiber, or combinations thereof.

"Promotion" or *"promotional"* means any enticements, bonuses, discounts, premiums, giveaways, or similar encouragements that influence consumers' opinions regarding a product.

261—72.3(15) Guidelines. Before an applicant will be granted authorization to use the marketing logo, an applicant shall comply with the following guidelines to demonstrate to the department that the product or service is manufactured, processed or originates in Iowa:

72.3(1) *Eligible applicants.* Eligible applicants are those:

a. Companies whose products are manufactured, processed or originate within the state of Iowa; or

b. Service-oriented firms including, but not limited to, financial, wholesalers and distribution centers whose products qualify under paragraph *"a"* above.

72.3(2) *Criteria.* An applicant shall meet the following criteria to be eligible to use the marketing logo in conjunction with a designated product or service:

a. The company shall have a credible reputation as confirmed by the local chamber of commerce, the better business bureau, the regional coordinating council, or a local economic development group. The department may also contact the consumer protection, farm or other appropriate division of the Iowa attorney general's office or other state or federal agencies for information about the company.

b. The applicant's product or service shall be manufactured or processed or shall originate in Iowa.

c. Any applicant that has participated in the A Taste of Iowa program and whose license to use the logo was terminated by the department is ineligible to reapply for program participation for a period of five years from the date of termination.

d. The company shall furnish a signed and completed application on forms provided by the department. The application shall include, but not be limited to, the following:

(1) A description of the product(s) or service(s) for which the logo is sought.

(2) Information confirming that the applicant's product or service is manufactured or processed or originates in Iowa.

(3) A description of the distribution area for the product or service.

(4) Warranty or guarantee statements covering the product or service, if available.

(5) Copies of promotional literature or brochures, if available.

(6) A statement describing how the logo is to be used and on what product(s) or service(s).

(7) Any other information about the product or service as requested by the department.

261—72.4(15) Review and approval of applications.

72.4(1) Applications shall be reviewed by department staff to determine if the applicant has satisfactorily demonstrated that the product or service meets the eligibility requirements of these rules. Applicants shall, upon request and at no charge to the department, agree to provide product samples.

72.4(2) Following review of the application, department staff shall submit recommendations for approval or denial to the director. The director shall make the final decision to approve or deny an application.

261—72.5(15) Licensing agreement; use of logo.

72.5(1) *Licensing agreement.* An approved applicant shall enter into a licensing agreement with the department as a condition of using the A Taste of Iowa logo. The terms of the agreement shall include, but not be limited to, duration of the license and any renewal options; conditions of logo usage; identification of product(s) or service(s) authorized to use the logo; an agreement to hold harmless and indemnify the department, the state, its officers or employees; an agreement to notify the department of any litigation, product recall, or investigation by a state or federal agency regarding the product or service utilizing the logo; and an acknowledgment that the state is not providing a guarantee or warranty concerning the safety, fitness, merchantability, or use of the applicant's product or service.

72.5(2) *Use of logo.* Upon notification of approval and execution of a licensing agreement with the department, the applicant may use the logo on its product, package or promotional materials until notified by the department to discontinue its use. The department shall furnish the approved applicant with a copy of the "official reproduction sheet" of camera-ready logo copy from which the company can reproduce the logo. The licensee shall follow the graphic standards as provided to the licensee and incorporated in the license agreement.

261—72.6(15) Denial or suspension of use of logo.

72.6(1) *Denial.* The department may deny permission to use the label or trademark if the department reasonably believes that the applicant's planned use (or for licensees, if the planned or actual use) would adversely affect the use of the label or trademark as a marketing tool for Iowa products or its use would be inconsistent with the marketing objectives of the department.

72.6(2) *Suspension.* The department may suspend permission to use the label or trademark for the same reasons stated in subrule 72.6(1), prior to an evidentiary hearing which shall be held within a reasonable period of time following the suspension.

261—72.7(15) Request for hearing.

72.7(1) *Filing deadline.* An applicant who is denied permission to use the marketing logo or a licensee that has received notice of suspension of permission to use the marketing logo may request a hearing concerning the denial or suspension. A request for a hearing shall be filed with the department within 20 days of receipt of the denial or suspension notice. Requests for hearing shall be submitted in writing by personal service or by certified mail, return receipt requested, to: A Taste of Iowa, International Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

72.7(2) *Contents of request for hearing.* A request for a hearing shall contain the following information:

a. The date of filing of the request;

b. The name, address and telephone number of the party requesting the hearing and, if represented by counsel, the name, address and telephone number of the petitioner's attorney;

c. A clear statement of the facts, including the reasons the requesting party believes the denial or suspension of permission to use the marketing logo should be reconsidered; and

d. The signature of the requesting party.

72.7(3) *Informal settlement.* Individuals are encouraged to meet informally with department representatives to resolve issues related to a denied application or suspension of authorization to use the logo. If settlement is reached, it shall be in writing and is binding on the agency and the individual.

72.7(4) *Hearing procedures.* If an informal resolution is not reached, the department will follow the procedures outlined in the uniform rules on agency procedure governing contested cases located in the first volume of the Iowa Administrative Code.

261—72.8(15) Requests for information. Information about the logo marketing program may be obtained by contacting: A Taste of Iowa, International Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4743.

These rules are intended to implement Iowa Code section 15.108(2)*"b."*

[Filed before 7/1/52]
[Filed 11/4/77, Notice 9/21/77—published 11/30/77, effective 1/4/78]
[Filed emergency 12/19/86—published 1/14/87, effective 12/19/86]
[Filed emergency 10/21/88—published 11/16/88, effective 10/21/88]
[Filed 9/25/89, Notice 7/12/89—published 10/18/89, effective 11/22/89]
[Filed emergency 9/29/89—published 10/18/89, effective 9/29/89]
[Filed 6/26/95, Notice 5/10/95—published 7/19/95, effective 8/23/95]
[Filed emergency 3/19/99—published 4/7/99, effective 3/19/99]

CHAPTERS 73 and 74
Reserved

(5) Professionalism.

1. Understand legislation and public policy that affect all young children, with and without disabilities, and their families.

2. Understand legal aspects, historical, philosophical, and social foundations of early childhood education and special education.

3. Understand principles of administration, organization and operation of programs for children aged birth to 8 and their families, including staff and program development, supervision and evaluation of staff, and continuing improvement of programs and services.

4. Identify current trends and issues of the profession to inform and improve practices and advocate for quality programs for young children and their families.

5. Adhere to professional and ethical codes.

6. Engage in reflective inquiry and demonstration of professional self-knowledge.

(6) Prestudent teaching field experiences. Complete 100 clock hours of prestudent teaching field experience with three age levels in infant and toddler, preprimary and primary programs and in different settings, such as rural and urban, encompassing differing socioeconomic status, ability levels, cultural and linguistic diversity and program types and sponsorship.

(7) Student teaching. Complete a supervised student teaching experience of at least 12 weeks' total in at least two different settings in two of three age levels: infant and toddler, preprimary, primary and with children with and without disabilities.

282—14.21(272) Minimum content requirements for teaching endorsements.

14.21(1) *Agriculture.* 7-12. Completion of 24 semester hours in agriculture to include coursework in agronomy, animal science, agricultural mechanics, and agricultural economics.

14.21(2) *Art.* K-6 or 7-12. Completion of 24 semester hours in art to include coursework in art history, studio art, and two- and three-dimensional art.

14.21(3) *Business—general.* 7-12. Completion of 24 semester hours in business to include 6 semester hours in accounting, 6 semester hours in business law, and coursework in computer applications, and coursework in consumer studies.

14.21(4) *Business—office.* 7-12. Completion of 24 semester hours in business to include advanced coursework in typewriting, computer applications or word processing, and office management.

14.21(5) *Business—marketing/management.* 7-12. Completion of 24 semester hours in business to include a minimum of 6 semester hours each in marketing, management, and economics.

14.21(6) *Driver and safety education.* 7-12. Completion of 15 semester hours in driver and safety education to include coursework in accident prevention, vehicle safety, and behind-the-wheel driving.

14.21(7) *English/language arts.*

a. K-6. Completion of 24 semester hours in English and language arts to include coursework in oral communication, written communication, language development, reading, children's literature, creative drama or oral interpretation of literature, and American literature.

b. 7-12. Completion of 24 semester hours in English to include coursework in oral communication, written communication, language development, reading, American literature, English literature and adolescent literature.

14.21(8) *Foreign language.* K-6 and 7-12. Completion of 24 semester hours in each foreign language.

14.21(9) *Health.* K-6 and 7-12. Completion of 24 semester hours in health to include coursework in public or community health, consumer health, substance abuse, family life education, mental/emotional health, and human nutrition.

14.21(10) *Home economics—general.* 7-12. Completion of 24 semester hours in home economics to include coursework in family life development, clothing and textiles, housing, and foods and nutrition.

14.21(11) *Industrial technology.* 7-12. Completion of 24 semester hours in industrial technology to include coursework in manufacturing, construction, energy and power, graphic communications and transportation. The coursework is to include at least 6 semester hours in three different areas.

14.21(12) *Journalism.* 7-12. Completion of 15 semester hours in journalism to include coursework in writing, editing, production and visual communications.

14.21(13) *Mathematics.*

a. K-6. Completion of 24 semester hours in mathematics to include coursework in algebra, geometry, number theory, measurement, computer programming, and probability and statistics.

b. 7-12. Completion of 24 semester hours in mathematics to include coursework in algebra, geometry, calculus, computer programming, and probability and statistics.

14.21(14) *Music.*

a. K-6. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history, and applied music.

b. 7-12. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history (at least two courses), applied music, and conducting.

14.21(15) *Physical education.*

a. K-6. Completion of 24 semester hours in physical education to include coursework in human anatomy, human physiology, movement education, adapted physical education, physical education in the elementary school, human growth and development of children related to physical education, and first aid and emergency care.

b. 7-12. Completion of 24 semester hours in physical education to include coursework in human anatomy, kinesiology, human physiology, human growth and development related to maturational and motor learning, adapted physical education, curriculum and administration of physical education, assessment processes in physical education, and first aid and emergency care.

14.21(16) *Reading.*

a. K-6. Completion of 20 semester hours in reading to include at least 12 semester hours specifically in reading by course title which must include foundations in methods and materials for teaching reading in the elementary classroom, corrective reading, remedial reading, a supervised tutoring experience, and at least 8 hours of coursework from oral and written communication, language development, children's literature, and tests and measurement.

b. 7-12. Completion of 20 semester hours in reading to include at least 12 semester hours specifically in reading by course title which must include foundations in methods and materials of teaching reading in the secondary classroom, corrective reading, reading in content areas, remedial reading, a supervised tutoring experience, and at least 8 hours of coursework from oral and written communication, the structure of language, adolescent literature, and tests and measurement.

14.21(17) *Science.*

a. Science—basic. K-6. Completion of at least 24 semester hours in science to include 12 hours in physical sciences, 6 hours in biology, and 6 hours in earth/space sciences.

(1) Competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.

2. Understand the fundamental facts and concepts in major science disciplines.

3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.

4. Be able to use scientific understanding when dealing with personal and societal issues.

(2) Reserved.

b. Biological. 7-12. Completion of 24 semester hours in biological science or 30 semester hours in the broad area of science to include 15 semester hours in biological science.

c. Chemistry. 7-12. Completion of 24 semester hours in chemistry or 30 semester hours in the broad area of science to include 15 semester hours in chemistry.

d. Earth science. 7-12. Completion of 24 semester hours in earth science or 30 semester hours in the broad area of science to include 15 semester hours in earth science.

e. General science. 7-12. Rescinded IAB 4/7/99, effective 7/1/00.

f. Physical science. 7-12. Completion of 24 semester hours in physical sciences to include coursework in physics, chemistry, and earth science.

g. Physics. 7-12. Completion of 24 semester hours in physics or 30 semester hours in the broad area of science to include 15 semester hours in physics.

h. All science I. Grades 5-8. The holder of this endorsement must also hold the middle school endorsement listed under 14.20(15).

(1) Required coursework. Completion of at least 24 semester hours in science to include 6 hours in chemistry, 6 hours in physics or physical sciences, 6 hours in biology, and 6 hours in the earth/space sciences.

(2) Competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.
2. Understand the fundamental facts and concepts in major science disciplines.
3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.
4. Be able to use scientific understanding when dealing with personal and societal issues.

i. All science II. Grades 9-12.

(1) Required coursework.

1. Completion of one of the following endorsement areas listed under 14.21(17): biological 7-12 or chemistry 7-12 or earth science 7-12 or physics 7-12.
2. Completion of at least 12 hours in each of the other three endorsement areas.

(2) Competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.
2. Understand the fundamental facts and concepts in major science disciplines.
3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.
4. Be able to use scientific understanding when dealing with personal and societal issues.

14.21(18) *Social sciences.*

a. American government. 7-12. Completion of 24 semester hours in American government or 30 semester hours in the broad area of social sciences to include 15 semester hours in American government.

b. American history. 7-12. Completion of 24 semester hours in American history or 30 semester hours in the broad area of the social sciences to include 15 semester hours in American history.

c. Anthropology. 7-12. Completion of 24 semester hours in anthropology or 30 semester hours in the broad area of social sciences to include 15 semester hours in anthropology.

d. Economics. 7-12. Completion of 24 semester hours in economics or 30 semester hours in the broad area of the social sciences to include 15 semester hours in economics, or 30 semester hours in the broad area of business to include 15 semester hours in economics.

e. Geography. 7-12. Completion of 24 semester hours in geography or 30 semester hours in the broad area of the social sciences to include 15 semester hours in geography.

f. History. K-6. Completion of 24 semester hours in history to include at least 9 semester hours in American history and 9 semester hours in world history.

g. Psychology. 7-12. Completion of 24 semester hours in psychology or 30 semester hours in the broad area of social sciences to include 15 semester hours in psychology.

h. Social studies. K-6. Completion of 24 semester hours in social studies, to include coursework from at least three of these areas: history, sociology, economics, American government, psychology and geography.

i. Sociology. 7-12. Completion of 24 semester hours in sociology or 30 semester hours in the broad area of social sciences to include 15 semester hours in sociology.

j. World history. 7-12. Completion of 24 semester hours in world history or 30 semester hours in the broad area of social sciences to include 15 semester hours in world history.

14.21(19) *Speech communication/theatre.*

a. K-6. Completion of 20 semester hours in speech communication/theatre to include coursework in speech communication, creative drama or theatre, and oral interpretation.

b. 7-12. Completion of 24 semester hours in speech communication/theatre to include coursework in speech communication, oral interpretation, creative drama or theatre, argumentation and debate, and mass media communication.

This rule is intended to implement Iowa Code chapter 272.

282—14.22(272) Area and grade levels of administrative endorsements.

Endorsements	Grade Levels			
	Pk-6*	7-12**	Pk-12	AEA
1. Principal	X	X		
2. Superintendent			X	
3. Area Education Agency				X

*The holder of this endorsement may be assigned by local school board action to fulfill this assignment at the 7-8 grade level.

**The holder of this endorsement may be assigned by local school board action to fulfill this assignment at the 5-6 grade level.

282—14.23(272) Administrative endorsements.

14.23(1) *Elementary principal.*

a. Authorization. The holder of this endorsement is authorized to serve as a principal of programs serving children from birth through grade six.

b. Program requirements.

(1) Degree — master's.

(2) Content: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. This sequence is to be at least 27 semester hours to include the following:

1. Early childhood, elementary and early adolescent level administration.
2. Early childhood, elementary and early adolescent level supervision and evaluation.
3. Knowledge and skill related to early childhood, elementary, early adolescent level curriculum development.
4. Knowledge of current strategies and developmentally appropriate practices of early childhood and elementary education, including an observation practicum.
5. Knowledge of home-school-community relationships and interactions designed to promote parent education, family involvement, and interagency collaboration.
6. Knowledge of child growth and development from birth through early adolescence.
7. School law and legislative and public policy issues affecting children and families.
8. Historical, social, philosophical, and psychological foundations related to early childhood, elementary and early adolescence.
9. Knowledge of family support systems, factors which place families at risk, and child care issues.
10. Planned field experiences in early childhood and in elementary or early adolescent school administration.
11. Evaluator approval component.

c. Other.

(1) Have had five years of teaching experience, three years of which must have been at the early childhood through grade six level.

(2) Graduates from institutions in other states who are seeking initial Iowa licensure and the elementary principal's endorsement must meet the requirements for the educational license in addition to the experience requirements.

14.23(2) *Secondary principal.*

a. Authorization. The holder of this endorsement is authorized to serve as a principal in grades seven through twelve.

b. Program requirements.

(1) Degree — master's.

(2) Content: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. This sequence is to be at least 27 semester hours to include the following:

1. Secondary level administration and supervision.
2. Early adolescent level administration and supervision.
3. Secondary curriculum: Knowledge and skill related to secondary level curriculum development.
4. Knowledge of early adolescent curriculum development.
5. Knowledge of school—community relationships.
6. Early adolescent developmental studies or early adolescent psychology.
7. School law.
8. Social, philosophical, or psychological foundations.
9. Planned field experience in secondary school administration.
10. Evaluator approval component.

c. Other.

(1) Have had five years of teaching experience, three years of which must have been at the secondary level (7-12).

(2) Graduates from institutions in other states who are seeking initial Iowa licensure and the secondary principal's endorsement must meet the requirements for the educational license in addition to the experience requirements.

14.23(3) *Superintendent.*

a. Authorization. The holder of this endorsement is authorized to serve as a superintendent from the prekindergarten level through grade twelve.

NOTE: This authorization does not permit general teaching, school service, or administration at any level except that level or area for which the holder is eligible or holds the specific endorsement(s).

b. Program requirements.

(1) Degree—specialist—(or its equivalent: A master's degree plus at least 30 semester hours of planned graduate study in administration beyond the master's degree).

(2) Content: Completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements. This sequence is to be at least 45 semester hours to include the following:

1. General elementary level administration.
2. General early adolescent level administration.
3. General secondary level administration.
4. Elementary, early adolescent, and secondary school supervision.
5. Curriculum development.
6. School law.
7. School finance.
8. School plant/facility planning.
9. School personnel/negotiations.

10. Knowledge of school-community relationships/public relations.
11. Administrative theory/principles of educational administration.
12. Social, philosophical, or psychological foundations.
13. Planned field experience in school administration.
14. Evaluator approval component.

c. Other.

(1) Have had three years' experience as a building principal or other Pk-12 districtwide or area education agency administrative experience.

(2) Graduates from institutions in other states who are seeking initial Iowa licensure and the superintendent's endorsement must meet the requirements for the educational license in addition to the experience requirements.

14.23(4) *AEA administrator license.* The area education agency administrator's license shall be issued to an applicant who has met the requirements in two of the four following subsections:

Requirements:

a. Five years' experience in higher education administration at a two- or four-year college or university which is accredited by the North Central Association of Colleges and Secondary Schools accrediting agency or which has been certified by the North Central Association of Colleges and Secondary Schools accrediting agency as a candidate for accreditation by that agency or as a school giving satisfactory assurance that it has the potential for accreditation and is making progress which, if continued, will result in its achieving accreditation by that agency within a reasonable time; or an earned doctorate in higher education administration.

b. Five years' experience in special education, media services, or educational services administration; or an earned doctorate in special education, media services, or educational services or any subspecialty of these services.

c. Five years' experience in primary or secondary school education; or an earned doctorate in educational administration for the primary or secondary level; and five years' teaching experience at any educational level.

d. Five years' experience in business or other nonacademic career pursuit; or an earned doctorate in public administration or business administration.

e. Evaluator approval component.

A person shall not be issued a temporary or emergency license for more than one year; and an education agency shall not employ unlicensed administrators, or employ temporary or emergency licensed administrators for more than two consecutive years.

282—14.24(272) Two-year exchange license. A two-year nonrenewable exchange license may be issued to an individual under the following conditions:

1. Has completed a state-approved teacher education program in a college or university approved by the state board of education or the state board of educational examiners in the home state.
2. Holds a valid regular certificate or license in the state in which the preparation was completed.
3. Is not subject to any pending disciplinary proceedings in any state.

Each applicant for the exchange license shall comply with all requirements with regard to application processes and payments of licensure fees.

Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application, the transcripts and the license or certificate held in the state in which the basic preparation for licensure was completed.

Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for an initial regular license in Iowa.

[Filed 1/29/76, Notice 10/6/75—published 2/23/76, effective 3/29/76]
[Filed 7/20/79, Notice 2/21/79—published 8/8/79, effective 9/12/79]
[Filed 10/10/80, Notice 6/25/80—published 10/29/80, effective 12/5/80 to 9/30/81]
[Filed 3/7/86, Notice 11/6/85—published 3/26/86, effective 10/1/88]
[Filed 6/13/86, Notice 2/12/86—published 7/2/86, effective 10/1/88]
[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]
[Filed emergency 9/16/88—published 10/5/88, effective 10/1/88]
[Filed emergency 9/14/90—published 10/3/90, effective 9/14/90]◊
[Filed emergency 11/14/90—published 12/12/90, effective 11/14/90]
[Filed emergency 12/21/90—published 1/9/91, effective 12/21/90]
[Filed 1/29/91, Notice 10/3/90—published 2/20/91, effective 3/27/91]
[Filed 1/21/92, Notice 11/13/91—published 2/19/92, effective 3/25/92]
[Filed 7/31/92, Notice 2/19/92—published 8/19/92, effective 10/1/92]*
[Filed emergency 6/17/93 after Notice 3/31/93—published 7/7/93, effective 7/23/93]
[Filed 9/22/93, Notice 3/31/93—published 10/13/93, effective 1/1/94]
[Filed 1/13/94, Notice 9/15/93—published 2/2/94, effective 3/9/94]
[Filed 4/28/94, Notice 2/2/94—published 5/25/94, effective 7/1/94]
[Filed 1/12/96, Notice 11/8/95—published 1/31/96, effective 3/6/96]
[Filed 5/16/96, Notice 3/13/96—published 6/5/96, effective 7/10/96]
[Filed 12/13/96, Notice 1/6/96—published 1/1/97, effective 2/5/97]
[Filed 6/27/97, Notice 4/23/97—published 7/16/97, effective 8/31/97]
[Filed 5/15/98, Notice 2/11/98—published 6/3/98, effective 7/8/98]
[Filed 7/24/98, Notice 6/3/98—published 8/12/98, effective 9/16/98]
[Filed 11/13/98, Notice 9/9/98—published 12/2/98, effective 1/6/99]
[Filed 11/30/98, Notice 9/9/98—published 12/16/98, effective 7/1/99]
[Filed 3/19/99, Notice 1/27/99—published 4/7/99, effective 7/1/00]

◊Two ARCs
*Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held September 9, 1992; delay lifted by the Committee October 14, 1992, effective October 15, 1992.

CHAPTER 14
ISSUANCE OF PRACTITIONERS' LICENSES
(Effective August 31, 2001)

282—14.1(272) Applicants desiring Iowa licensure. Licenses are issued upon application filed on a form provided by the board of educational examiners.

282—14.2(272) Applicants from recognized Iowa institutions. An applicant for initial licensure who completes the teacher, administrator, or school service personnel preparation program from a recognized Iowa institution shall have the recommendation for the specific license and endorsement(s) or the specific endorsement(s) from the designated recommending official at the recognized education institution where the preparation was completed. A recognized Iowa institution is one which has its program of preparation approved by the state board of education according to standards established by said board, or an alternative program recognized by the state board of educational examiners.

282—14.3(272) Applicants from recognized non-Iowa institutions. An applicant for initial licensure who completes the teacher, administrator, or school service personnel preparation program from a recognized non-Iowa institution shall have the recommendation for the specific license and endorsement(s) or the specific endorsement(s) from the designated recommending official at the recognized institution where the preparation was completed, provided all requirements for Iowa licensure have been met.

Applicants who hold a valid license from another state and whose preparation was completed through a nontraditional program, through an accumulation of credits from several institutions, shall file all transcripts with the practitioner preparation and licensure bureau for a determination of eligibility for licensure.

A recognized non-Iowa institution is one which is accredited by the regional accrediting agency for the territory in which the institution is located.

282—14.4(272) Applicants from foreign institutions. An applicant for initial licensure whose preparation was completed in a foreign institution will be required to have all records translated into English and then file these records with the board of educational examiners for a determination of eligibility for licensure.

282—14.5(272) Issue date on original license. A license is valid only from and after the date of issuance.

282—14.6(272) Adding endorsements to licenses. After the issuance of a teaching, administrative, or school service personnel license, an individual may add other endorsements to that license upon proper application, provided current requirements for that endorsement have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

14.6(1) To add an endorsement, the applicant shall comply with one of the following options:

Option 1. Identify with a recognized Iowa teacher preparing institution, meet that institution's current requirements for the endorsement desired, and receive that institution's recommendation.

Option 2. Identify with a recognized Iowa teacher education institution and receive a statement that the applicant has completed the equivalent of the institution's approved program for the endorsement sought.

CHAPTER 19
COACHING AUTHORIZATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 65]
[Prior to 10/3/90, see Education Department[281] Ch 79]

282—19.1(272) Requirements. Applicants for the coaching authorization shall have completed the following requirements:

19.1(1) Successful completion of one semester credit hour or ten contact hours in a course relating to knowledge and understanding of the structure and function of the human body in relation to physical activity.

19.1(2) Successful completion of one semester credit hour or ten contact hours in a course relating to knowledge and understanding of human growth and development of children and youth in relation to physical activity.

19.1(3) Successful completion of two semester credit hours or twenty contact hours in a course relating to knowledge and understanding of the prevention and care of athletic injuries and medical and safety problems relating to physical activity.

19.1(4) Successful completion of one semester credit hour or ten contact hours relating to knowledge and understanding of the techniques and theory of coaching interscholastic athletics.

19.1(5) Beginning on or after July 1, 2000, each applicant for an initial coaching authorization shall have successfully completed one semester hour or 15 contact hours in a course relating to the theory of coaching which must include at least 5 contact hours relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches.

282—19.2(272) Validity. The coaching authorization shall be valid for five years, and it shall expire five years from the date of issuance. The fee for the issuance of the coaching authorization shall be $50.

282—19.3(272) Approval of courses. Each institution of higher education, private college or university, merged area school or area education agency wishing to offer the semester credit or contact hours for the coaching authorization must submit course descriptions for each offering to the board of educational examiners for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the board of educational examiners.

282—19.4(272) Application process. Any person interested in the coaching authorization shall submit records of credit to the board of educational examiners for an evaluation in terms of the required courses or contact hours.

Application materials are available from the board of educational examiners or from institutions or agencies offering approved courses or contact hours.

282—19.5(272) Renewal. The authorization may be renewed upon application, $50 renewal fee, and verification of successful completion of five planned renewal activities/courses related to athletic coaching approved in accordance with guidelines approved by the board of educational examiners. Beginning on or after July 1, 2000, each applicant for the renewal of a coaching authorization shall have completed one renewal activity/course relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches. A one-year extension of the holder's coaching authorization will be issued if all requirements for the renewal of the coaching authorization have not been met. This extension is not renewable. The cost of the one-year extension shall be $10.

282—19.6(272) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the coaching authorization.

These rules are intended to implement Iowa Code section 272.31.

[Filed 1/25/85, Notice 11/21/84—published 2/13/85, effective 3/20/85]
[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]
[Filed emergency 9/14/90—published 10/3/90, effective 9/14/90]◊
[Filed 1/29/91, Notice 10/3/90—published 2/20/91, effective 3/27/91]
[Filed emergency 6/17/93 after Notice 3/31/93—published 7/7/93, effective 7/23/93]
[Filed 3/19/99, Notice 12/16/98—published 4/7/99, effective 7/1/00]

◊Two ARCs

HUMAN SERVICES DEPARTMENT[441]

Rules transferred from Social Services Department[770] to Human Services Department[498], see 1983 Iowa Acts, Senate File 464, effective July 1, 1983.
Rules transferred from agency number [498] to [441] to conform with the reorganization numbering scheme in general, IAC Supp. 2/11/87.

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[Ch 3, 1973 IDR, renumbered as [770] Ch 77]
[Prior to 7/1/83, Social Services[770] Ch 3]
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441—3.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

441—3.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

441—3.3(17A) Public rule-making docket.

3.3(1) *Docket maintained.* The department shall maintain a current public rule-making docket.

3.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed by the department's bureau of policy analysis for internal discussion within the department. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the council on human services, mental health and developmental disabilities commission, or the HAWK-I board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the department of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

3.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)*"a,"* to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule's becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule.

b. A citation to all published notices relating to the proceeding.

c. Where written submissions on the proposed rule may be inspected.

d. The time during which written submissions may be made.

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made.

f. Whether a written request for the issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected.

g. The current status of the proposed rule and any department determinations with respect thereto.

h. Any known timetable for department decisions or other action in the proceeding.

i. The date of the rule's adoption.

j. The date of the rule's filing, indexing, and publication.

k. The date on which the rule will become effective.

l. Where the rule-making record may be inspected.

441—3.4(17A) Notice of proposed rule making.

3.4(1) *Contents.* At least 35 days before the adoption of a rule the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule.

b. The specific legal authority for the proposed rule.

c. Except to the extent impracticable, the text of the proposed rule.

d. Where, when, and how persons may present their views on the proposed rule.

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

3.4(2) *Copies of notices by mail.* Persons desiring to receive copies of future Notices of Intended Action by subscription shall complete Form 470-2250, Notice Subscription, which is available from the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, indicating the name and address to which the notices shall be sent. Persons may subscribe to all notices of the department, or only to notices pertaining to the service, income maintenance, or medical programs. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail a copy of the notice to subscribers who have completed Form 470-2250 and paid the subscription price. The subscription price includes the cost of labor and supplies for copying and mailing of the notices. At the end of each calendar year, subscribers will be sent Form 470-2250 to complete if they wish to continue on the mailing list.

3.4(3) *Notices electronically transmitted.* Persons desiring to receive Notices of Intended Action via electronic transmission shall either write the bureau of policy analysis at the address listed in subrule 3.4(2) or E-mail the department's rules coordinator at dhsrules@dhs.state.ia.us indicating the E-mail address to which the notices shall be sent, whether they wish to receive all notices of the department or only income maintenance, service, or medical rules, and the format in which they wish the notices mailed, e. g., Microsoft Word or Acrobat pdf files. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall E-mail a copy of the notice to the persons who have requested the service. This service shall be available without charge.

441—3.5(17A) Public participation.

3.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via electronic transmission, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, or to the department's rules coordinator at dhsrules@dhs.state.ia.us.

3.5(2) *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The department may waive technical compliance with these procedures.

Oral proceedings scheduled by the department regarding rules directly affecting indigent clients shall be held in each of the five regions defined in rule 441—1.4(17A) and in the Mason City, Davenport, and Ottumwa area offices.

In the case of rules not directly affecting indigent clients, the department shall determine for each rule for which oral proceedings are scheduled whether it will be necessary to hold presentations in all eight locations. Anyone may object to the department's decision prior to the date of the proceedings by writing the same addressee specified in the Notice of Intended Action for receiving written data, views, or arguments. The department shall review the adequacy of the number of locations in light of the comments received.

3.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, section 8, or subrule 3.5(2).

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. An employee of the department shall preside at the oral proceeding on the proposed rules and shall present a prepared statement on the substance of the rules. The presiding officer shall transcribe the proceeding or prepare a written summary of the presentations made.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at the proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the department decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Whenever possible, persons making oral presentations should submit their testimony in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. These submissions become the property of the department.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

3.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

The department may send notices of proposed rule making and a request for comments to any agency, organization, or association known to it to have a direct interest or expertise pertaining to the substance of the proposed rule.

3.5(5) *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the bureau of policy analysis at (515)281-8440 in advance to arrange access or other needed services.

441—3.6(17A) Regulatory analysis.

3.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10, subsection 7.

3.6(2) *Distribution list.* Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost or via electronic transmission, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The department may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The department may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses shall be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

3.6(3) *Time of distribution.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail or electronically transmit to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

3.6(4) *Qualified requestors for regulatory analysis—economic impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"a,"* after a proper request from:

a. The administrative rules coordinator.

b. The administrative rules review committee.

3.6(5) *Qualified requestors for regulatory analysis—business impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"b,"* after a proper request from:

a. The administrative rules review committee.

b. The administrative rules coordinator.

c. At least 25 or more persons who sign the request provided that each represents a different small business.

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

3.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10, subsection 4.

3.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the department. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 1.

3.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsections 4 and 5.

3.6(9) *Publication of a concise summary.* The department shall make available to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10, subsection 5.

3.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"a,"* unless a written request expressly waives one or more of the items listed therein.

3.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"b."*

441—3.7(17A,25B) Fiscal impact statement. A rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

441—3.8(17A) Time and manner of rule adoption.

3.8(1) *Time of adoption.* The department shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the department shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

3.8(2) *Consideration of public comment.* Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

3.8(3) *Reliance on department expertise.* Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

441—3.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

3.9(1) *Allowable variances.* The department shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

3.9(2) *Fair warning.* In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question the department shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests.

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

3.9(3) *Petition for rule making.* The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

3.9(4) *Concurrent rule-making proceedings.* Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

441—3.10(17A) Exemptions from public rule-making procedures.

3.10(1) *Omission of notice and comment.* To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.10(2) *Categories exempt.* The following narrowly tailored category of rules is exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by state or federal law, including federal statutes or regulations establishing conditions for federal funding of departmental programs under Titles IV, XIX, XX, or XXI to the Social Security Act, or under the federal Food Stamp Act, where the department is not exercising any options under federal law.

3.10(3) *Public proceedings on rules adopted without them.* The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 3.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a state agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 3.10(1). This petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of the petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 3.10(1) or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

441—3.11(17A) Concise statement of reasons.

3.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received.

3.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

3.11(3) *Time of issuance.* After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

441—3.12(17A) Contents, style, and form of rule.

3.12(1) *Contents.* Each rule adopted by the department shall contain the text of the rule and, in addition:

a. The date the department adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if the reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include the reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include the reasons; and

g. The effective date of the rule.

3.12(2) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department shall provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review either electronically or at the State Law Library.

At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

3.12(3) *Style and form.* In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

441—3.13(17A) Department rule-making record.

3.13(1) *Requirement.* The department shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

3.13(2) *Contents.* The department rule-making record shall contain:

a. Copies of or citations to all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of department submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of Form 470-0096, Rule Log, containing dates of actions and Iowa Administrative Bulletin references relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the department, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the department and considered by the council of human services, mental health and developmental disabilities commission, or HAWK-I board in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the department is authorized by law to keep them confidential; provided, however, that when any materials are deleted because they are authorized by law to be kept confidential, the department shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code subsection 17A.4(4), and any department response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any requests for an exception to policy for the rule; and

k. A copy of any executive order concerning the rule.

3.13(3) *Effect of record.* Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

3.13(4) *Maintenance of record.* The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

441—3.14(17A) Filing of rules. The department shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

441—3.15(17A) Effectiveness of rules prior to publication.

3.15(1) *Grounds.* The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.15(2) *Special notice.* When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 3.15(2).

441—3.16(17A) Review by department of rules.

3.16(1) *Request for review.* Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted a review of the specified rule within five years prior to the filing of the written request.

3.16(2) *Conduct of review.* In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the department's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any requests for exceptions to the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

[Filed emergency 4/30/76—published 5/17/76, effective 4/30/76]
[Filed 6/25/76, Notice 3/22/76—published 7/12/76, effective 8/16/76]
[Filed emergency 5/8/78—published 5/31/78, effective 5/12/78]
[Filed 9/12/78, Notice 7/26/78—published 10/4/78, effective 11/8/78]
[Filed 12/6/78, Notice 5/31/78—published 12/27/78, effective 1/31/79]
[Filed 8/29/80, Notice 6/11/80—published 9/17/80, effective 10/22/80]
[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]
[Filed 4/28/86, Notice 3/12/86—published 5/21/86, effective 7/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 7/24/87, Notices 5/6/87 and 5/20/87—published 8/12/87, effective 10/1/87]
[Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
[Filed 1/29/92, Notice 9/4/91—published 2/19/92, effective 3/25/92]
[Filed emergency 5/13/92—published 6/10/92, effective 5/14/92]
[Filed 7/17/92, Notice 6/10/92—published 8/5/92, effective 10/1/92]
[Filed 3/10/99, Notice 1/13/99—published 4/7/99, effective 7/1/99]

CHAPTER 4
PETITIONS FOR RULE MAKING

[Ch 4, 1974 IDR, renumbered as [770] Ch 78]
[Prior to 7/1/83, Social Services[770] Ch 4]
[Prior to 2/11/87, Human Services[498]]

441—4.1(17A) Petition for rule making. Any person or state agency may file a petition for rule making with the department at the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. A petition is deemed filed when it is received by that office. The department must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF HUMAN SERVICES

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULEMAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by subrule 4.4(1).

4.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.1(2) The department may deny a petition because it does not substantially conform to the required form.

441—4.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

441—4.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Rules Coordinator, Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

441—4.4(17A) Agency consideration.

4.4(1) *Forwarding of petition and meeting.* Within five working days after the filing of a petition, the department shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the department shall schedule a brief and informal meeting between the petitioner and a member of the staff of the department to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

4.4(2) *Action on petition.* Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department shall, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the department mails or delivers the required notification to petitioner.

4.4(3) *Denial of petition for nonconformance with form.* Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202, section 11.

[Filed 9/19/75, Notice 8/11/75—published 10/6/75, effective 11/10/75]
[Filed without Notice 5/8/78—published 5/31/78, effective 7/5/78]
[Filed without Notice 3/14/79—published 4/4/79, effective 5/9/79]
[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 3/3/87, Notice 12/31/86—published 3/25/87, effective 5/1/87]
[Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
[Filed 3/10/99, Notice 1/13/99—published 4/7/99, effective 7/1/99]

CHAPTER 5
DECLARATORY ORDERS

[Ch 5, 1973 IDR, renumbered as [770] Ch 79]
[Prior to 7/1/83, Social Services[770] Ch 5]
[Prior to 2/11/87, Human Services[498]]

441—5.1(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department at the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE DEPARTMENT OF HUMAN SERVICES

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested. For public assistance policy rulings, the request should state facts such as the amount of income and resources of a person who may be affected by the policy.
2. A citation and the relevant language of the specific statutes, rules, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers. A request which seeks to change rather than to declare or determine policy will be denied.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by the petitioner for a meeting provided for by rule 441—5.7(17A).
9. The petitioner's state identification number, if applicable.

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

441—5.2(17A) Notice of petition. Within five working days of receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 441—5.6(17A) to whom notice is required by any provision of law.

441—5.3(17A) Intervention.

5.3(1) *Nondiscretionary intervention.* Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition for declaratory order and before the 30-day time for department action under rule 441—5.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

5.3(2) *Discretionary intervention.* Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

5.3(3) *Filing and form of petition for intervention.* A petition for intervention shall be filed at the bureau of policy analysis. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE DEPARTMENT OF HUMAN SERVICES

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

441—5.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

441—5.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Rules Coordinator, Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

441—5.6(17A) Service and filing of petitions and other papers.

5.6(1) *Service.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served by mailing or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

5.6(2) *Filing.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. All documents are considered filed upon receipt.

441—5.7(17A) Consideration. Upon request by the petitioner, the department shall schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department, to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

441—5.8(17A) Action on petition.

5.8(1) *Time frames for action.* Within 30 days after receipt of a petition for a declaratory order, the director or the director's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13, subsection 5.

5.8(2) *Date of issuance of order.* The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means unless another date is specified in the order.

441—5.9(17A) Refusal to issue order.

5.9(1) *Reasons for refusal to issue order.* The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13, subsection 1, and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.
3. The department does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the department to determine whether a statute is unconstitutional on its face.

5.9(2) *Action on refusal.* A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

5.9(3) *Filing of new petition.* Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue a ruling.

441—5.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

441—5.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

441—5.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement 1998 Iowa Acts, chapter 1202, section 13.

[Filed 9/19/75, Notice 8/11/75—published 10/6/75, effective 11/10/75]
[Filed without Notice 5/8/78—published 5/31/78, effective 7/5/78]
[Filed without Notice 3/14/79—published 4/4/79, effective 5/9/79]
[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 3/3/87, Notice 12/31/86—published 3/25/87, effective 5/1/87]
[Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
[Filed 3/10/99, Notice 1/13/99—published 4/7/99, effective 7/1/99]

CHAPTER 6
Reserved

[Ch 6, 1973 IDR, renumbered as [770] Ch 80]

7.5(8) *Appeal rights under the family investment program limited benefit plan.* A participant only has the right to appeal the establishment of the limited benefit plan once at the time the department issues the timely and adequate notice that establishes the limited benefit plan. However, when the reason for the appeal is based on an incorrect grant computation, an error in determining the eligible group, or another worker error, a hearing shall be granted when the appeal otherwise meets the criteria for hearing.

This rule is intended to implement Iowa Code sections 17A.10 and 17A.22.

441—7.6(217) Informing persons of their rights.

7.6(1) *Written and oral notification.* The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person's status. Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

a. The right to request a hearing.

b. The procedure for requesting a hearing.

c. The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

d. Provisions, if any, for payment of legal fees by the department.

Written notification shall be given on the application form and pamphlets prepared by the agency for applicants and recipients. Explanation shall be included in the agency pamphlets explaining the various provisions of the program. Oral explanation shall also be given regarding the policy on appeals during the application process and at the time of any contemplated action by the agency when the need for an explanation is indicated. Persons not familiar with English shall be provided a translation into the language understood by them in the form of a written pamphlet or orally. In all cases when a person is illiterate or semiliterate, the person shall, in addition to receiving the written pamphlet on rights, be advised of each right to the satisfaction of the person's understanding.

7.6(2) *Representation.* All persons shall be advised that they may be represented at hearings by others, including legal counsel, relatives, friends, or any other spokesperson of choice, unless otherwise specified by statute or federal regulations. The agency shall advise the persons of any legal services which may be available and assist in securing the services if the persons desire.

441—7.7(217) Notice of intent to approve, deny, terminate, reduce, or suspend assistance or deny reinstatement of assistance.

7.7(1) *Notification.* Whenever the department proposes to terminate, reduce, or suspend food stamps, financial assistance, Medicaid, or services, it shall give timely and adequate notice of the pending action, except when a service is deleted from the state's comprehensive annual service plan in the social services block grant program at the onset of a new program year or as provided in subrule 7.7(2). Whenever the department proposes to approve or deny food stamps, financial assistance, Medicaid, or services, it shall give adequate notice of the action.

a. Timely means that the notice is mailed at least ten calendar days before the date the action would become effective. The timely notice period shall begin on the day after the notice is mailed.

b. Adequate means a written notice that includes:
(1) A statement of what action is being taken,
(2) The reasons for the intended action,
(3) The manual chapter number and subheading supporting the action,
(4) An explanation of the appellant's right to appeal, and
(5) The circumstances under which assistance is continued when an appeal is filed.

7.7(2) *Dispensing with timely notice.* Timely notice may be dispensed with, but adequate notice shall be sent no later than the date benefits would have been issued when:

a. There is factual information confirming the death of a recipient or of the family investment program payee when there is no relative available to serve as a new payee.

b. The recipient provides a clear written, signed statement that the recipient no longer wishes assistance, or gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that the recipient understands this must be the consequence of supplying the information.

c. The recipient has been admitted or committed to an institution which does not qualify for payment under an assistance program.

d. The recipient has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

e. The recipient's whereabouts are unknown and mail directed to the recipient has been returned by the post office indicating no known forwarding address. When the recipient's whereabouts become known during the payment period covered by the returned warrant, the warrant shall be made available to the recipient.

f. The county establishes that the recipient has been accepted for assistance in a new jurisdiction.

g. Cash assistance or food stamps are changed because a child is removed from the home as a result of a judicial determination or voluntarily placed in foster care.

h. A change in the level of medical care is prescribed by the recipient's physician.

i. A special allowance or service granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance or service shall terminate at the end of the specified period.

j. Rescinded, effective 2/1/84.

k. The agency terminates, reduces, or suspends benefits or makes changes based on the completed monthly report, which can be either Form 470-0455, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document, as described at 40.7(1)*"b."*

l. The agency terminates benefits for failure to return a completed monthly report form, as described in paragraph *"k."*

m. The agency approves or denies an application for assistance.

7.7(3) *Action due to probable fraud.* When the agency obtains facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, the facts have been verified through collateral sources, notice of the grant adjustment shall be timely when mailed at least five calendar days before the action would become effective. The notice shall be sent by certified mail, return receipt requested.

7.22(3) *Consolidating hearings.* Appeal hearings and administrative disqualification hearings may be consolidated if the issues arise out of the same or related circumstances, and the person has been provided with notice of the consolidation by the department of inspections and appeals. If the hearings are combined, the time frames for conducting a disqualification hearing shall apply.

If the hearings are combined for the purpose of setting the amount of the overpayment at the same time as determining whether or not an intentional program violation has occurred, the assistance unit shall lose its right to a subsequent hearing on the amount of the overpayment.

7.22(4) *Attendance at hearing.* The assistance unit member shall be allowed ten days from the scheduled hearing to present reasons indicating good cause for not attending the hearing. The director or the director's designee shall determine if good cause exists.

Unless good cause is determined, when the assistance unit member or the person's representative cannot be located or fails to appear at the scheduled hearing, the hearing shall be conducted without that person. In that instance, the administrative law judge shall consider the evidence and determine if the evidence is clear and convincing that an intentional program violation was committed.

If the assistance unit member who failed to appear at the hearing is found to have committed an intentional program violation, but the director or the director's designee later determines that this person or representative had good cause for not appearing, the previous hearing decision shall no longer be valid and a new hearing shall be conducted.

7.22(5) *Hearing decisions.* The administrative law judge shall base the determination of intentional program violation on clear and convincing evidence that demonstrates the person committed, and intended to commit, an intentional program violation.

a. The proposed and final hearing decisions shall be made in accordance with rule 7.16(217) unless otherwise specified. The department's appeals section shall notify the person and the county office of the final decision within 90 days of the date the person is notified in writing that the hearing has been scheduled.

EXCEPTION: The person or representative may request to postpone the hearing for up to 30 days, provided the request is made at least 10 calendar days before the scheduled hearing date. When the hearing is postponed, the 90-day time frame for notifying the person of the final decision shall be extended for as many days as the hearing is postponed.

No action to disqualify shall be taken until the final appeal decision is received finding that the person has committed an intentional program violation.

b. No further administrative appeal procedure shall exist after the final decision of an adverse disqualification hearing is issued. The determination of intentional program violation shall not be reversed by a subsequent hearing decision. However, the person may appeal the case to the Iowa district court.

When a determination of intentional program violation is reversed by a court decision, the department's appeals section shall notify the county office with specifics of the court's decision.

[Filed December 27, 1971; amended December 2, 1974]
[Filed 4/30/76, Notice 3/22/76—published 5/17/76, effective 7/1/76]
[Filed 9/29/76, Notice 8/23/76—published 10/20/76, effective 11/24/76]
[Filed 3/27/78, Notice 2/8/78—published 4/19/78, effective 5/24/78]
[Filed 5/8/78, Notice 10/19/77—published 5/31/78, effective 7/5/78]
[Filed emergency 3/30/79—published 4/18/79, effective 3/30/79]
[Filed 5/5/80, Notice 2/20/80—published 5/28/80, effective 7/2/80]
[Filed 10/23/80, Notice 9/3/80—published 11/12/80, effective 12/17/80]
[Filed 6/2/81, Notice 3/18/81—published 6/24/81, effective 8/1/81]
[Filed 7/1/82, Notices 10/28/81, 12/23/81—published 7/21/82, effective 8/25/82]
[Filed 7/1/82, Notice 5/12/82—published 7/21/82, effective 9/1/82]
[Filed 10/28/83, Notice 8/17/83—published 11/23/83, effective 1/1/84]
[Filed 11/18/83, Notice 10/12/83—published 12/7/83, effective 2/1/84]
[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
[Filed 5/4/84, Notice 2/29/84—published 5/23/84, effective 7/1/84]
[Filed 5/4/84, Notice 3/14/84—published 5/23/84, effective 7/1/84]
[Filed 7/26/85, Notice 6/5/85—published 8/14/85, effective 10/1/85]
[Filed emergency 6/26/86—published 7/16/86, effective 7/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 1/15/87, Notice 12/3/86—published 2/11/87, effective 4/1/87]
[Filed emergency 7/14/89 after Notice 5/31/89—published 8/9/89, effective 8/1/89]
[Filed 11/16/89, Notice 9/20/89—published 12/13/89, effective 2/1/90]
[Filed 1/16/90, Notice 11/15/89—published 2/7/90, effective 4/1/90]
[Filed emergency 10/10/91 after Notice 8/21/91—published 10/30/91, effective 11/1/91]
[Filed 1/16/92, Notice 9/18/91—published 2/5/92, effective 4/1/92]
[Filed 1/16/92, Notice 11/27/91—published 2/5/92, effective 4/1/92]
[Filed without Notice 8/12/93—published 9/1/93, effective 11/1/93]
[Filed emergency 11/12/93—published 12/8/93, effective 1/1/94]
[Filed 12/16/93, Notice 9/1/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notice 12/8/93—published 3/2/94, effective 5/1/94]
[Filed 10/12/94, Notice 8/17/94—published 11/9/94, effective 1/1/95]
[Filed without Notice 9/25/95—published 10/11/95, effective 12/1/95]
[Filed emergency 11/16/95—published 12/6/95, effective 12/1/95]
[Filed emergency 1/10/96 after Notice 10/11/95—published 1/31/96, effective 2/1/96]
[Filed 1/10/96, Notice 10/11/95—published 1/31/96, effective 4/1/96]
[Filed 8/15/96, Notice 5/8/96—published 9/11/96, effective 11/1/96]
[Filed 10/9/96, Notice 8/14/96—published 11/6/96, effective 1/1/97]
[Filed emergency 9/16/97—published 10/8/97, effective 10/1/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]◊
[Filed 12/10/97, Notice 10/8/97—published 12/31/97, effective 3/1/98]
[Filed 6/10/98, Notice 5/6/98—published 7/1/98, effective 8/5/98]
[Filed without Notice 6/10/98—published 7/1/98, effective 8/15/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 5/31/99]

◊Two ARCs

TITLE IV
FAMILY INVESTMENT PROGRAM

CHAPTER 40
APPLICATION FOR AID

[Prior to 7/1/83, Social Services[770] Ch 40]
[Prior to 2/11/87, Human Services[498]]

DIVISION I
FAMILY INVESTMENT PROGRAM—CONTROL GROUP

[Rescinded IAB 2/12/97, effective 3/1/97]

441—40.1 to **40.20** Reserved.

DIVISION II
FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

[Prior to 10/13/93, 441—40.1(239) to 40.9(239)]

441—40.21(239B) Definitions.

"Applicant" means a person for whom assistance is being requested, parent(s) living in the home with the child(ren), and the nonparental relative as defined in 441—subrule 41.22(3) who is requesting assistance for the child(ren).

"Assistance unit" includes any person whose income is considered when determining eligibility or the amount of assistance for aid to dependent children.

"Budgeting process" means the process by which income is computed to determine eligibility under the 185 percent eligibility test described in 441—41.27(239B), Initial eligibility, the initial family investment program grant, ongoing eligibility, and the ongoing family investment program grant.

1. For retrospective budgeting, the budget month is the second month preceding the payment month.

2. For prospective budgeting, the budget month and payment month are the same calendar month.

"Budget month" means the calendar month from which the local office uses income or circumstances of the eligible group to compute eligibility and the amount of assistance.

"Central office" shall mean the state administrative office of the department of human services.

"Change in income" means a permanent change in hours worked, rate of pay, or beginning or ending income.

"Change in work expenses" means a permanent change in the cost of dependent care or the beginning or ending of dependent care.

"Department" shall mean the Iowa department of human services.

"Income in kind" is any gain or benefit which is not in the form of money payable directly to the eligible group including nonmonetary or in-kind benefits, such as meals, clothing, and vendor payments. Vendor payments are money payments which are paid to a third party and not to the eligible group.

"Initial two months" means the first two consecutive months for which assistance is paid. This may include a month for which a partial payment is made.

Whenever *"medical institution"* is used in this title, it shall mean a facility which is organized to provide medical care, including nursing and convalescent care, in accordance with accepted standards as authorized by state law and as evidenced by the facility's license. A medical institution may be public or private. Medical institutions include the following:

1. Hospitals
2. Extended care facilities (skilled nursing)
3. Intermediate care facilities
4. Mental health institutions
5. Hospital schools

"Payment month" means the calendar month for which assistance is paid.

"Payment standard" means the total needs of a group as determined by adding need according to the schedule of basic needs, described in 441—subrule 41.28(2), to any allowable special needs, described in 441—subrule 41.28(3).

"Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) programs" means the department's training program as described in 441—Chapter 93, Division II.

"Prospective budgeting" means the determination of eligibility and the amount of assistance for a calendar month based on the best estimate of income and circumstances which will exist in that calendar month.

"Recipient" means a person for whom assistance is paid, parent(s) living in the home with the eligible child(ren) and nonparental relative as defined in 441—subrule 41.22(3) who is receiving assistance for the child(ren). Unless otherwise specified, a person is not a recipient for any month in which the assistance issued for that person is subject to recoupment because the person was ineligible.

"Report month" for retrospective budgeting means the calendar month following the budget month. "Report month" for prospective budgeting means the calendar month in which a change occurs.

"Retrospective budgeting" means the computation of the amount of assistance for a payment month based on actual income and circumstances which existed in the budget month.

"Standard of need" means the total needs of a group as determined by adding need according to the schedule of living costs, described in 441—subrule 41.28(2), to any allowable special needs, described in 441—subrule 41.28(3).

"Suspension" means a month in which an assistance payment is not made due to ineligibility for one month when eligibility is expected to exist the following month.

"Unborn child" shall include an unborn child during the entire term of the pregnancy.

"X-PERT" means an automated knowledge-based computer system that determines eligibility for FIP and other assistance programs.

This rule is intended to implement Iowa Code sections 239B.3, 239B.5, and 239B.6.

441—40.22(239B) Application. For cases selected for the X-PERT system, the application for the family investment program shall be initiated by submitting Form 470-3112, Application for Assistance, Part 1, or Form 470-3122 (Spanish). Applicants whose cases are selected for the X-PERT system but whose eligibility cannot be determined through the X-PERT system may be requested to complete Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish). Form 470-3112 or Form 470-3122 shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf.

For cases not selected for the X-PERT system, the application for the family investment program shall be submitted on Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish). When submitting Application for Assistance, Part 1, Form 470-3112 or Form 470-3122 (Spanish), the applicant shall also be required to complete Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish), no later than at the time of the required face-to-face interview. Form PA-2207-0 or Form PA-2230-0 (Spanish) shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. When both parents, or a parent and a stepparent, are in the home, both shall sign the application.

40.22(1) Each individual wishing to do so shall have the opportunity to apply for assistance without delay. When the parent is in the home with the child and is not prevented from acting as payee by reason of physical or mental impairment, this parent shall make the application.

40.22(2) An applicant may be assisted by other individuals in the application process; the client may be accompanied by such individuals in contact with the local office, and when so accompanied, may also be represented by them. When the applicant has a guardian, the guardian shall participate in the application process.

40.22(3) The applicant shall immediately be given an application form to complete. When the applicant requests that the forms be mailed, the local office shall send the necessary forms in the next outgoing mail.

40.22(4) A new application is not required when adding a new person to the eligible group or when a parent or a stepparent becomes a member of the household.

40.22(5) Reinstatement.

a. Assistance shall be reinstated without a new application when all necessary information is provided at least three working days before the effective date of cancellation and eligibility can be reestablished.

b. Assistance may be reinstated without a new application when all necessary information is provided after the third working day but before the effective date of cancellation and eligibility can be reestablished before the effective date of cancellation.

c. When eligibility factors are met, assistance shall be reinstated when a completed Public Assistance Eligibility Report, Form PA-2140-0, or a Review/Recertification Eligibility Document, Form 470-2881, is received by the county office within ten days of the date a cancellation notice is sent to the recipient because the form was incomplete or not returned.

d. Rescinded, effective October 1, 1985.

This rule is intended to implement Iowa Code sections 239B.3, 239B.5 and 239B.6.

441—40.23(239B) Date of application. The date of application is the date an identifiable Public Assistance Application, Form 470-0462 or Form 470-0466 (Spanish), Form 470-3112, Application for Assistance, Part 1, or Form 470-3122 (Spanish), is received in any local or area office or by an income maintenance worker in any satellite office or by a designated worker who is in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided. The disproportionate share hospital, federally qualified health center or other facility will forward the application to the department office which is responsible for the completion of the eligibility determination. An identifiable application is an application containing a legible name and address that has been signed.

A new application is not required when adding a person to an existing eligible group. This person is considered to be included in the application that established the existing eligible group. However, in these instances, the date of application to add a person is the date the change is reported. When it is reported that a person is anticipated to enter the home, the date of application to add the person shall be the date of the report.

In those instances where a person previously excluded from the eligible group as described at 441—subrule 41.27(11) is to be added to the eligible group, the date of application to add the person is the date the person indicated willingness to cooperate.

EXCEPTIONS: When adding a person who was previously excluded from the eligible group for failing to comply with 441—subrule 41.22(13), the date of application to add the person is the date the social security number or proof of application for a social security number is provided.

When adding a person who was previously excluded from the eligible group as described at 441—subrules 41.25(5) and 46.28(2) and rule 441—46.29(239B), the date of application to add the person is the day after the period of ineligibility has ended.

When adding a person who was previously excluded from the eligible group as described at 441—subrule 41.24(8), the date of application to add the person is the date the person signs a family investment agreement.

This rule is intended to implement Iowa Code section 239B.2.

441—40.24(239B) Procedure with application.

40.24(1) The decision with respect to eligibility shall be based primarily on information furnished by the applicant. The applicant shall report no later than at the time of the face-to-face interview any change as defined at 40.27(4)*"e"* which occurs after the application was signed. Any change which occurs after the face-to-face interview shall be reported by the applicant within five days from the date the change occurred.

The county office shall notify the applicant in writing of additional information or verification that is required to establish eligibility for assistance. Failure of the applicant to supply the information or verification, or refusal by the applicant to authorize the county office to secure the information or verification from other sources, shall serve as a basis for denial of assistance. Five working days shall be considered as a reasonable period for the applicant to supply the required information or verification. The county office shall extend the deadline when the applicant requests an extension because the applicant is making every effort to supply the information or verification but is unable to do so. "Supply" shall mean the requested information is received by the department by the specified due date. Any time taken beyond the required time frame shall be considered a delay on the part of the applicant.

a. When an individual is added to an existing eligible group, the five-day requirement for reporting changes shall be waived. These individuals and eligible groups shall be subject to the recipient's ten-day reporting requirement as defined in 40.27(4).

b. Reserved.

40.24(2) In processing an application, the county office or the designated worker as described in rule 441—40.23(239B) who is in a disproportionate share hospital, federally qualified health center, or other facility in which outstationing activities are provided shall conduct at least one face-to-face interview with the applicant prior to approval of the application for assistance. In addition, at the conclusion of the interview, applicants whose cases are selected for the X-PERT system shall be provided the Summary of Facts, Form 470-3114, for review. The applicant shall also sign and return to the county office the Summary Signature Page, Form 470-3113 or Form 470-3123 (Spanish), within the time frame described at 40.24(1). Form 470-3113 or Form 470-3123 (Spanish) shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. When both parents, or a parent and stepparent are in the home, both shall sign the form. The worker shall assist the applicant, when requested, in providing information needed to determine eligibility and the amount of assistance. The application process shall include a visit, or visits, to the home of the child and the person with whom the child will live during the time assistance is granted under the following circumstances:

a. When it is the judgment of the worker or the supervisor that a home visit is required to clarify or verify information pertaining to the eligibility requirements; or

b. When the applicant requests a home visit for the purpose of completing a pending application.

When adding an individual to an existing eligible group, the face-to-face interview requirement may be waived.

40.24(3) The applicant who is subject to monthly reporting as described in 40.27(1) shall become responsible for completing Form PA-2140-0, Public Assistance Eligibility Report, after the time of the face-to-face interview. This form shall be issued and returned according to the requirements in 40.27(4)*"b."* The application process shall continue as regards the initial two months of eligibility, but eligibility and the amount of payment for the third month and those following are dependent on the proper return of these forms. The county office shall explain to the applicant at the time of the face-to-face interview the applicant's responsibility to complete and return this form.

40.24(4) The decision with respect to eligibility shall be based on the applicant's eligibility or ineligibility on the date the county office enters all eligibility information into the department's computer system, except as described in 40.24(3). The applicant shall become a recipient on the date the county office enters all eligibility information into the department's computer system and the computer system determines the applicant is eligible for aid.

This rule is intended to implement Iowa Code sections 239B.4, 239B.5 and 239B.6.

441—40.25(239B) Time limit for decision. The applicant shall receive a notice approving assistance, or a written notice of denial as soon as possible, but not later than 30 days from the date of application. This time standard shall apply except in unusual circumstances, such as when the local office and the applicant have made every reasonable effort to secure necessary information which has not been supplied by the date the time limit expired; or because of emergency situations, such as fire, flood or other conditions beyond the administrative control of the local office. When eligibility is dependent upon the birth of a child the time limit may be extended while awaiting the birth of the child. When it becomes evident that due to an error on the part of the local office, eligibility will not be established within the 30-day limit, the application shall be approved pending a determination of eligibility.

This rule is intended to implement Iowa Code sections 239B.4, 239B.5 and 239B.6.

441—40.26(239B) Effective date of grant. New approvals shall be effective as of the date the applicant becomes eligible for assistance, but in no case shall the effective date be earlier than seven days following the date of application. When an individual is added to an existing eligible group, the individual shall be added effective as of the date the individual becomes eligible for assistance, but in no case shall the effective date be earlier than seven days following the date the change is reported. When it is reported that a person is anticipated to enter the home, the effective date of assistance shall be no earlier than the date of entry or seven days following the date of report, whichever is later.

When the change is timely reported as described at subrule 40.27(4), a payment adjustment shall be made when indicated. When the individual's presence is not timely reported as described at subrule 40.27(4), excess assistance issued is subject to recovery.

In those instances where a person previously excluded from the eligible group as described at 441—subrule 41.27(11) is to be added to the eligible group, the effective date of eligibility shall be seven days following the date the person indicated willingness to cooperate. However, in no instance shall the person be added until cooperation has actually occurred.

EXCEPTIONS: When adding a person who was previously excluded from the eligible group for failing to comply with 441—subrule 41.22(13), the effective date of eligibility shall be seven days following the date that the social security number or proof of application for a social security number is provided.

When adding a person who was previously excluded from the eligible group as described at 441—subrules 41.25(5) and 46.28(2) and rule 441—46.29(239B), the effective date of eligibility shall be seven days following the date that the period of ineligibility ended.

When adding a person who was previously excluded from the eligible group as described at 441—subrule 41.24(8), the effective date of eligibility shall be seven days following the date the person signs a family investment agreement. In no case shall the effective date be within the six-month ineligibility period of a subsequent limited benefit plan as described at 441—paragraph 41.24(8)*"a."*

This rule is intended to implement Iowa Code section 239B.3.

441—40.27(239B) Continuing eligibility.

40.27(1) Eligibility factors shall be reviewed at least every six months for the family investment program. A semiannual review shall be conducted using information contained in and verification supplied with Form PA-2140-0, Public Assistance Eligibility Report. A face-to-face interview shall be conducted at least annually at the time of a review using information contained in and verification supplied with Form 470-2881, Review/ Recertification Eligibility Document. When the client has completed Form PA-2207-0, Public Assistance Application, or Form PA-2230-0 (Spanish), for another purpose required by the department, this form may be used as the review document for the semiannual or annual review.

a. Any assistance unit with one or more of the following characteristics shall report monthly:

(1) The assistance unit contains any member with earned income, including earnings in kind, unless the income is exempt under 441—paragraph 41.27(7)*"y"* or the only earned income is from exempt work study, annualized self-employment, or Job Corps unless the participant is aged 20 or older.

(2) The assistance unit contains any member with a recent work history. A recent work history means the person received earned income during either one of the two calendar months immediately preceding the budget month, unless the income was exempt under 441—paragraph 41.27(7)*"y"* or the only earned income was from exempt work study, annualized self-employment, or Job Corps unless the participant is aged 20 or older.

(3) The assistance unit contains any member receiving nonexempt unearned income, the source or amount of which is expected to change more often than once annually, unless the income is from job insurance benefits or interest; or unless the assistance unit's adult members are 60 years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act; or unless all adults, who would otherwise be members of the assistance unit, are receiving Supplemental Security Income including state supplementary assistance.

(4) Rescinded IAB 10/13/93, effective 10/1/93.

(5) The assistance unit contains any member residing out of state on a temporary basis.

b. The assistance unit subject to monthly reporting shall complete a Public Assistance Eligibility Report, Form PA-2140-0, for each budget month, unless the assistance unit is required to complete Form 470-2881, Review/Recertification Eligibility Document for that month. The Public Assistance Eligibility Report shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf. When both parents or a parent and a stepparent are in the home, both shall sign the form.

40.27(2) A redetermination of specific eligibility factors shall be made when:

a. The recipient reports a change in circumstances, or

b. A change in the recipient's circumstances comes to the attention of a staff member.

40.27(3) Information for semiannual reviews shall be submitted on Form PA-2140-0, Public Assistance Eligibility Report. Information for the annual face-to-face determination interview shall be submitted on Form 470-2881, Review/Recertification Eligibility Document. When the client has completed Form PA-2207-0, Public Assistance Application, for another purpose, this form may be used as the review document for the semiannual or annual review. The review form shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf. When both parents, or a parent and a stepparent, are in the home, both shall sign the Public Assistance Eligibility Report, the Review/Recertification Eligibility Document, or the Public Assistance Application.

40.27(4) Responsibilities of recipients (including individuals in suspension status). For the purposes of this subrule, recipients shall include persons who received assistance subject to recoupment because the persons were ineligible.

a. The recipient shall cooperate by giving complete and accurate information needed to establish eligibility and the amount of the family investment program grant.

b. The recipient shall complete Form PA-2140-0, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document, when requested by the county office in accordance with these rules. Either form will be supplied as needed to the recipient by the department. The department shall pay the cost of postage to return the form. When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the fifth calendar day of the report month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the seventh day after the date it is mailed by the department. The county office shall supply the recipient with a Form PA-2140-0, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document, on request. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the last day of the budget month and accompanied by verification as required in 441—paragraph 41.27(1)*"i,"* and 41.27(2)*"q."*

c. The recipient shall supply, insofar as the recipient is able, additional information needed to establish eligibility and the amount of the family investment program grant within five working days from the date a written request is mailed by the county office to the recipient's current mailing address or given to the recipient. The county office shall extend the deadline when the recipient requests an extension because the recipient is making every effort to supply the information or verification but is unable to do so. "Supply" shall mean the requested information is received by the department by the specified due date. The recipient shall give written permission for release of information when the recipient is unable to furnish information needed to establish eligibility and the amount of the family investment program grant. Failure to supply the information or refusal to authorize the county office to secure the information from other sources shall serve as a basis for cancellation of assistance.

d. The recipient or applicant shall cooperate with the department when the recipient's or applicant's case is selected by quality control for verification of eligibility. The recipient or applicant shall also cooperate with the front end investigations conducted by the department of inspections and appeals to determine whether information supplied to the department by the client is complete and correct regarding pertinent public assistance information unless the investigation revolves solely around the circumstances of a person whose income and resources do not affect family investment program eligibility. (See department of inspections and appeals rules 481—Chapter 72.) Failure to cooperate shall serve as a basis for cancellation or denial of the family's assistance. Once denied or canceled for failure to cooperate, the family may reapply but shall not be considered for approval until cooperation occurs.

e. The recipient, or an individual being added to the existing eligible group, shall timely report any change in the following circumstances:

(1) Income from all sources, including any change in the care expenses and any change in full-time or part-time employment status as defined in 441—paragraph 41.27(2)*"b."*

(2) Resources.

(3) Members of the household.

(4) School attendance.

(5) Becoming incapacitated or recovery from incapacity.

(6) Change of mailing or living address.

(7) Payment of child support.

(8) Rescinded IAB 2/5/92, effective 4/1/92.

(9) Receipt of a grant that exceeds the amount on the most recent notice from the department by $10 or more or receipt of a duplicate grant.

(10) Receipt of a social security number.

(11) Payment for child support, alimony, or dependents as defined in 441—paragraph 41.27(8)*"b"* and 441—subrule 41.27(10).

f. A report shall be considered timely when made within ten days from:

(1) The receipt of resources, income, or increased or decreased income.

(2) The date care expenses increase or decrease or the date full-time or part-time employment status, as defined in 441—paragraph 41.27(2)*"b,"* changes.

(3) The date the address changes.

(4) The date the child is officially dropped from the school rolls.

(5) The date a person enters or leaves the household.

(6) The date medical or psychological evidence indicates a person becomes incapacitated or recovers from incapacity.

(7) The date the client increases or decreases child support payments.

(8) Rescinded IAB 2/5/92, effective 4/1/92.

(9) The date the recipient receives a grant that exceeds the amount on the most recent notice from the department by $10 or more or a duplicate grant.

(10) The receipt of a social security number.

(11) The date a person described in 441—paragraph 41.27(8)*"b"* or *"c"* or a sponsor increases or decreases payments for child support, alimony or dependents.

g. When a change is not timely reported, any excess assistance paid shall be subject to recovery.

40.27(5) After assistance has been approved, eligibility for continuing assistance and the amount of the grant shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month and any change affecting the amount of assistance shall be effective for the corresponding payment month except:

a. When the recipient reports a new person to be added to the eligible group, and that person meets eligibility requirements, a payment adjustment shall be made for the month of report, subject to the effective date of grant limitations prescribed in 441—40.26(239B).

b. When it is timely reported income ended during one of the initial two months of eligibility and a grant adjustment could not be made effective the first of the following month in accordance with 441—subparagraph 41.27(9)*"b"*(1), a payment adjustment shall be made.

c. When verification of an income deduction, diversions, or deposit into an individual development account is provided before the end of the report month or the extended filing date described at 40.22(5)*"c,"* whichever is later, but too late for a grant adjustment to be made effective the first of the following month, a payment adjustment shall be made.

d. When cancellation of assistance is later in those cases where issuance of a timely notice, as required by 441—7.6(217), requires that the action be delayed until the first day of the second calendar month. Any overpayment received in the first calendar month shall be recouped.

e. Any change not reported prospectively in the budget month and reported on the monthly report form shall be effective for the corresponding payment month. When the change creates ineligibility for more than one month, the payment made in the report month shall be recouped.

f. When the recipient timely reports, as defined in 40.24(1) or 40.27(4), a change in income or circumstances during the first initial month of eligibility, prospective eligibility and grant amount for the second initial month shall be determined based on the change. A payment adjustment shall be made when indicated. Recoupment shall be made for any overpayment regardless of when the change is reported.

g. When an individual included in the eligible group becomes ineligible, that individual's needs shall be removed prospectively effective the first of the next month. When the action must be delayed due to administrative requirements a payment adjustment or recoupment shall be made when appropriate.

h. When specifically indicated otherwise in these rules, such as in 441—subrule 41.25(5) and 441—subparagraph 41.27(9)*"c"*(2).

i. When a sanction under 441— subrule 41.25(8) is implemented or removed, the change shall be effective the first of the next calendar month after notification as described in that subrule has been received.

j. When a sanction under 441—paragraph 41.22(6)*"f"* is implemented, the change shall be effective the first of the next calendar month after the change has occurred when income maintenance determines noncooperation or after income maintenance receives notification from the child support recovery unit (CSRU) when CSRU determines noncooperation. When the sanction is removed, the change shall be effective the first of the next calendar month after the recipient has expressed willingness to cooperate as described in 441—paragraph 41.22(6)*"f."* However, action to remove the sanction shall be delayed until cooperation has actually occurred or until notification has been received from CSRU that the client has cooperated.

This rule is intended to implement Iowa Code sections 239B.2, 239B.3, 239B.5, 239B.6 and 239B.18.

441—40.28(239B) Referral for investigation. The local office may refer questionable cases to the department of inspections and appeals for further investigation. Referrals shall be made using Form 427-0328, Referral For Front End Investigation.

This rule is intended to implement Iowa Code section 239B.5.

441—40.29(239B) Conversion to the X-PERT system. For conversion to the X-PERT system at a time other than review, the recipient may be required to provide additional information. To obtain this information, a recipient may be required to appear for a face-to-face interview. Failure to appear for this interview when so requested, or failure to provide requested information, shall result in cancellation.

These rules are intended to implement Iowa Code chapter 239B.

[Filed June 23, 1955; amended August 30, 1972, June 3, 1975, June 27, 1975]
[Filed 9/29/76, Notice 8/23/76—published 10/20/76, effective 11/24/76]
[Filed 8/18/77, Notice 6/15/77—published 9/7/77, effective 10/12/77]
[Filed 8/9/78, Notice 6/28/78—published 9/6/78, effective 11/1/78]
[Filed 1/4/79, Notice 11/29/78—published 1/24/79, effective 3/1/79]
[Filed emergency after Notice 9/6/79, Notice 7/11/79—published 10/3/79, effective 10/1/79]
[Filed 10/24/79, Notice 8/22/79—published 11/14/79, effective 1/1/80]
[Filed emergency 6/30/80—published 7/23/80, effective 7/1/80]
[Filed 12/19/80, Notice 10/29/80—published 1/7/81, effective 2/11/81]
[Filed without Notice 3/24/81—published 4/15/81, effective 6/1/81]
[Filed emergency 6/30/81—published 7/22/81, effective 7/1/81]
[Filed 6/30/81, Notice 4/29/81—published 7/22/81, effective 9/1/81]
[Filed emergency 9/25/81—published 10/14/81, effective 10/1/81]
[Filed emergency 10/23/81—published 11/11/81, effective 11/1/81]
[Filed 6/15/82, Notice 3/17/82—published 7/7/82, effective 9/1/82]
[Filed emergency 7/1/82—published 7/21/82, effective 7/1/82]
[Filed 7/1/82, Notice 4/28/82—published 7/21/82, effective 9/1/82]
[Filed 9/1/83, Notice 6/22/83—published 9/28/83, effective 11/2/83]
[Filed emergency 12/16/83—published 1/4/84, effective 1/1/84]
[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
[Filed 5/4/84, Notice 2/29/84—published 5/23/84, effective 7/1/84]
[Filed emergency 9/28/84—published 10/24/84, effective 10/1/84]
[Filed without Notice 9/28/84—published 10/24/84, effective 12/1/84]
[Filed 9/28/84, Notice 8/15/84—published 10/24/84, effective 12/1/84]
[Filed 12/11/84, Notice 10/10/84—published 1/2/85, effective 3/1/85]
[Filed emergency 1/21/85—published 2/13/85, effective 2/1/85]
[Filed 3/22/85, Notice 2/13/85—published 4/10/85, effective 6/1/85]
[Filed 4/29/85, Notice 10/24/84—published 5/22/85, effective 7/1/85]
[Filed 7/26/85, Notice 6/5/85—published 8/14/85, effective 10/1/85]
[Filed 11/15/85, Notice 10/9/85—published 12/4/85, effective 2/1/86]
[Filed emergency 5/28/86 after Notice 4/9/86—published 6/18/86, effective 6/1/86]
[Filed emergency 7/25/86 after Notice 6/4/86—published 8/13/86, effective 8/1/86]
[Filed 9/3/86, Notice 7/2/86—published 9/24/86, effective 11/1/86]
[Filed 10/17/86, Notice 8/27/86—published 11/5/86, effective 1/1/87]
[Filed 11/14/86, Notice 10/8/86—published 12/3/86, effective 2/1/87]

[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 9/24/87, Notice 8/12/87—published 10/21/87, effective 12/1/87]
[Filed 2/17/88, Notice 12/30/87—published 3/9/88, effective 6/1/88]
[Filed 4/13/89, Notice 3/8/89—published 5/3/89, effective 7/1/89]
[Filed emergency 6/29/89 after Notice 5/3/89—published 7/26/89, effective 7/1/89]
[Filed 12/15/89, Notice 7/26/89—published 1/10/90, effective 3/1/90]
[Filed 4/13/90, Notice 3/7/90—published 5/2/90, effective 7/1/90]
[Filed 7/10/91, Notice 5/29/91—published 8/7/91, effective 10/1/91]
[Filed without Notice 9/18/91—published 10/16/91, effective 11/21/91]
[Filed emergency 10/10/91—published 10/30/91, effective 11/21/91]
[Filed 1/16/92, Notice 9/18/91—published 2/5/92, effective 4/1/92]
[Filed 1/29/92, Notice 10/16/91—published 2/19/92, effective 3/25/92]
[Filed emergency 6/11/92 after Notice 4/15/92—published 7/8/92, effective 7/1/92]
[Filed 7/17/92, Notice 6/10/92—published 8/5/92, effective 10/1/92]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed 12/16/93, Notice 10/13/93—published 1/5/94, effective 3/1/94]
[Filed 2/16/95, Notice 11/23/94—published 3/15/95, effective 5/1/95]
[Filed 8/15/96, Notice 5/8/96—published 9/11/96, effective 11/1/96]
[Filed emergency 1/15/97—published 2/12/97, effective 3/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 3/1/98]
[Filed emergency 1/14/98 after Notice 11/19/97—published 2/11/98, effective 2/1/98]
[Filed 6/10/98, Notice 5/6/98—published 7/1/98, effective 9/1/98]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 5/31/99]

CHAPTER 41
GRANTING ASSISTANCE

[Prior to 7/1/83, Social Services[770] Ch 41]
[Prior to 2/11/87, Human Services[498]]

DIVISION I
FAMILY INVESTMENT PROGRAM—CONTROL GROUP
[Rescinded IAB 2/12/97, effective 3/1/97]

441—41.1 to **41.20** Reserved.

DIVISION II
FAMILY INVESTMENT PROGRAM—TREATMENT GROUP
[Prior to 10/13/93, Human Services(441—41.1 to 41.9)]

441—41.21(239B) Eligibility factors specific to child.

41.21(1) *Age.* The family investment program shall be available to a needy child under the age of 18 years without regard to school attendance.

A child is eligible for the entire month in which the child's eighteenth birthday occurs, unless the birthday falls on the first day of the month. The family investment program shall also be available to a needy child of 18 years who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, as defined in paragraph 41.24(2)*"e,"* and who is reasonably expected to complete the program before reaching the age of 19.

41.21(2) Rescinded, effective June 1, 1988.

41.21(3) *Residing with relative.* The child shall be living in the home of one of the relatives specified in subrule 41.22(3). When an unwed mother intends to place her child for adoption shortly after birth, the child shall be considered as living with the mother until the time custody is actually relinquished.

a. Living with relatives implies primarily the existence of a relationship involving an accepted responsibility on the part of the relative for the child's welfare, including the sharing of a common household.

b. Home is the family setting maintained or in the process of being established as evidenced by the assumption and continuation of responsibility for the child by the relative.

41.21(4) Rescinded, effective July 1, 1980.

41.21(5) *Deprivation of parental care and support.*

a. A child shall be considered as deprived of parental support or care when the parent is out of the home in which the child lives under the following conditions. When these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously; except that a parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States is not considered absent from the home. "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(1) The nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(2) The known or indefinite duration of the absence precludes relying on the parent to plan for the present support or care of the child.

b. The family investment program is available to a child of unmarried parents the same as to a child of married parents when all eligibility factors are met.

c. A parent is considered incapacitated when a clearly identifiable physical or mental defect has a demonstrable effect upon earning capacity or the performance of the homemaking duties required to maintain a home for the child. The incapacity shall be expected to last for a period of at least 30 days from the date of application.

(1) The determination of incapacity shall be supported by medical or psychological evidence. The evidence may be submitted either by letter from the physician or on Form PA-2126-5, Report on Incapacity.

(2) When an examination is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment on Form PA-5113-0, Authorization for Examination and Claim for Payment.

(3) A finding of eligibility for social security benefits or supplemental security income benefits based on disability or blindness is acceptable proof of incapacity for family investment program purposes.

(4) Rescinded, IAB 6/1/88, effective 8/1/88.

(5) A parent who is considered incapacitated shall be referred to the department of education, division of vocational rehabilitation services, for evaluation and services. Acceptance of these services is optional.

d. When a child is deprived of support or care of a natural parent, the presence of an able-bodied stepparent in the home shall not disqualify a child for assistance, provided that other eligibility factors are met. A stepparent is a person who is the legal spouse of the child's natural or adoptive parent by ceremonial or common law marriage.

This rule is intended to implement Iowa Code sections 239B.1, 239B.2 and 239B.5.

441—41.22(239B) Eligibility factors specific to payee.

41.22(1) Reserved.

41.22(2) Rescinded, effective June 1, 1988.

41.22(3) *Specified relationship.*

a. A child may be considered as meeting the requirement of living with a specified relative if the child's home is with one of the following or with a spouse of the relative even though the marriage is terminated by death or divorce:

Father—adoptive father.

Mother—adoptive mother.

Grandfather—grandfather-in-law, meaning the subsequent husband of the child's natural grandmother, i.e., stepgrandfather—adoptive grandfather.

Grandmother—grandmother-in-law, meaning the subsequent wife of the child's natural grandfather, i.e., stepgrandmother—adoptive grandmother.

Great-grandfather—great-great-grandfather.

Great-grandmother—great-great-grandmother.

Stepfather, but not his parents.

Stepmother, but not her parents.

Brother—brother-of-half-blood—stepbrother—brother-in-law—adoptive brother.

Sister—sister-of-half-blood—stepsister—sister-in-law—adoptive sister.

Uncle—aunt, of whole or half blood.

Uncle-in-law—aunt-in-law.

Great uncle—great-great-uncle.

Great aunt—great-great-aunt.

First cousins—nephews—nieces.

Second cousins, meaning the son or daughter of one's parent's first cousin.

b. A relative of the putative father can qualify as a specified relative if the putative father has acknowledged paternity by the type of written evidence on which a prudent person would rely.

(2) Physical or emotional harm shall include situations of documented abuse or incest.

(3) when the good cause determination is based in whole or in part upon the anticipation of emotional harm to the minor parent or child, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm.
2. The emotional health history of the individual subject to emotional harm.
3. Intensity and probable duration of the emotional impairment.

c. The minor parent is in a foster care independent living arrangement.

d. The minor parent is participating in the job corps solo parent program.

e. The parents or legal guardian refuses to allow the minor parent and child to return home and the minor parent is living with a specified relative, aged 21 or over, on the day of interview, and the caretaker is the applicant or payee.

f. The minor parent and child live in a maternity home or other licensed adult-supervised supportive living arrangement as defined by the department of human services.

g. Other circumstances exist which indicate that living with the parents or legal guardian will defeat the goals of self-sufficiency and responsible parenting. Situations which appear to meet this good cause reason must be referred to the administrator of the division of economic assistance, or the administrator's designee, for determination of good cause.

41.22(17) *Claiming good cause for not living in the home of a parent or legal guardian.* Each applicant or recipient who is not living with a parent or legal guardian shall have the opportunity to claim good cause for not living with a parent or legal guardian.

41.22(18) *Determination of good cause for not living in the home of a parent or legal guardian.* The county office shall determine whether good cause exists for each applicant or recipient who claims good cause.

a. The applicant or recipient shall be notified by the county office of its determination that good cause does or does not exist. The determination shall:

(1) Be in writing.

(2) Contain the county office's findings and basis for determination.

(3) Be entered in the family investment program case record.

b. When the county office determines that good cause does not exist:

(1) The applicant or recipient shall be so notified.

(2) The application shall be denied or family investment program assistance canceled.

(3) A referral to services shall be made if the minor parent is not living with a parent or legal guardian and good cause does not exist.

c. The county office shall:

(1) Periodically, but not less frequently than every six months, review those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change.

(2) When it determines that circumstances have changed so that good cause no longer exists, rescind its findings and proceed to enforce the requirements.

41.22(19) *Proof of good cause for not living in the home of a parent or legal guardian.* The applicant or recipient who claims good cause shall provide corroborative evidence to prove the good cause claim within the time frames described at 441—subrule 40.24(1) and paragraph 40.27(4) *"c."*

a. A good cause claim may be corroborated by one or more of the following types of evidence:

(1) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the parent or legal guardian might inflict physical or emotional harm on the minor parent or child.

(2) Medical records that indicate the emotional health history and present emotional health status of the minor parent or child; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the minor parent or child.

(3) Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances which provide the basis for the good cause claim. Written statements from the client's friends or relatives are not sufficient alone to grant good cause based on physical or emotional harm, but may be used to support other evidence.

(4) Notarized statements from the parents or legal guardian or other reliable evidence to verify that the parents or legal guardian refuse to allow the minor parent and child to return home.

(5) Court, criminal, child protective services, social services or other records which verify that the parents or legal guardian of the minor parent is deceased, missing or living in another state, or that the minor parent is in a foster care independent living arrangement, the job corps solo parent program, maternity home or other licensed adult-supervised supportive living arrangement.

b. When after examining the corroborative evidence submitted by the applicant or recipient, the county office wishes to request additional corroborative evidence which is needed to permit a good cause determination, the county office shall:

(1) Promptly notify the applicant or recipient that additional corroborative evidence is needed.

(2) Specify the type of document which is needed.

c. When the applicant or recipient requests assistance in securing evidence, the county office shall:

(1) Advise the applicant or recipient how to obtain the necessary documents.

(2) Make a reasonable effort to obtain any specific documents which the applicant or recipient is not reasonably able to obtain without assistance.

This rule is intended to implement Iowa Code chapter 239B, Iowa Code section 249A.4, and 1997 Iowa Acts, House File 715, section 3, subsection 5.

441—41.23(239B) Home, residence, citizenship, and alienage.

41.23(1) *Iowa residence.*

a. A resident of Iowa is one:

(1) Who is living in Iowa voluntarily with the intention of making that person's home there and not for a temporary purpose. A child is a resident of Iowa when living there on other than a temporary basis. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(2) Who, at the time of application, is living in Iowa, is not receiving assistance from another state, and entered Iowa with a job commitment or seeking employment in Iowa, whether or not currently employed. Under this definition the child is a resident of the state in which the caretaker is a resident.

b. Residence is retained until abandoned. Temporary absence from Iowa, with subsequent returns to Iowa, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

41.23(2) *Suitability of home.* The home shall be deemed suitable until the court has ruled it unsuitable and, as a result of such action, the child has been removed from the home.

41.23(3) *Temporary absence from the home.* The needs of an individual who is temporarily out of the home are included in the assistance grant. A temporary absence exists in the following circumstances.

a. An individual is anticipated to be in the medical institution for less than a year, as verified by a physician's statement. Failure to return within one year will result in the individual's needs being removed from the grant.

b. When an individual is out of the home to secure education or training, as defined for children in 41.24(2)*"e"* and for adults in 441—subrule 93.114(1), first sentence, as long as the caretaker relative retains supervision of the child.

c. An individual is out of the home for reasons other than reasons in paragraphs *"a"* and *"b"* and the payee intends that the individual will return to the home within three months. Failure to return within three months will result in the individual's needs being removed from the grant.

41.23(4) *Citizenship and alienage for persons entering the United States before August 22, 1996.*

a. A family investment program assistance grant may include the needs of:

(1) A person who is a resident of the United States when the person is either a citizen or an alien lawfully admitted for permanent residence or otherwise legally permanently residing in the United States as evidenced by suitable documentary proof furnished by the Immigration and Naturalization Service of the United States Department of Justice.

(2) An alien granted lawful temporary resident status pursuant to Section 201 or 302 of the Immigration Reform and Control Act of 1986 (Public Law 99-603), who is a Cuban or Haitian entrant as defined in paragraph (1) or (2) (A) of Section 501(e) of Public Law 96-422, as in effect on April 1, 1983.

(3) An alien granted lawful temporary or permanent resident status pursuant to Section 201 or 302 of the Immigration Reform and Control Act of 1986 (Public Law 99-603), who is not a Cuban or Haitian entrant applicant, and who was adjusted to lawful temporary resident status more than five years prior to application. All other aliens granted lawful temporary or permanent resident status, pursuant to Section 201 or 302 of the Immigration Reform and Control Act of 1986, are disqualified for five years from the date lawful temporary resident status is granted.

b. As a condition of eligibility each recipient shall complete and sign Form 470-2549, Statement of Citizenship Status, attesting to the recipient's citizenship or alien status, when the statement has not previously been signed on the application. The form shall be signed by the recipient, or when the recipient is incompetent or incapacitated, someone acting responsibly on the recipient's behalf. When both parents are in the home, both shall sign the form. An adult recipient shall sign the form for dependent children. Failure to sign Form 470-2549 when required to do so creates ineligibility for the entire eligibility group.

41.23(5) *Citizenship and alienage for persons entering the United States on or after August 22, 1996.*

a. A family investment program assistance grant may include the needs of:

(1) A citizen or national of the United States.

(2) Refugees admitted under Section 207 of the Immigration and Nationality Act (INA).

(3) Asylees admitted under Section 208 of the INA.

(4) Aliens whose deportation has been withheld under Section 243(h) of the INA.

(5) Veterans of the United States Armed Forces who were honorably discharged for reasons other than alienage, their spouses, and dependent children.

(6) Active duty personnel of the United States Armed Forces, their spouses, and dependent children.

(7) An alien who entered the United States on or after August 22, 1996, and who has resided in the United States for a period of at least five years.

b. As a condition of eligibility each recipient shall complete and sign Form 470-2549, Statement of Citizenship Status, attesting to the recipient's citizenship or alien status, when the statement has not previously been signed on the application. The form shall be signed by the recipient, or when the recipient is incompetent or incapacitated, someone acting responsibly on the recipient's behalf. When both parents are in the home, both shall sign the form. An adult recipient shall sign the form for dependent children. Failure to sign Form 470-2549 when required to do so creates ineligibility for the entire eligibility group.

This rule is intended to implement Iowa Code section 239B.2.

441—41.24(239B) Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) program. An application for assistance constitutes a registration for the program for all members of the family investment program (FIP) case. Persons in any FIP case who are not exempt from referral to PROMISE JOBS shall enter into a family investment agreement (FIA) as a condition of receiving FIP, except as described at 41.24(8).

41.24(1) *Referral to PROMISE JOBS.*

a. All persons whose needs are included in a grant under the FIP program shall be referred to PROMISE JOBS as FIA-responsible persons unless the county office determines the persons are exempt.

b. Any parent living in the home of a child receiving a grant shall also be referred to PROMISE JOBS as an FIA-responsible person unless the county office determines the person is exempt.

c. Persons determined exempt from referral, including applicants, may volunteer for PROMISE JOBS.

d. Applicants who have chosen and are in a limited benefit plan that began on or after June 1, 1999, shall complete significant contact with or action in regard to PROMISE JOBS as described at paragraphs 41.24(8)*"a"* and *"d"* for FIP eligibility to be considered. For two-parent households, both parents must participate as previously stated except when one parent meets the exemption criteria described at subrule 41.24(2).

41.24(2) *Exemptions.* The following persons are exempt from referral:

a. and *b.* Rescinded IAB 12/3/97, effective 2/1/98.

c. A person who is under the age of 16 and is not a parent.

d. A person who is disabled, according to the Americans with Disabilities Act, and unable to participate. Medical evidence of disability may be obtained from either an independent physician or psychologist or the state rehabilitation agency in the same manner specified in 41.21(5)*"c."*

e. A person who is aged 16 to 19, and is not a parent, who attends an elementary, secondary or equivalent level of vocational or technical school full-time.

(1) A person shall be considered to be attending school full-time when enrolled or accepted in a full-time (as certified by the school or institute attended) elementary, secondary or the equivalent level of vocational or technical school or training leading to a certificate or diploma. Correspondence school is not an allowable program of study.

(2) A person shall also be considered to be in regular attendance in months when the person is not attending because of an official school or training program vacation, illness, convalescence, or family emergency. A child meets the definition of regular school attendance until the child has been officially dropped from the school rolls.

(3) When a person's education is temporarily interrupted pending adjustment of the education or training program, exemption shall be continued for a reasonable period of time to complete the adjustment.

41.24(3) *Parents aged 19 and under.*

a. Parents aged 18 or 19 are referred to PROMISE JOBS as follows:

(1) A parent aged 18 or 19 who has not successfully completed a high school education (or its equivalent) shall be required to participate in educational activities, directed toward the attainment of a high school diploma or its equivalent.

(2) The parent shall be required to participate in other PROMISE JOBS options if the person fails to make good progress in completing educational activities or if it is determined that participation in educational activities is inappropriate for the parent.

(3) The parent shall be required to participate in parenting skills training in accordance with 441—Chapter 93.

b. Parents aged 17 or younger are referred to PROMISE JOBS as follows:

(1) A parent aged 17 or younger who has not successfully completed a high school education or its equivalent shall be required to participate in high school completion activities, directed toward the attainment of a high school diploma or its equivalent.

(2) The parent shall be required to participate in parenting skills training in accordance with 441—Chapter 93.

41.24(4) *Method of referral.*

a. While the eligibility decision is pending, applicants in a limited benefit plan that began on or after June 1, 1999, shall receive a letter which contains information about the need to complete significant contact with or action in regard to the PROMISE JOBS program to be eligible for FIP assistance and the procedure for being referred to the PROMISE JOBS program.

b. When the FIP application is approved or when exempt status is lost, volunteers and persons who are not exempt from referral to PROMISE JOBS shall receive a letter which contains information about participant responsibility under PROMISE JOBS and the FIA and instructs the FIP participant to contact PROMISE JOBS within ten calendar days to schedule the PROMISE JOBS orientation.

41.24(5) *Changes in status and redetermination of exempt status.* Any exempt person shall report any change affecting the exempt status to the county office within ten days of the change. The county office shall reevaluate exempt persons when changes in status occur and at the time of six-month or annual review. The recipient and the PROMISE JOBS unit shall be notified of any change in a recipient's exempt status.

41.24(6) *Volunteers.* Any applicant and any recipient may volunteer for referral. The income maintenance worker shall not refer an applicant to the program when it appears that the applicant shall be ineligible for FIP.

41.24(7) *Referral to vocational rehabilitation.* The department shall make the department of education, division of vocational rehabilitation services, aware of any person determined exempt from referral to PROMISE JOBS because of a medically determined physical or mental impairment. However, acceptance of vocational rehabilitation services by the client is optional.

41.24(8) *The limited benefit plan (LBP).* When a participant responsible for signing and meeting the terms of a family investment agreement as described at rule 441—93.109(239B) chooses not to sign or fulfill the terms of the agreement, the FIP eligible group or the individual participant shall enter into a limited benefit plan. The first month of the limited benefit plan is the first month after the month in which timely and adequate notice is given to the participant as defined at 441—subrule 7.7(1). A participant who is exempt from PROMISE JOBS is not subject to the limited benefit plan.

a. A limited benefit plan shall either be a first limited benefit plan or a subsequent limited benefit plan. From the effective date of the limited benefit plan, for a first limited benefit plan, the FIP household shall not be eligible until the participant who chose the limited benefit plan completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph *"d."* If a subsequent limited benefit plan is chosen by the same participant, a six-month period of ineligibility applies and ineligibility continues after the six-month period is over until the participant who chose the LBP completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph *"d."* A limited benefit plan imposed in error as described in paragraph *"f"* shall not be considered a limited benefit plan. A limited benefit plan is considered imposed when timely and adequate notice is issued establishing the limited benefit plan.

b. The limited benefit plan shall be applied to participants responsible for the family investment agreement and other members of the participant's family as follows:

(1) When the participant responsible for the family investment agreement is a parent or needy caretaker relative, the limited benefit plan shall apply to the entire FIP eligible group as defined at subrule 41.28(1).

(2) When the participant choosing a limited benefit plan is a needy relative who acts as payee when the parent is in the home but is unable to act as payee, or is a dependent child's stepparent who is in the FIP eligible group because of incapacity or caregiving, the limited benefit plan shall apply only to the individual participant choosing the plan.

(3) When the FIP eligible group includes a minor parent living with the minor parent's adult parent or needy caretaker relative who receives FIP benefits and both the minor parent and the adult parent or needy caretaker relative are responsible for developing a family investment agreement, each parent or needy caretaker relative is responsible for a separate family investment agreement, and the limited benefit plan shall be applied as follows:

1. When the adult parent or needy caretaker relative chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the entire eligible group, even though the minor parent has not chosen the limited benefit plan. However, the minor parent may reapply for FIP benefits as a minor parent living with self-supporting parents or as a minor parent living independently and continue in the family investment agreement process.

2. When the minor parent chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the minor parent and any child of the minor parent.

3. When the minor parent is the only eligible child in the adult parent's or needy caretaker relative's home and the minor parent chooses the limited benefit plan, the adult parent's or needy caretaker relative's FIP eligibility ceases in accordance with subrule 41.28(1). The adult parent or needy caretaker relative shall become ineligible beginning with the effective date of the minor parent's limited benefit plan.

(4) When the FIP eligible group includes children who are mandatory PROMISE JOBS participants, the children shall not have a separate family investment agreement but shall be asked to sign the eligible group's family investment agreement and to carry out the responsibilities of that family investment agreement. A limited benefit plan shall be applied as follows:

1. When the parent or needy caretaker relative responsible for a family investment agreement meets those responsibilities but a child who is a mandatory PROMISE JOBS participant chooses an individual limited benefit plan, the limited benefit plan shall apply only to the individual child choosing the plan.

2. When the child who chooses a limited benefit plan under numbered paragraph "1" above is the only child in the eligible group, the parents' or needy caretaker relative's eligibility ceases in accordance with subrule 41.28(1). The parents or needy caretaker relative shall become ineligible beginning with the effective date of the child's limited benefit plan.

(5) When the FIP eligible group includes parents or needy caretaker relatives who are exempt from PROMISE JOBS participation and children who are mandatory PROMISE JOBS participants, the children are responsible for completing a family investment agreement. If a child who is a mandatory PROMISE JOBS participant chooses the limited benefit plan, the limited benefit plan shall be applied in the manner described in subparagraph (4).

(6) When both parents of a FIP child are in the home, a limited benefit plan shall be applied as follows:

1. When only one parent of a child in the eligible group is responsible for a family investment agreement and that parent chooses the limited benefit plan, the limited benefit plan applies to the entire family and cannot be ended by the voluntary participation in a family investment agreement by the exempt parent.

2. When both parents of a child in the eligible group are responsible for a family investment agreement, both are expected to sign the agreement. If either parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the participation of the other parent in a family investment agreement.

3. When the parents from a two-parent family in a limited benefit plan separate, the limited benefit plan shall follow only the parent who chose the limited benefit plan and any children in the home of that parent.

4. A subsequent limited benefit plan applies when either parent in a two-parent family previously chose a limited benefit plan.

c. A participant shall be considered to have chosen a limited benefit plan under any of the following circumstances:

(1) A participant who does not establish an orientation appointment with the PROMISE JOBS program as described at 441—subrule 93.105(2) or who fails to keep or reschedule an orientation appointment shall receive one reminder letter which informs the participant that those who do not attend orientation have elected to choose the limited benefit plan. A participant who does not establish an orientation appointment within ten calendar days from the mailing date of the reminder letter or who fails to keep or reschedule an orientation appointment shall receive notice establishing the limited benefit plan. Timely and adequate notice provisions as in 441—subrule 7.7(1) apply.

(2) A participant who chooses not to sign the family investment agreement after attending a PROMISE JOBS program orientation shall enter into the limited benefit plan as described in subparagraph (1).

(3) A participant who signs a family investment agreement but does not carry out the family investment agreement responsibilities shall be deemed to have chosen a limited benefit plan as described in subparagraph (1). This includes a participant who fails to respond to the PROMISE JOBS worker's request to renegotiate the family investment agreement when the participant has not attained self-sufficiency by the date established in the family investment agreement. A limited benefit plan shall be imposed regardless of whether the request to renegotiate is made before or after expiration of the family investment agreement.

d. A participant who chooses a limited benefit plan may reconsider that choice as follows:

(1) A participant who chooses a first limited benefit plan may reconsider at any time from the date timely and adequate notice is issued establishing the limited benefit plan. To reconsider, the participant must communicate the desire to engage in PROMISE JOBS activities to the department or appropriate PROMISE JOBS office and develop and sign the family investment agreement. FIP benefits shall be effective the date the family investment agreement is signed or the effective date of the grant as described in rule 441—40.26(239B), whichever date is later. FIP benefits may be reinstated in accordance with 441—subrule 40.22(5) when the family investment agreement is signed before the limited benefit plan goes into effect.

(2) Rescinded IAB 4/7/99, effective 5/31/99.

(3) A participant who chooses a subsequent limited benefit plan may reconsider that choice at any time following the required six-month period of ineligibility. To reconsider, the participant must contact the department or the appropriate PROMISE JOBS office to communicate the desire to engage in PROMISE JOBS activities, sign a new or updated family investment agreement, and satisfactorily complete 20 hours of employment or the equivalent in an activity other than work experience or unpaid community service, unless problems or barriers as described at rules 441—93.133(239B) and 93.134(239B) apply. The 20 hours of employment or other activity must be completed within 30 days of the date that the family investment agreement is signed, unless problems or barriers as described at rules 441—93.133(239B) and 93.134(239B) apply. FIP benefits shall not begin until the person who chose the limited benefit plan completes the previously defined significant actions. FIP benefits shall be effective the date the family investment agreement is signed or the effective date of the grant as described in rule 441—40.26(239B), whichever date is later, but in no case shall the effective date be within the six-month period of ineligibility.

(4) For a two-parent family when both parents are responsible for a family investment agreement as described at subrule 41.24(1), a first or subsequent limited benefit plan continues until both parents have completed significant contact or action with the PROMISE JOBS program as described in subparagraphs (1) and (3) above.

e. When a participant has chosen a subsequent limited benefit plan, a qualified professional shall attempt to visit with the participant family with a focus upon the children's well-being. The visit shall be performed during or within four weeks of the second month of the start of the subsequent limited benefit plan. The visit shall serve as an extension of the family investment program and the family investment agreement philosophy of supporting families as they move toward self-sufficiency. The department may contract for the visit.

f. A limited benefit plan imposed in error shall not be considered a limited benefit plan. This includes any instance when participation in PROMISE JOBS should not have been required as defined in the administrative rules. Examples of instances when an error has occurred are:

(1) The person considered to have chosen the limited benefit plan was disabled and unable to participate as described at paragraph 41.24(2)*"d"* on the date the notice of decision was issued to impose the limited benefit plan.

(2) It is verified that the person considered to have chosen the limited benefit plan moved out of state prior to the date that PROMISE JOBS determined the limited benefit plan was chosen.

(3) The final appeal decision under 441—Chapter 7 reverses the decision to impose a limited benefit plan.

41.24(9) *Nonparticipation by volunteer participants.*

a. Volunteer participants are not subject to the limited benefit plan as described at 41.24(8).

(1) Volunteer participants who do not schedule or keep an appointment for orientation or who choose not to complete an FIA after attending orientation shall have PROMISE JOBS referral status changed to exempt by the income maintenance worker. No penalty is involved.

(2) Volunteers who complete the FIA and choose not to carry out the activities or meet the responsibilities of the FIA, including resolving participation issues as described at rule 441—93.132(249C), shall be deactivated from the PROMISE JOBS program after completion of the conciliation process described below. Volunteers who are deactivated from the program after completing the FIA shall not be eligible for priority program services as long as other participants are waiting for services.

b. Conciliation for volunteers shall be provided by a conciliation unit established by the PROMISE JOBS local service delivery area. PROMISE JOBS staff from DWD shall conciliate in cases decided by JTPA workers and PROMISE JOBS staff from JTPA shall conciliate in cases decided by DWD workers. The bureau of refugee services shall arrange with PROMISE JOBS staff of DWD and JTPA to provide conciliation services when the need arises. If the local service delivery area has developed interagency teams of PROMISE JOBS staff, teams shall be assigned to conciliate in cases decided by other teams.

(1) When the PROMISE JOBS worker determines that an exempt volunteer, after signing the FIA, has chosen not to carry out the activities or responsibilities of the FIA, the worker shall notify the conciliation unit of the PROMISE JOBS local service delivery area. This notice shall include documentation of the issues of participation or problems of participation which have not been resolved. The conciliation unit shall review the material to determine if the nonfinancial sanction of loss of priority service is applicable. If the conciliation unit disagrees with the PROMISE JOBS worker, the conciliation unit shall contact the worker to resolve the issue. If the conciliation unit agrees with the PROMISE JOBS worker, the conciliation unit shall initiate a 30-day conciliation period by issuing the Notice of Potential Sanction—Exempt Volunteers, Form 470-2667, to the participant. During this 30-day period, the participant can present additional information to the conciliation unit to resolve the issues of participation or problems with participation, or identify barriers to participation which should be addressed in the FIA. If the conciliation unit finds that the participant has chosen not to carry out the activities or responsibilities of the FIA, a nonfinancial sanction of loss of priority service shall be imposed. The conciliation period begins the day following the day the Notice of Potential Sanction—Exempt Volunteers is issued.

(2) If the participant presents additional information which indicates resolution of issues of participation or problems with participation, or which indicates a barrier to participation which will be addressed in the FIA, the conciliation unit shall review these with the PROMISE JOBS worker, with conciliation staff having the final say. If the issues and problems are not resolved, barriers to participation are not identified, or the participant indicates unwillingness to include the barriers to participation in a renegotiated FIA, the conciliation unit shall notify the PROMISE JOBS worker to apply the loss of priority services sanction.

41.24(10) *Notification of services.*

a. The department shall inform all applicants for and recipients of FIP of the advantages of employment under FIP.

b. The department shall provide a full explanation of the family rights, responsibilities, and obligations under PROMISE JOBS and the FIA, with information on the time-limited nature of the agreement.

c. The department shall provide information on the employment, education and training opportunities, and support services to which they are entitled under PROMISE JOBS, as well as the obligations of the department. This information shall include explanations of transitional child care and transitional Medicaid.

d. The department shall inform applicants for and recipients of FIP benefits of the grounds for exemption from FIA responsibility and from participation in the PROMISE JOBS program.

e. The department shall explain the LBP and the process by which FIA-responsible persons and mandatory PROMISE JOBS participants can choose the LBP or individual LBP.

f. The department shall inform all applicants for and recipients of FIP of their responsibility to cooperate in establishing paternity and enforcing child support obligations.

g. Within 30 days of the date of application for FIP, the department shall notify the applicant or recipient of the opportunity to volunteer for the program. Notification shall include a description of the procedure to be used in volunteering for the program.

41.24(11) *Implementation.* A limited benefit plan imposed effective on or after June 1, 1999, shall be imposed according to the revised rules becoming effective on that date. A limited benefit plan imposed effective on or before May 1, 1999, shall be imposed subject to the previous rules for the limited benefit plan. For a person who is in a limited benefit plan on May 1, 1999, the terms of the person's existing limited benefit plan shall continue until that limited benefit plan either ends or is lifted in accordance with previous limited benefit plan rules. A participant who chose a limited benefit plan under the previous policy and who then chooses a limited benefit plan that becomes effective on or after June 1, 1999, shall be subject to a subsequent limited benefit plan under the provisions of the revised rules.

441—41.25(239B) Uncategorized factors of eligibility.

41.25(1) *Divesting of income.* Assistance shall not be approved when an investigation proves that income was divested and the action was deliberate and for the primary purpose of qualifying for assistance or increasing the amount of assistance paid.

41.25(2) *Duplication of assistance.* A recipient whose needs are included in a family investment program grant shall not concurrently receive a grant under any other public assistance program administered by the department, including IV-E foster care, or state-funded foster care. A recipient shall not concurrently receive the family investment program and subsidized adoption unless exclusion of the person from the FIP grant will reduce benefits to the family. Neither shall a recipient concurrently receive a grant from a public assistance program in another state. When a recipient leaves the home of a specified relative, no payment for a concurrent period shall be made for the same recipient in the home of another relative.

41.25(3) *Aid from other funds.* Supplemental aid from any other agency or organization shall be limited to aid for items of need not covered by the department's standards and to the amount of the percentage reduction used in determining the payment level. Any duplicated assistance shall be considered unearned income.

41.25(4) *Contracts for support.* A person entitled to total support under the terms of an enforceable contract is not eligible to receive the family investment program when the other party, obligated to provide the support, is able to fulfill that part of the contract.

41.25(5) *Participation in a strike.*

a. The family of any parent with whom the child(ren) is living shall be ineligible for the family investment program for any month in which the parent is participating in a strike on the last day of the month.

b. Any individual shall be ineligible for the family investment program for any month in which the individual is participating in a strike on the last day of that month.

c. Definitions:

(1) A strike is a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(2) An individual is not participating in a strike at the individual's place of employment when the individual is not picketing and does not intend to picket during the course of the dispute, does not draw strike pay, and provides a signed statement that the individual is willing and ready to return to work but does not want to cross the picket line solely because of the risk of personal injury or death or trauma from harassment. The district administrator shall determine whether such a risk to the individual's physical or emotional well-being exists.

41.25(6) *Aliens sponsored by an agency or organization.*

a. An alien sponsored by a public or private agency or organization which executed an affidavit for support shall be ineligible for the family investment program assistance for three years following the alien's date of entry into the United States unless it is determined that the agency or organization no longer exists, that the agency or organization is no longer able to meet the alien's needs as specified in subrule 41.28(2), or that the alien entered the United States with a status identified in 41.27(10)*"b"*(1) through (5).

b. In order for an agency or organization to be considered unable to meet the alien's needs, the agency or organization must provide a signed and notarized statement that the agency or organization is unable to meet the alien's needs in whole or in part.

c. When the agency or organization is capable of meeting only a portion of the alien's needs, any income made available to the alien shall be treated as unearned income in accordance with subrule 41.27(1).

d. For a period of 36 months following the date of entry into the United States, the sponsored alien shall provide the local office with the information and documentation required to determine the alien's eligibility. The alien is responsible for obtaining the cooperation of the sponsor. Aliens who do not obtain this cooperation or supply this information are not eligible for assistance. Date of entry is the date established by the Immigration and Naturalization Service as the date the alien was admitted for permanent residency.

41.25(7) *Time limit for receiving assistance.*

a. Assistance shall not be provided to a FIP applicant or recipient family that includes an adult who has received assistance for 60 calendar months under any state program in Iowa or in another state that is funded by the Temporary Assistance for Needy Families (TANF) block grant. The 60-month period need not be consecutive. An "adult" is any person who is a parent of the FIP child or that child's sibling (of whole or half-blood or adoptive) in the home, stepparent of the FIP child, or included as an optional member under subparagraphs 41.28(1)*"b"*(1) and (2). In two-parent households, the 60-month limit is determined when either parent has received assistance for 60 months. "Assistance" shall include any month for which the adult receives a FIP grant or payment for PROMISE JOBS expense allowances. Assistance received for a partial month shall count as a full month.

b. In determining the number of months an adult received assistance, the department shall consider toward the 60-month limit:

(1) Assistance received even when the parent is excluded from the grant unless the parent is an SSI recipient.

(2) Assistance received by an optional member of the eligible group as described in subparagraphs 41.28(1)*"b"*(1) and (2). However, once the person has received assistance for 60 months, the person is ineligible but assistance may continue for other persons in the eligible group.

c. In determining the number of months an adult received assistance, the department shall not consider toward the 60-month limit any month for which FIP and PROMISE JOBS assistance was not issued for the family, such as:

(1) A month of suspension.

(2) A month for which no grant is issued due to the limitations described in rules 441—45.26(239B) and 441—45.27(239B).

(3) When all assistance for the month is returned.

(4) When all assistance for the month is reimbursed via child support collection or overpayment recovery.

d. The department shall not consider toward the 60-month limit months of assistance a parent or pregnant person received as a minor child and not as the head of a household or married to the head of a household. This includes assistance received for a minor parent for any month in which the minor parent was a child on the adult parent's FIP case or on the nonparental caretaker's FIP case.

e. The department shall not consider toward the 60-month limit months of assistance received by an adult while living on an Indian reservation or in an Alaskan Native village if, during the month, at least 1,000 persons lived there and at least 50 percent of the adults living there were unemployed.

This rule is intended to implement Iowa Code sections 239B.2 and 239B.5.

41.25(8) *School attendance requirements.*

a. The department shall require an applicant for or recipient of family investment program assistance who is the child's parent in the home or other specified relative whose needs are included in the grant payable to the child's family to cooperate with efforts to ensure children receiving family investment program assistance complete educational requirements through the sixth grade. As a condition of eligibility, an applicant or recipient, who is the child's parent in the home or specified relative whose needs are included in the FIP grant, shall provide written authorization for release of information to a school truancy officer concerning the receipt of assistance and for release of information by a school truancy officer concerning the child's compliance with attendance requirements on Form 470-3383, Authorization to Exchange Information With Your Child's School.

A signed authorization is required for any child in the home aged 5 through 13 who is a member of the FIP eligible group. The same signed authorization shall cover all FIP children in the home who are aged 5 through 13 on the date the release is signed. An additional signed release is required when a FIP child turns the age of 5 after the date a release was signed or when another child aged 5 through 13 joins the FIP eligible group after the date the release was signed. Signed releases obtained by the department from July 1, 1997, to December 1, 1997, remain in effect for all FIP children aged 5 through 13 who were in the home when the release was received by the county department office.

When both parents are in the home, both shall sign the release. When a minor parent and the minor's child receive family investment program assistance on the adult parent's case, or on the case of a specified relative whose needs are included in the assistance grant, the adult parent or specified relative shall sign the release. The signed release shall stay in effect until the FIP child turns 14 years of age. A new release is required when the household reapplies for family investment program and a new application is needed to determine the household's eligibility. Assistance shall be denied or canceled when the household fails to supply a signed release within the time frames described at 441—subrules 40.24(1) and 40.27(4). However, FIP assistance shall not be denied or canceled prior to January 1, 1998, for failure to return a signed release. The requirements in this paragraph apply to children in a public school or an accredited nonpublic school who have not completed sixth grade. They do not apply to children who are receiving competent private instruction in accordance with Iowa Code chapter 299A.

b. If a child of a family applying for or receiving family investment program assistance is not in compliance with the attendance requirements established under Iowa Code section 299.1, and has not completed educational requirements through the sixth grade, and the school has used every means available to ensure the child does attend, the truancy officer, as defined at Iowa Code section 299.12, shall provide written notification to the department. The department shall then initiate contact with the child's parent or other specified relative to participate in an attendance cooperation meeting. The parties to the attendance cooperation meeting may include the child, and shall include the child's parent in the home or specified relative whose needs are included in the child's assistance grant, the truancy officer and a representative of the department. When both parents of the child live in the child's home, both shall be encouraged to attend, but only one parent is required to attend. The department's representative or the truancy officer may invite other parties deemed appropriate to participate in the attendance cooperation meeting, such as other school officials, the county attorney or designee, or a designee of the juvenile court. The family may also invite another family member, a friend, advocate, or legal representative to the meeting.

c. The purpose of the attendance cooperation meeting is for the participating parties to attempt to ascertain the cause of the child's nonattendance, to cause the parties to arrive at an agreement addressing the child's attendance, and to initiate referrals to any services or counseling that the parties believe to be appropriate under the circumstances. The terms agreed to shall be reduced to writing in Form 470-3391, School Attendance Cooperation Agreement, and signed by the parties to the agreement. In two-parent families, both parents shall sign the agreement even if only one parent attends the meeting. Each party signing the agreement shall receive a copy of the agreement, which shall set forth the cause identified for the child's nonattendance and future responsibilities of each party.

d. If the parties to an attendance cooperation meeting determine that a monitor would improve compliance with the attendance cooperation agreement, the parties may designate a person to monitor the agreement. The monitor shall be a designee of the department. The monitor may be a volunteer if the volunteer is approved by all parties to the agreement and receives a written authorization for access to confidential information and for performing monitor activities from the child's parent or specified relative. A monitor shall contact parties to the attendance cooperation agreement on a periodic basis as appropriate to monitor the performance of the agreement.

e. If the parties fail to enter into an attendance cooperation agreement, or the child's parent or specified relative acting as a party violates a term of the attendance cooperation agreement or fails to participate in an attendance cooperation meeting without good cause, and the truancy officer confirms that the child still meets the conditions for being deemed truant, then the child shall be deemed to be truant.

The parent or specified relative shall be considered to have good cause when failing to attend the meeting for reasons beyond the person's control, such as illness, family emergencies or other unforeseen circumstances.

f. If the department receives written notification from a school truancy officer under 1997 Iowa Acts, House File 597, section 5, that a child receiving family investment program assistance is deemed to be truant, the child's family shall be subject to sanction as provided in paragraph *"g."* The sanction shall continue to apply until the department receives written notification from the school truancy officer of any of the following:

(1) The child is complying with the attendance policy applicable to the child's school.

(2) The child has satisfactorily completed educational requirements through the sixth grade.

(3) The child's school has determined there is good cause for the child's nonattendance and the school withdraws the written notification.

(4) The child is no longer enrolled in the school for which the written notification was provided and the child's family demonstrates that the child is enrolled in and is attending another school or is otherwise receiving equivalent schooling as authorized under state law.

g. The sanction shall be a deduction of 25 percent from the net cash assistance grant amount payable to the child's family prior to any deduction for recoupment of a prior overpayment. If more than one child is deemed to be truant, the sanction shall continue to apply until the department receives written notification from the school truancy officer, as described in paragraph *"f,"* concerning each child. When the family is also subject to sanction under paragraph 41.22(6)*"f,"* the sanction for truancy shall be calculated as though the sanction in paragraph 41.22(6)*"f"* does not exist.

41.25(9) *Pilot diversion program.* Assistance shall not be approved when an assistance unit is subject to the period of ineligibility as described at 441—subrule 47.5(3).

41.25(10) *Fugitive felons, and probation and parole violators.* Assistance shall be denied to a person who is (1) convicted of a felony under state or federal law and is fleeing to avoid prosecution, custody or confinement, or (2) violating a condition of probation or parole imposed under state or federal law. The prohibition does not apply to conduct pardoned by the President of the United States, beginning with the month after the pardon is given.

This rule is intended to implement Iowa Code chapter 239B and 1997 Iowa Acts, House File 597.

441—41.26(239B) Resources.

41.26(1) *Limitation.* An applicant or recipient may have the following resources and be eligible for the family investment program. Any resource not specifically exempted shall be counted toward resource limitations.

a. A homestead without regard to its value. A mobile home or similar shelter shall be considered as a homestead when it is occupied by the recipient. Temporary absence from the homestead with a defined purpose for the absence and with intent to return when the purpose of the absence has been accomplished shall not be considered to have altered the exempt status of the homestead. The net market value of any other real property shall be considered with personal property.

b. Household goods and personal effects without regard to their value. Personal effects are personal or intimate tangible belongings of an individual, especially those that are worn or carried on the person, which are maintained in one's home, and include clothing, books, grooming aids, jewelry, hobby equipment, and similar items.

c. Life insurance which has no cash surrender value. The owner of the life insurance policy is the individual paying the premium on the policy with the right to change the policy as the individual sees fit.

d. An equity not to exceed a value of $3000 in one motor vehicle for each adult and working teenage child whose resources must be considered as described in 41.26(2). The disregard shall be allowed when the working teenager is temporarily absent from work. The equity value in excess of $3000 of any vehicle shall be counted toward the resource limitation in 41.26(1)*"e."* When a motor vehicle(s) is modified with special equipment for the handicapped, the special equipment shall not increase the value of the motor vehicle(s).

Beginning July 1, 1994, and continuing in succeeding state fiscal years, the motor vehicle equity value to be disregarded shall be increased by the latest increase in the consumer price index for used vehicles during the previous state fiscal year.

e. A reserve of other property, real or personal, not to exceed $2000 for applicant assistance units and $5000 for recipient assistance units. EXCEPTION: Applicant assistance units with at least one member who was a recipient in Iowa in the month prior to the month of application are subject to the $5000 limit. The exception includes those persons who did not receive an assistance grant due to the $10 grant limitation described at rule 441—45.26(239B) and persons whose grants were suspended as in 41.27(9)*"f"* in the month prior to the month of application.

Resources of the applicant or the recipient shall be determined in accordance with subrule 41.26(2).

f. Money which is counted as income in a month, during that same month; and that part of lump sum income defined in 41.27(9)*"c"*(2) reserved for the current or future month's income.

g. Payments which are exempted for consideration as income and resources under subrule 41.27(6).

h. An equity not to exceed $1,500 in one funeral contract or burial trust for each member of the eligible group. Any amount in excess of $1,500 shall be counted toward resource limitations unless it is established that the funeral contract or burial trust is irrevocable.

i. One burial plot for each member of the eligible group. A burial plot is defined as a conventional gravesite, crypt, mausoleum, urn, or other repository which is customarily and traditionally used for the remains of a deceased person.

j. Settlements for payment of medical expenses.

k. Life estates.

41.26(8) *Trusts.* The department shall determine whether assets from a trust or conservatorship, except one established solely for the payment of medical expenses, are available by examining the language of the trust agreement or order establishing a conservatorship.

a. Funds clearly conserved and available for care, support, or maintenance shall be considered toward resource or income limitations.

b. When the local office questions whether the funds in a trust or conservatorship are available, the local office shall refer the trust or conservatorship to central office. When assets in the trust or conservatorship are not clearly available, central office staff may contact the trustee or conservator and request that the funds in the trust or conservatorship be made available for current support and maintenance. When the trustee or conservator chooses not to make the funds available, the department may petition the court to have the funds released either partially or in their entirety or as periodic income payments. Funds in a trust or conservatorship that are not clearly available shall be considered unavailable until the trustee, conservator or court actually makes the funds available. Payments received from the trust or conservatorship for basic or special needs are considered income.

41.26(9) *Aliens sponsored by individuals.* When a sponsor is financially responsible for an alien according to subrule 41.27(10), the resources of the sponsor and the sponsor's spouse in excess of $1500 shall be applied to the alien's resource limitation.

a. When a person described in subrule 41.27(10) sponsors two or more aliens who apply for assistance on or after November 1, 1981, the resources of the sponsor and the sponsor's spouse in excess of $1500 shall be divided equally among the aliens.

b. The resources of a sponsor or sponsor's spouse receiving supplemental security income or the family investment program shall be treated in accordance with subrule 41.26(2).

c. Notwithstanding anything to the contrary in these rules or regulations, the resources of a sponsor who executed an affidavit of support pursuant to Section 213 of the Immigration and Nationality Act (as implemented by the Personal Responsibility and Work Reconciliation Act of 1996) on behalf of the alien and the resources of the sponsor's spouse shall be counted in their entirety when determining eligibility and benefit level for a sponsored alien who entered the United States on or after August 22, 1996.

41.26(10) *Not considered a resource.* Inventories and supplies, exclusive of capital assets, that are required for self-employment shall not be considered a resource. Inventory is defined as all unsold items, whether raised or purchased, that are held for sale or use and shall include, but not be limited to, merchandise, grain held in storage and livestock raised for sale. Supplies are items necessary for the operation of the enterprise, such as lumber, paint and seed. Capital assets are those assets which, if sold at a later date, could be used to claim capital gains or losses for federal income tax purposes. When self-employment is temporarily interrupted due to circumstances beyond the control of the household, such as illness, and inventory or supplies retained by the household shall not be considered a resource.

This rule is intended to implement Iowa Code section 239B.5.

441—41.27(239B) Income. All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, shall be considered in determining initial and continuing eligibility and the amount of the family investment program grant. The determination of initial eligibility is a three-step process. Initial eligibility shall be granted only when (1) the countable gross nonexempt unearned and earned income, exclusive of the family investment program grant, received by the eligible group and available to meet the current month's needs is no more than 185 percent of the standard of need for the eligible group; (2) the countable net unearned and earned income is less than the standard of need for the eligible group; and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the payment standard for the eligible group. The determination of continuing eligibility is a two-step process. Continuing eligibility shall be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed 185 percent of the standard of need for the eligible group; and (2) countable net unearned and earned income is less than the payment standard for the eligible group. The amount of the family investment program grant shall be determined by subtracting countable net income from the payment standard for the eligible group. Child support assigned to the department in accordance with subrule 41.22(7) and retained by the department as described in subparagraph 41.27(1)*"h"*(2) shall be considered as exempt income for the purpose of determining continuing eligibility, including child support as specified in paragraphs 41.22(7)*"b"* and 41.27(7)*"q."* Expenses for care of children or disabled adults, deductions, and diversions shall be allowed when verification is provided. The county office shall return all verification to the applicant or recipient.

41.27(1) *Unearned income.* Unearned income is any income in cash that is not gained by labor or service. When taxes are withheld from unearned income, the amount considered will be the net income after the withholding of taxes (federal insurance contribution Act, state and federal income taxes). Net unearned income, from investment and nonrecurring lump sum payments, shall be determined by deducting reasonable income producing costs from the gross unearned income. Money left after this deduction shall be considered gross income available to meet the needs of the eligible group.

a. Social security income is the amount of the entitlement before withholding of a Medicare premium.

b. Rescinded, effective December 1, 1986.

c. Rescinded, effective September 1, 1980.

d. Rescinded IAB 2/11/98, effective 2/1/98.

c. After deducting the allowable work expenses as defined in 41.27(2)*"a"* and *"b,"* and income diversions as defined in subrules 41.27(4) and 41.27(8), 50 percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each individual whose income must be considered is deducted in determining eligibility and the amount of the assistance grant. The 50 percent work incentive deduction is not time limited. Initial eligibility is determined without the application of the 50 percent work incentive deduction as described at 41.27(9)*"a"*(2) and (3).

d. Ineligibility for expenses and disregards. Except for persons in 41.27(8)*"b"* and *"c,"* a person whose earned income must be considered is not eligible for the 20 percent earned income deduction or the care expense described in 41.27(2)*"a"* and *"b"* for any month in which the individual failed, without good cause, to timely report a change in earned income or to timely report earned income on Form 470-0455, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document. However, the individual is eligible for the 50 percent work incentive deduction described in 41.27(2)*"c."* Good cause for not timely returning a Public Assistance Eligibility Report or a Review/Recertification Eligibility Document or for not timely reporting a change in earned income shall be limited to circumstances beyond the control of the individual, such as, but not limited to, a failure by the department to provide needed assistance when requested, to give needed information, to follow procedure resulting in a delay in the return of the Public Assistance Eligibility Report, or the Review/Recertification Eligibility Document, or when conditions require the forms to be mailed other than with the regular end-of-the-month mailing. Good cause shall also include, but not be limited to, circumstances when the individual was prevented from reporting by a physical or mental disability, death or serious illness of an immediate family member; or other unanticipated emergencies; or mail was not delivered due to a disruption of regular mail delivery. The applicant or recipient who returns the Public Assistance Eligibility Report, or the Review/Recertification Eligibility Document, listing earned income, by the sixteenth day of the report month shall be considered to have good cause for not timely returning the Public Assistance Eligibility Report or the Review/Recertification Eligibility Document.

e. Rescinded IAB 9/11/96, effective 11/1/96.

f. to *i.* Reserved.

j. A person is considered self-employed when the person:

(1) Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions.

(2) Establishes the person's own working hours, territory, and methods of work.

(3) Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

k. The net profit from self-employment income in a nonhome based operation shall be determined by deducting only the following expenses that are directly related to the production of the income:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees of the self-employed.

(3) The cost of shelter in the form of rent; the interest on mortgage or contract payments; taxes; and utilities.

(4) The cost of machinery and equipment in the form of rent or the interest on mortgage or contract payments.

(5) Insurance on the real or personal property involved.

(6) The cost of any repairs needed.

(7) The cost of any travel required.

(8) Any other expense directly related to the production of income, except the purchase of capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

l. When the client is renting out apartments in the client's home, the following shall be deducted from the gross rentals received to determine the profit:

(1) Shelter expense in excess of that set forth on the chart of basic needs components in subrule 41.28(2) for the eligible group.

(2) That portion of expense for utilities furnished to tenants which exceeds the amount set forth on the chart of basic needs components in subrule 41.28(2).

(3) Ten percent of gross rentals to cover the cost of upkeep.

m. In determining profit from furnishing board, room, operating a family life home, or providing nursing care, the following amounts shall be deducted from the payments received:

(1) $41 plus an amount equivalent to the monthly maximum food stamp allotment in the food stamp program for a one-member household for a boarder and roomer or an individual in the home to receive nursing care, or $41 for a roomer, or an amount equivalent to the monthly maximum food stamp allotment in the food stamp program for a one-member household for a boarder.

(2) Ten percent of the total payment to cover the cost of upkeep for individuals receiving a room or nursing care.

n. Gross income from providing child care in the applicant's or recipient's own home shall include the total payment(s) received for the service and any payment received due to the Child Nutrition Amendments of 1978 for the cost of providing meals to children. In determining profit from providing child care services in the applicant's or recipient's own home, 40 percent of the total gross income received shall be deducted to cover the costs of producing the income, unless the individual requests to have expenses in excess of the 40 percent considered. When the applicant or recipient requests to have actual expenses considered, profit shall be determined in the same manner as specified in 41.27(2)*"o."*

o. In determining profit for a self-employed enterprise in the home other than providing room and board, renting apartments or providing child care services in the home, the following expenses shall be deducted from the income received:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees.

(3) The cost of machinery and equipment in the form of rent; or the interest on mortgage or contract payment; and any insurance on such machinery equipment.

(4) Ten percent of the total gross income to cover the costs of upkeep when the work is performed in the home.

v. Bona fide loans. Evidence of a bona fide loan may include any of the following:

(1) The loan is obtained from an institution or person engaged in the business of making loans.

(2) There is a written agreement to repay the money within a specified time.

(3) If the loan is obtained from a person not normally engaged in the business of making a loan, there is a borrower's acknowledgment of obligation to repay (with or without interest), or the borrower expresses intent to repay the loan when funds become available in the future, or there is a timetable and plan for repayment.

w. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

x. The income of a person ineligible due to receipt of state-funded foster care, IV-E foster care, or subsidized adoption assistance.

y. Payments for major disaster and emergency assistance provided under the Disaster Relief Act of 1974 as amended by Public Law 100-707, the Disaster Relief and Emergency Assistance Amendments of 1988.

z. Payments made to certain United States citizens of Japanese ancestry and resident Japanese aliens under Section 105 of Public Law 100-383, and payments made to certain eligible Aleuts under Section 206 of Public Law 100-383, entitled "Wartime Relocation of Civilians."

aa. Payments received from the Radiation Exposure Compensation Act.

ab. Deposits into an individual development account (IDA) when determining eligibility and benefit amount. The amount of the deposit is exempt as income and shall not be used in the 185 percent eligibility test. The deposit shall be deducted from nonexempt earned and unearned income that the client receives in the same budget month in which the deposit is made. To allow a deduction, verification of the deposit shall be provided by the end of the report month or the extended filing date, whichever is later. The client shall be allowed a deduction only when the deposit is made from the client's money. The earned income deductions in 41.27(2)*"a," "b,"* and *"c"* shall be applied to nonexempt earnings from employment or net profit from self-employment that remain after deducting the amount deposited into the account. Allowable deductions shall be applied to any nonexempt unearned income that remains after deducting the amount of the deposit. If the client has both nonexempt earned and unearned income, the amount deposited into the IDA account shall first be deducted from the client's nonexempt unearned income. Deposits shall not be deducted from earned or unearned income that is exempt.

ac. Assigned support collected in a month and retained by child support recovery as described in subparagraph 41.27(1)*"h"*(2).

41.27(7) *Exempt as income.* The following are exempt as income.

a. Reimbursements from a third party.

b. Reimbursement from the employer for job-related expenses.

c. The following nonrecurring lump sum payments:

(1) Income tax refund.

(2) Retroactive supplemental security income benefits.

(3) Settlements for the payment of medical expenses.

(4) Refunds of security deposits on rental property or utilities.

(5) That part of a lump sum received and expended for funeral and burial expenses.

(6) That part of a lump sum both received and expended for the repair or replacement of resources.

d. Payments received by the family providing foster care to a child or children when the family is operating a licensed foster home.

e. Rescinded IAB 5/1/91, effective 7/1/91.

f. A small monetary nonrecurring gift, such as a Christmas, birthday or graduation gift, not to exceed $30 per person per calendar quarter.

When a monetary gift from any one source is in excess of $30, the total gift is countable as unearned income. When monetary gifts from several sources are each $30 or less, and the total of all gifts exceeds $30, only the amount in excess of $30 is countable as unearned income.

g. Earned income credit.

h. Supplementation from county funds providing:

(1) The assistance does not duplicate any of the basic needs as recognized by the family investment program, or

(2) The assistance, if a duplication of any of the basic needs, is made on an emergency basis, not as ongoing supplementation.

i. Any payment received as a result of an urban renewal or low-cost housing project from any governmental agency.

j. A retroactive corrective payment.

k. The training allowance issued by the division of vocational rehabilitation, department of education.

l. Payments from the PROMISE JOBS program.

m. Rescinded, effective July 1, 1989.

n. The training allowance issued by the department for the blind.

o. Payment(s) from a passenger(s) in a car pool.

p. Support refunded by the child support recovery unit for the first month of termination of eligibility and the family does not receive the family investment program.

q. Support refunded by the child support recovery unit or otherwise paid to or for the recipient for a month of suspension. The maximum exempt payment shall be the amount of the monthly support entitlement. The payment shall never exceed the amount of support collected for the month of suspension.

r. Retrospective income received by an individual, whose needs are prospectively removed from the eligible group or who is no longer a member of the household, except nonrecurring lump sum income that causes a period of ineligibility and the income of a parent or stepparent who remains in the home.

s. Income of a nonparental relative as defined in 41.22(3) except when the relative is included in the eligible group.

t. The retrospective income of individuals who are prospectively added to an eligible group for the initial two months of eligibility unless retrospective budgeting is required by 41.27(9)*"a"*(5). The benefit of this exemption shall also apply to the incomes of persons who made application for assistance for July or August 1983 provided the family is currently eligible for assistance.

u. Rescinded IAB 9/11/96, effective 11/1/96.

v. Compensation in lieu of wages received by a child under the Job Training Partnership Act of 1982.

w. Any amount for training expenses included in a payment issued under the Job Training Partnership Act of 1982.

x. Rescinded, effective July 1, 1986.

y. Earnings of an applicant or recipient aged 19 or younger who is a full-time student as defined in 41.24(2)*"e."* The exemption applies through the entire month of the person's twentieth birthday.

EXCEPTION: When the twentieth birthday falls on the first day of the month, the exemption stops on the first day of that month.

z. Retrospective income attributed to an unmarried, underage parent in accordance with 41.27(8)*"c"* effective the first day of the month following the month in which the unmarried, underage parent turns age 18 or reaches majority through marriage. When the unmarried, underage parent turns age 18 on the first day of a month, the retrospective income of the self-supporting parent(s) becomes exempt as of the first day of that month.

aa. Rescinded IAB 12/3/97, effective 2/1/98.

ab. Incentive payments received from participation in the adolescent pregnancy prevention programs.

ac. Payments received from the comprehensive child development program, funded by the Administration for Children, Youth, and Families, provided the payments are considered complimentary assistance by federal regulation.

ad. Incentive allowance payments received from the work force investment project, provided the payments are considered complimentary assistance by federal regulation.

ae. Interest and dividend income.

af. Rescinded IAB 12/3/97, effective 2/1/98.

ag. Terminated income of recipient households who are subject to retrospective budgeting beginning with the calendar month the source of the income is absent, provided the absence of the income is timely reported as described at 441—subrule 40.24(1) and 441—subparagraph 40.27(4)*"f"*(1).

EXCEPTION: Income that terminated in one of the two initial months occurring at time of an initial application that was not used prospectively shall be considered retrospectively as required by 41.27(9)*"b"*(1). If income terminated and is timely reported but a grant adjustment cannot be made effective the first of the next month, a payment adjustment shall be made. This subrule shall not apply to nonrecurring lump sum income defined at 41.27(9)*"c"*(2).

ah. Welfare reform and regular household honorarium income. All moneys paid to a FIP household in connection with the welfare reform demonstration longitudinal study or focus groups shall be exempted.

ai. Diversion or self-sufficiency grants assistance as described at 441—Chapter 47.

41.27(8) *Treatment of income in excluded parent cases, stepparent cases, and underage parent cases.*

a. Treatment of income in excluded parent cases.

(1) Treatment of income when parent is a citizen or an alien other than those described in 41.23(4)*"a"*(3). A parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group is eligible for the 20 percent earned income deduction, child care expenses for children in the eligible group, the 50 percent work incentive deduction described at 41.27(2)*"a,"* *"b,"* and *"c,"* and diversions described at 41.27(4), and shall be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except as described at 41.27(11). All remaining nonexempt income of the parent shall be applied against the needs of the eligible group. Excluded parents are subject to the earned income sanction at 41.27(2)*"d."* The 20 percent earned income deduction and child care expenses described at 41.27(2)*"a"* and *"b"* shall not be allowed for sanctioned earnings. However, the 50 percent work incentive deduction as in 41.27(2)*"c"* and diversions in 41.27(4) shall be allowed.

(2) Treatment of income of a parent who is ineligible because of lawful temporary or permanent resident status. The income of a parent who is ineligible as described in 41.23(4)*"a"*(3) shall be attributable to the eligible group in the same manner as the income of a stepparent is determined pursuant to 41.27(8)*"b"*(1) to (7), (9) and (10), except for child care expenses which are only allowed for the children in the eligible group. Nonrecurring lump sum income received by the parent shall be treated in accordance with 41.27(9)*"c"*(2). The alien parent is subject to the earned income sanction in 41.27(2)*"d."* The 20 percent earned income deduction and child care expenses in 41.27(2)*"a"* and *"b"* shall not be allowed for sanctioned earnings. However, the 50 percent work incentive deduction in 41.27(2)*"c"* shall be allowed.

b. Treatment of income in stepparent cases. The income of a stepparent who is not included in the eligible group, but is living with the parent in the home of the eligible child(ren), shall be given the same consideration and treatment as that of a natural parent subject to the limitations of subparagraphs (1) to (11) below.

(1) The stepparent's monthly gross nonexempt earned income, earned as an employee or monthly net profit from self-employment, shall receive a 20 percent earned income deduction.

(2) The stepparent's monthly nonexempt earned income remaining after the 20 percent earned income deduction shall be allowed child care expenses for the stepparent's ineligible dependents in the home, subject to the restrictions described in 41.27(2)*"b"*(1) to (5).

(3) Any amounts actually paid by the stepparent to individuals not living in the home, who are claimed or could be claimed by the stepparent as dependents for federal income tax purposes, shall be deducted from nonexempt monthly earned and unearned income of the stepparent.

(4) The stepparent shall also be allowed a deduction from nonexempt monthly earned and unearned income for alimony and child support payments made to individuals not living in the home with the stepparent.

(5) Except as described at 41.27(11), the nonexempt monthly earned and unearned income of the stepparent remaining after application of the deductions in 41.27(8)*"b"*(1) to (4) above shall be used to meet the needs of the stepparent and the stepparent's dependents living in the home, when the dependents' needs are not included in the eligible group and the stepparent claims or could claim the dependents for federal income tax purposes. These needs shall be determined in accordance with the family investment program standard of need for a family group of the same composition.

(6) The stepparent shall be allowed the 50 percent work incentive deduction from monthly earnings. The deduction shall be applied to earnings that remain after all other deductions in 41.27(8)"*b*"(1) through (5) have been subtracted from the earnings. However, the 50 percent work incentive deduction is not allowed when determining initial eligibility as described at 41.27(9)"*a*"(2) and (3).

(7) The deductions described in subparagraphs (1) through (6) will first be subtracted from earned income in the same order as they appear above.

When the stepparent has both nonexempt earned and unearned income and earnings are less than the allowable deductions, then any remaining portion of the deductions in subparagraphs (3) through (5) shall be subtracted from unearned income. Any remaining income shall be applied as unearned income to the needs of the eligible group.

If the stepparent has earned income remaining after allowable deductions, then any nonexempt unearned income shall be added to the earnings and the resulting total counted as unearned income to the needs of the eligible group.

(8) A nonexempt nonrecurring lump sum received by a stepparent shall be considered as income in the budget month, and counted in computing eligibility and the amount of the grant for the payment month. Any portion of the nonrecurring lump sum retained by the stepparent in the month following the month of receipt shall be considered a resource to the stepparent.

(9) When the income of the stepparent, not in the eligible group, is insufficient to meet the needs of the stepparent and the stepparent's dependent, but ineligible, child(ren) living in the home, the income of the parent may be diverted to meet the unmet needs of the child(ren) of the current marriage except as described at 41.27(11).

(10) When the needs of the stepparent, living in the home, are not included in the eligible group, the eligible group and any dependent but ineligible child(ren) of the parent shall be considered as one unit, and the stepparent and the stepparent's dependents, other than the spouse, shall be considered a separate unit.

(11) The earned income sanction described in 41.27(2)"*d*" does not apply to earnings of the stepparent.

c. Treatment of income in underage parent cases. In the case of a dependent child whose unmarried parent is under the age of 18 and living in the same home as the unmarried, underage parent's own self-supporting parent(s), the income of each self-supporting parent shall be considered available to the eligible group after appropriate deductions. The deductions to be applied are the same as are applied to the income of a stepparent pursuant to 41.27(8)"*b*"(1) to (7). Child care expenses in 41.27(8)"*b*"(2) shall be allowed for the self-supporting parent's(s') ineligible child(ren). Nonrecurring lump sum income received by the self-supporting parent(s) shall be treated in accordance with 41.27(8)"*b*"(8).

When the self-supporting spouse of a self-supporting parent is also living in the home, the income of that spouse shall be attributable to the self-supporting parent in the same manner as the income of a stepparent is determined pursuant to 41.27(8)"*b*"(1) to (7). Child care expenses in 41.27(8)"*b*"(2) shall be allowed for the ineligible dependents of the self-supporting spouse who is a stepparent of the minor parent. Nonrecurring lump sum income received by the spouse of the self-supporting parent shall be treated in accordance with 41.27(8)"*b*"(8). The self-supporting parent and any ineligible dependents of that person shall be considered as one unit; the self-supporting spouse and the spouse's ineligible dependents, other than the self-supporting parent, shall be considered a separate unit.

The earned income sanction described in 41.27(2)"*d*"does not apply to earnings of self-supporting parent(s) and their spouses.

41.27(9) *Budgeting process.*

a. Initial eligibility.

(1) At time of application all earned and unearned income received and anticipated to be received by the eligible group during the month the decision is made shall be considered to determine eligibility for the family investment program, except income which is exempt. When income is prorated in accordance with 41.27(9)*"c"*(1), 41.27(9)*"g"* and 41.27(9)*"i,"* the prorated amount is counted as income received in the month of decision. Allowable work expenses during the month of decision shall be deducted from earned income, except when determining eligibility under the 185 percent test defined in 41.27(239B). The determination of eligibility in the month of decision is a three-step process as described in 41.27(239B).

(2) When countable gross nonexempt earned and unearned income in the month of decision, or in any other month after assistance is approved, exceeds 185 percent of the standard of need for the eligible group, the application shall be rejected or the assistance grant canceled. Countable gross income means nonexempt gross income, as defined in rule 441—41.27(239B), without application of any disregards, deductions, or diversions. When the countable gross nonexempt earned and unearned income in the month of decision equals or is less than 185 percent of the standard of need for the eligible group, initial eligibility under the standard of need shall then be determined. Initial eligibility under the standard of need is determined without application of the earned income disregard as specified in 41.27(2)*"c."* All other appropriate exemptions, deductions and diversions are applied. Countable income is then compared to the standard of need for the eligible group. When countable net earned and unearned income in the month of decision equals or exceeds the standard of need for the eligible group, the application shall be denied.

(3) When the countable net income in the month of the decision is less than the standard of need for the eligible group, the earned income disregard in 41.27(2)*"c"* shall be applied when there is eligibility for this disregard. When countable net earned and unearned income in the month of decision, after application of the earned income disregard in 41.27(2)*"c"* and all other appropriate exemptions, deductions, and diversions, equals or exceeds the payment standard for the eligible group, the application shall be denied.

When the countable net income in the month of decision is less than the payment standard for the eligible group, the application shall be approved. The amount of the family investment program grant shall be determined by subtracting countable net income in the month of decision from the payment standard for the eligible group, except as specified in 41.27(9)*"a"*(4).

(4) Eligibility for the family investment program for any month or partial month before the month of decision shall be determined only when there is eligibility in the month of decision. The family composition for any month or partial month before the month of decision shall be considered the same as on the date of decision. In determining eligibility and the amount of the assistance payment for any month or partial month preceding the month of decision, income and all circumstances except family composition in that month shall be considered in the same manner as in the month of decision. When the eligibility determination is delayed until the third initial month or later and payment is being made for the preceding months, the payment for the month following the initial two months shall be based, retrospectively, on income and all circumstances except family composition in the corresponding budget month.

(5) The amount of the assistance grant for the initial two months of eligibility shall be computed prospectively with two exceptions. Income shall be considered retrospectively for the first two payment months which follow a month of suspension, unless there has been a change in the family's circumstances. Also, income for the first and second months of eligibility shall be considered retrospectively when the applicant was a recipient for the two immediately preceding payment months, including months for which payment was not received due to the restriction defined in 441—45.26(239B) and 441—45.27(239B).

(6) Income considered for prospective budgeting shall be the best estimate, based on knowledge of current and past circumstances and reasonable expectations of future circumstances.

(7) Work expense for care, as defined in 41.27(2)*"b,"* shall be the allowable care expense expected to be billed or otherwise expected to become due during the budget month. The 20 percent earned income deduction for each wage earner, as defined in 41.27(2)*"a,"* and the 50 percent work incentive deduction as defined in 41.27(2)*"c,"* shall be allowed.

b. Ongoing eligibility.

(1) After the initial two payment months, the amount of each grant shall be based, retrospectively, on income and other circumstances in the budget month. However, when the income was considered prospectively in the initial application and is not expected to continue, it shall not be considered again. This includes an eligible group not receiving a payment due to the restriction defined in 441—45.26(239B) and 441—45.27(239B).

(2) When a change in eligibility factors occurs, the local office shall prospectively compute eligibility based on the change, effective no later than the month following the month the change occurred. If eligibility continues, no action is taken. If ineligibility exists, assistance shall be canceled or suspended. Continuing eligibility under the 185 percent eligibility test, defined in 41.27(239B), shall be computed prospectively and retrospectively.

(3) Income considered for retrospective budgeting shall be the actual income received in the budget month, except for the income described in 41.27(9)*"c"*(1), 41.27(9)*"g"* and 41.27(9)*"i."* A payroll check will be considered received the date the employer distributes payroll checks to employees.

(4) Work expense for care, as defined in 41.27(2)*"b,"* shall be the allowable care expense expected to be billed or which otherwise became due in the budget month. The 20 percent earned income deduction for each wage earner, as defined in 41.27(2)*"a,"* and the 50 percent work incentive disregard, as defined in 41.27(2)*"c,"* shall be allowed.

c. Lump sum income.

(1) Lump sum income other than nonrecurring. Recurring lump sum earned and unearned income, except for the income of the self-employed, shall be prorated over the number of months for which the income was received and applied to the grant for the same number of months. Income received by an individual employed under a contract shall be prorated over the period of the contract. Income received at periodic intervals or intermittently shall be prorated over the period covered by the income and applied to the grant for the same number of months, except periodic or intermittent income from self-employment shall be treated as described in 41.27(9)*"i."* When the lump sum income is earned income, appropriate disregards, deductions and diversions shall be applied to the monthly prorated income. Income is prorated when a lump sum is received before the month of decision and is anticipated to recur; or a lump sum is received during the month of decision or any time during the receipt of assistance.

(2) Nonrecurring lump sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 41.26(4), 41.26(7), 41.27(8)*"b,"* and 41.27(8)*"c,"* shall be treated in accordance with this rule. Nonrecurring lump sum income shall be considered as income in the budget month and counted in computing eligibility and the amount of the grant for the payment month, unless the income is exempt. Nonrecurring lump sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. When countable income, exclusive of the family investment program grant but including countable lump sum income, exceeds the needs of the eligible group, the case shall be canceled or the application rejected. In addition, the eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter.

The period of ineligibility shall be shortened when the schedule of living costs as defined in 41.28(2) increases.

The period of ineligibility shall be shortened by the amount which is no longer available to the eligible group due to a loss, a theft or because the person controlling the lump sum no longer resides with the eligible group and the lump sum is no longer available to the eligible group.

The period of ineligibility shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 441—Chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over $25 per incident; cost of replacement of exempt resources as defined in subrule 41.26(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump sum income, is less than the needs of the eligible group, the lump sum shall be counted as income for the budget month. For purposes of applying the lump sum provision, the eligible group is defined as all eligible persons and any other individual whose lump sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump sum income was received may be eligible for family investment program as a separate eligible group. Income of this eligible group plus income, excluding the lump sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant.

d. The third digit to the right of the decimal point in any computation of income, hours of employment and work expenses for care, as defined in 41.27(2)*"b,"* shall be dropped. This includes the calculation of the amount of a truancy sanction as defined in paragraph 41.25(8)*"g"* or a child support sanction as defined in paragraph 41.22(6)*"f."*

e. In any month for which an individual is determined eligible to be added to a currently active family investment program case, the individual's needs shall be included subject to the effective date of grant limitations as prescribed in 441—40.26(239B). When adding an individual to an existing eligible group, any income of that individual shall be considered prospectively for the initial two months of that individual's eligibility and retrospectively for subsequent months. Any income considered in prospective budgeting shall be considered in retrospective budgeting only when the income is expected to continue. The needs of an individual determined to be ineligible to remain a member of the eligible group shall be removed prospectively effective the first of the following month.

f. Suspension. The local office shall suspend assistance retrospectively when income or circumstances in the budget month cause ineligibility and the local office has knowledge or reason to believe that ineligibility will exist for only one month. During the month of suspension, individuals not in the eligible group prior to suspension may be eligible for the family investment program as a separate eligible group. Income of this eligible group plus income of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant. The income of an ineligible parent or other legally responsible person shall be considered prospectively in accordance with 41.27(4) and 41.27(8).

g. Rescinded IAB 2/11/98, effective 2/1/98.

41.27(11) *Restriction on diversion of income.* No income may be diverted to meet the needs of a person living in the home who has been sanctioned under subrule 41.24(8) or 41.25(5), or who has been disqualified under subrule 41.25(10) or rule 441—46.28(239B) or 441—46.29(239B), or who is required to be included in the eligible group according to 41.28(1)*"a"* and has failed to cooperate. This restriction applies to 41.27(4)*"a"* and 41.27(8).

This rule is intended to implement Iowa Code chapter 239B and 1997 Iowa Acts, House File 715, section 3, subsection 5.

441—41.28(239B) Need standards.

41.28(1) *Definition of the eligible group.* The eligible group consists of all eligible persons living together, except when one or more of these persons has elected to receive supplemental security income under Title XVI of the Social Security Act. There shall be at least one child in the eligible group except when the only eligible child is receiving supplemental security income. The unborn child is not considered a member of the eligible group for purposes of establishing the number of persons in the eligible group.

a. The following persons shall be included (except as otherwise provided in these rules):

(1) The dependent child and any brother or sister of the child, of whole or half blood or adoptive, if the brother or sister meets the eligibility requirements of age and school attendance specified in subrule 41.21(1) and is deprived as specified in subrule 41.21(5), or rule 441—42.22(239B) if the brother or sister is living in the same home as the dependent child.

(2) Any natural or adoptive parent of such child, if the parent is living in the same home as the dependent child.

b. The following persons may be included:

(1) The needy relative who assumes the role of parent.

(2) The needy relative who acts as payee when the parent is in the home, but is unable to act as payee.

(3) The incapacitated stepparent, upon request, when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common law marriage and the incapacitated stepparent does not have a child in the eligible group.

(4) The stepparent who is not incapacitated when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common-law marriage and the stepparent is required in the home to care for the dependent children. These services must be required to the extent that if the stepparent were not available, it would be necessary to allow for care as a deduction from earned income of the parent.

41.28(2) *Schedule of needs.* The schedule of living costs represents 100 percent of basic needs. The schedule of living costs is used to determine the needs of individuals when these needs must be determined in accordance with the standard of need defined in 441—40.21(239B). The 185 percent schedule is included for the determination of eligibility in accordance with 441—41.27(239B). The schedule of basic needs is used to determine the basic needs of those persons whose needs are included in and are eligible for a family investment program grant. The eligible group is considered a separate and distinct group without regard to the presence in the home of other persons, regardless of relationship to or whether they have a liability to support members of the eligible group. The schedule of basic needs is also used to determine the needs of persons not included in the assistance grant, when these needs must be determined in accordance with the payment standard defined in 441—40.21(239B). The percentage of basic needs paid to one or more persons as compared to the schedule of living costs is shown on the chart below.

SCHEDULE OF NEEDS

Number of Persons	1	2	3	4	5	6	7	8	9	10	Each Additional Person
185% of Living Costs	675.25	1330.15	1570.65	1824.10	2020.20	2249.60	2469.75	2695.45	2915.60	3189.40	320.05
Schedule of Living Costs	365	719	849	986	1092	1216	1335	1457	1576	1724	173
Schedule of Basic Needs	183	361	426	495	548	610	670	731	791	865	87
Ratio of Basic Needs to Living Costs	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18

CHART OF BASIC NEEDS COMPONENTS
(all figures are on a per person basis)

Number of Persons	1	2	3	4	5	6	7	8	9	10 or More
Shelter	77.14	65.81	47.10	35.20	31.74	26.28	25.69	22.52	20.91	20.58
Utilities	19.29	16.45	11.77	8.80	7.93	6.57	6.42	5.63	5.23	5.14
Household Supplies	4.27	5.33	4.01	3.75	3.36	3.26	3.10	3.08	2.97	2.92
Food	34.49	44.98	40.31	39.11	36.65	37.04	34.00	33.53	32.87	32.36
Clothing	11.17	11.49	8.70	8.75	6.82	6.84	6.54	6.39	6.20	6.10
Pers. Care & Supplies	3.29	3.64	2.68	2.38	2.02	1.91	1.82	1.72	1.67	1.64
Med. Chest Supplies	.99	1.40	1.34	1.13	1.15	1.11	1.08	1.06	1.09	1.08
Communications	7.23	6.17	3.85	3.25	2.50	2.07	1.82	1.66	1.51	1.49
Transportation	25.13	25.23	22.24	21.38	17.43	16.59	15.24	15.79	15.44	15.19

a. The definitions of the basic need components are as follows:

(1) Shelter: Rental, taxes, upkeep, insurance, amortization.

(2) Utilities: Fuel, water, lights, water heating, refrigeration, garbage.

(3) Household supplies and replacements: Essentials associated with housekeeping and meal preparation.

(4) Food: Including school lunches.

(5) Clothing: Including layette, laundry, dry cleaning.

(6) Personal care and supplies: Including regular school supplies.

(7) Medicine chest items.

(8) Communications: Telephone, newspapers, magazines.

(9) Transportation: Includes bus fares and other out-of-pocket costs of operating a privately owned vehicle.

b. Special situations in determining eligible group:

(1) The needs of a child or children in a nonparental home shall be considered a separate eligible group when the relative is receiving the family investment program assistance for the relative's own children.

(2) When the unmarried specified relative under age 19 is living in the same home with a parent or parents who receive the family investment program, the needs of the specified relative, when eligible, shall be included in the same eligible group with the parent(s). When the specified relative is a parent, the needs of the eligible children for whom the unmarried parent is caretaker shall be included in the same eligible group. When the specified relative is a nonparental relative, the needs of the eligible children for whom the specified relative is caretaker shall be considered a separate eligible group.

When the unmarried specified relative under the age of 19 is living in the same home as a parent(s) who receives the family investment program but the specified relative is not an eligible child, need of the specified relative shall be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative under the age of 19 is living with a nonparental relative or in an independent living arrangement, need shall be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative is under the age of 18 and living in the same home with a parent(s) who does not receive the family investment program, the needs of the specified relative, when eligible, shall be included in the assistance grant with the children when the specified relative is a parent. When the specified relative is a nonparental relative as defined in 41.22(3), only the needs of the eligible children shall be included in the assistance grant. When the unmarried specified relative is aged 18, need shall be determined in the same manner as though the specified relative had attained majority.

(3) When a person who would ordinarily be in the eligible group has elected to receive supplemental security income benefits, the person, income and resources, shall not be considered in determining family investment program benefits for the rest of the family.

(4) When two individuals, married to each other, are living in a common household and the children of each of them are recipients of assistance, the assistance grant shall be computed on the basis of their comprising one eligible group. This rule shall not be construed to require that an application for assistance be made for children who are not the natural or adoptive children of the applicant.

41.28(3) Special needs. On the basis of demonstrated need the following special needs shall be allowed, in addition to the basic needs.

a. School expenses. Any specific charge, excluding tuition, for a child's education made by the school, or in accordance with school requirements in connection with a course in the curriculum, shall be allowed provided the allowance shall not exceed the reasonable cost required to meet the specifications of the course, and the student is actually participating in the course at the time the expense is claimed. Payment will not be made for ordinary expenses for school supplies.

b. Guardian/conservator fee. An amount not to exceed $10 per case per month may be allowed for guardian's/conservator's fees when authorized by appropriate court order. No additional payment is permitted for court costs or attorney's fees.

c. FIP special needs classroom training. Rescinded IAB 12/3/97, effective 2/1/98.

d. Job Training Partnership Act. Rescinded IAB 12/3/97, effective 2/1/98.

41.28(4) *Period of adjustment.* When a parent recovers from the condition which caused incapacity, or when the absent parent and parent establish or reestablish a home for the child, assistance shall continue for the existing eligible group, if there is need, for a period not to exceed the issuance of three warrants.

This rule is intended to implement Iowa Code section 239B.5.

441—41.29(239B) Composite FIP/SSI cases. When persons in the family investment program household, who would ordinarily be in the eligible group, are receiving supplemental security income benefits, the following rules shall apply.

41.29(1) *Pending SSI approval.* When a person who would ordinarily be in the eligible group has applied for supplemental security income benefits, the person's needs may be included in the family investment program grant pending approval of supplemental security income.

41.29(2) *Ownership of property.* When property is owned by both the supplemental security income beneficiary and the family investment program recipient, each shall be considered as having a half interest in order to determine the value of the resource, unless the terms of the deed or purchase contract clearly establish ownership on a different proportional basis.

This rule is intended to implement Iowa Code section 239B.5.

[Filed 6/23/55; amended 4/12/72, 8/30/72, 11/20/72, 12/28/72, 6/21/73, 10/24/73, 3/20/74, 7/1/74, 12/2/74, 3/21/75]
[Emergency amendments filed and effective 9/19/75—published 10/6/75]
[Filed 11/25/75, Notice 10/6/75—published 12/15/75, effective 1/19/76]
[Filed 6/25/76, Notice 5/17/76—published 7/12/76, effective 8/16/76]
[Filed without notice 7/29/76—published 8/23/76, effective 9/27/76]
[Filed emergency 7/29/76—published 8/23/76, effective 7/29/76]
[Filed 9/29/76, Notice 8/23/76—published 10/20/76, effective 11/24/76]
[Filed 4/13/77, Notice 2/23/77—published 5/4/77, effective 6/8/77, 7/1/77]
[Filed emergency 7/20/77—published 8/10/77, effective 7/20/77]
[Filed 8/18/77, Notice 6/15/77—published 9/7/77, effective 10/12/77]
[Filed 1/16/78, Notice 9/7/77—published 2/8/78, effective 3/15/78]
[Filed 2/8/78, Notice 12/28/77—published 3/8/78, effective 4/12/78]
[Filed 6/1/78, Notice 4/19/78—published 6/28/78, effective 4/19/78]
[Filed emergency 6/28/78—published 7/26/78, effective 7/1/78]
[Filed 8/9/78, Notice 6/28/78—published 9/6/78, effective 11/1/78]
[Filed 9/12/78, Notice 7/26/78—published 10/4/78, effective 11/8/78]
[Filed 12/6/78, Notice 10/4/78—published 12/27/78, effective 2/1/79]
[Filed 1/4/79, Notice 11/29/78—published 1/24/79, effective 3/1/79]
[Filed 1/31/79, Notice 11/29/78—published 2/21/79, effective 4/1/79]
[Filed 2/2/79, Notice 12/27/78—published 2/21/79, effective 3/28/79]
[Filed 3/30/79, Notice 2/21/79—published 4/18/79, effective 5/23/79]
[Filed 6/5/79, Notice 4/4/79—published 6/27/79, effective 8/1/79]
[Filed emergency 6/26/79—published 7/25/79, effective 7/1/79]
[Filed 7/3/79, Notice 4/18/79—published 7/25/79, effective 9/1/79]
[Filed 8/2/79, Notice 5/30/79—published 8/22/79, effective 9/26/79]
[Filed 8/2/79, Notice 5/30/79—published 8/22/79, effective 10/1/79]
[Filed emergency after Notice 9/6/79, Notice 7/11/79—published 10/3/79, effective 10/1/79]
[Filed 9/6/79, Notice 7/11/79—published 10/3/79, effective 12/1/79]
[Filed 9/27/79, Notices 2/21/79, 4/18/79—published 10/17/79, effective 12/1/79]
[Filed 10/24/79, Notice 8/22/79—published 11/14/79, effective 1/1/80]
[Filed 4/4/80, Notice 1/23/80—published 4/30/80, effective 6/4/80]
[Filed emergency 5/5/80—published 5/28/80, effective 5/5/80]

[Filed emergency 3/14/91—published 4/3/91, effective 3/14/91]
[Filed without Notice 4/11/91—published 5/1/91, effective 7/1/91]
[Filed 5/17/91, Notice 3/20/91—published 6/12/91, effective 8/1/91]
[Filed emergency 6/14/91—published 7/10/91, effective 7/1/91]
[Filed 7/10/91, Notice 5/29/91—published 8/7/91, effective 10/1/91]
[Filed 9/18/91, Notice 7/10/91◊—published 10/16/91, effective 12/1/91]
[Filed emergency 10/10/91 after Notice 9/4/91—published 10/30/91, effective 11/1/91]
[Filed 11/15/91, Notice 9/18/91—published 12/11/91, effective 2/1/92]
*[Filed 12/11/91, Notice 10/16/91—published 1/8/92, effective 3/1/92]◊
[Filed 1/16/92, Notice 9/18/91—published 2/5/92, effective 4/1/92]
[Filed emergency 4/15/92—published 5/13/92, effective 4/16/92]
[Filed emergency 6/11/93 after Notice 4/28/93—published 7/7/93, effective 7/1/93]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed emergency 11/12/93—published 12/8/93, effective 1/1/94]
[Filed 12/16/93, Notice 10/13/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notice 12/8/93—published 3/2/94, effective 5/1/94]
[Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
[Filed emergency 1/11/95 after Notice 11/23/94—published 2/1/95, effective 2/1/95]
[Filed 2/16/95, Notice 11/23/94—published 3/15/95, effective 5/1/95]
[Filed 7/12/95, Notice 5/10/95—published 8/2/95, effective 10/1/95]
[Filed without Notice 9/25/95—published 10/11/95, effective 12/1/95]
[Filed emergency 11/16/95—published 12/6/95, effective 12/1/95]
[Filed emergency 1/10/96 after Notice 10/11/95—published 1/31/96, effective 2/1/96]
[Filed 1/10/96, Notice 10/11/95—published 1/31/96, effective 4/1/96]
[Filed 8/15/96, Notice 5/8/96—published 9/11/96, effective 11/1/96]
[Filed emergency 9/19/96—published 10/9/96, effective 9/19/96]
[Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]
[Filed 12/12/96, Notice 10/9/96—published 1/1/97, effective 3/1/97]
[Filed emergency 1/15/97—published 2/12/97, effective 3/1/97]
[Filed 3/12/97, Notice 1/1/97—published 4/9/97, effective 6/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed emergency 6/12/97—published 7/2/97, effective 7/1/97]
[Filed emergency 9/16/97—published 10/8/97, effective 10/1/97]
[Filed 9/16/97, Notice 7/2/97—published 10/8/97, effective 12/1/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 3/1/98]
[Filed 12/10/97, Notice 10/8/97—published 12/31/97, effective 3/1/98]
[Filed emergency 1/14/98 after Notice 11/19/97—published 2/11/98, effective 2/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed 6/10/98, Notice 5/6/98—published 7/1/98, effective 9/1/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 5/31/99]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 6/1/99]

◊Two ARCs
*Effective date of 3/1/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

CHAPTER 46
OVERPAYMENT RECOVERY

[Prior to 7/1/83, Social Services[770] Ch 46]
[Prior to 2/11/87, Human Services[498]]

DIVISION I
FAMILY INVESTMENT PROGRAM—CONTROL GROUP
[Rescinded IAB 2/12/97, effective 3/1/97]

441—46.1 to **46.20** Reserved.

DIVISION II
FAMILY INVESTMENT PROGRAM—TREATMENT GROUP
[Prior to 10/13/93, 441—46.1(239) to 46.8(239)]

441—46.21(239) Definitions.

"Agency error" in overpayments means: (a) The same as circumstances described in 441—subrule 45.24(1) pertaining to underpayments, or (b) any error that is not a client or procedural error.

"Client" means a current or former applicant or recipient of the family investment program.

"Client error" means and may result from:

False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report changes in income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report the receipt of and, if applicable, to refund assistance in excess of the amount shown on the most recent Notice of Decision, Form PA-3102-0, or the receipt of a duplicate grant; or

Failure to refund to the child support recovery unit any nonexempt payment from the absent parent received after the date the decision on eligibility was made.

False or misleading statements regarding the existence of a sponsor or the income or resources of the sponsor and the sponsor's spouse, when a sponsor is financially responsible for an alien according to 441—subrules 41.25(6) and 41.27(10).

"Good cause" for the sponsor of an alien not reporting income or resources means the change results in a monthly error of less than $10.

"Intentional program violation" is an action by a person for the purpose of establishing or maintaining the family's eligibility for FIP, or for increasing or preventing reduction in the grant amount by intentionally (1) making a false or misleading statement; (2) misrepresenting, concealing or withholding facts; or (3) acting with the intent to mislead, misrepresent, conceal or withhold facts, or provide false information.

"Overpayment" means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive.

"Procedural error" means a technical error which does not in and of itself result in an overpayment. Procedural errors include:

Failure to secure a properly signed application at the time of initial application or reapplication.

Failure of the county office to conduct the face-to-face interviews described in 441—subrules 40.24(2) and 40.27(1).

Failure to request a Public Assistance Eligibility Report or a Review/Recertification Eligibility Document at the time of a monthly, semiannual, or annual review.

Failure of county office staff to cancel the family investment program when the client submits a Public Assistance Eligibility Report or a Review/Recertification Eligibility Document which is not complete as defined in 441—paragraph 40.27(4)*"b."* However, overpayments of grants as defined above based on incomplete reports are subject to recoupment.

"Recoup" means reimburse, return, or repay an overpayment.

"Recoupment" means the repayment of an overpayment, either by a payment from the client or an amount withheld from the assistance grant or both.

"Without fault" means an alien's sponsor is "without fault" when the department fails to determine that an alien has a sponsor, fails to determine that an alien sponsored by an agency or organization is ineligible for assistance in accordance with 441—subrule 41.25(6), fails to count the sponsor's income in accordance with 441—subrule 41.27(10) and resources in accordance with 441—subrule 41.26(9) in determining the alien's eligibility or an overpayment results from an agency error.

441—46.22(239) Monetary standards.

46.22(1) *Amount subject to recoupment.* All family investment program overpayments shall be subject to recoupment.

46.22(2) *Grant issued.* When recoupment is made by withholding from the family investment program grant, the grant issued shall be for no less than $10.

441—46.23(239) Notification and appeals. All clients shall be notified by the department of inspections and appeals, as described at 441—subrule 7.5(6), when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The local office shall provide additional information regarding the computation of the overpayment upon the client's request. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with 441—subrule 7.5(6).

441—46.24(239) Determination of overpayments. All overpayments due to agency or client error or due to assistance paid pending an appeal decision or due to assistance paid while real property is exempt as a resource in accordance with 441—paragraph 41.26(6)*"d"* shall be recouped. A procedural error alone does not result in an overpayment.

46.24(1) *Agency error.* When an overpayment is due to an agency error, recoupment shall be made, including those instances when errors by the department prevent the requirements in 441—subrule 41.22(6) or 41.22(7) from being met or when the client receives a duplicate grant. An overpayment of any amount is subject to recoupment with one exception: When the client receives a grant that exceeds the amount on the most recent notice from the department, recoupment shall be made only when the amount received exceeds the amount on the notice by $10 or more. The client is required to timely report receipt of excess assistance under 441—subrule 40.27(4). An overpayment due to agency error shall be computed as if the information had been acted upon timely.

46.24(2) *Assistance paid pending appeal decision.* Recoupment of overpayments resulting from assistance paid pending a decision on an appeal hearing shall begin no later than the month after the month in which the final decision is issued.

46.24(3) *Client error.*

a. An overpayment due to client error shall be computed as if the information had been reported and acted upon timely.

EXCEPTION: When the client, without good cause, as defined in 441—paragraph 41.27(2)*"d,"* fails to report income earned as specified in 41.27(2)*"d,"* the deductions in 441—paragraphs 41.27(2)*"a"* and *"b"* shall not be allowed. However, the work incentive deduction in 441—paragraph 41.27(2)*"c"* shall be allowed except as described in 441—paragraph 41.27(9)*"a."*

b. Overpayments due to failure to refund payments received from the absent parent shall be the total nonexempt support payment made for members of the eligible group at the time the support payment was received. In addition, assistance payments made to meet the needs of the eligible group may also be subject to recoupment under provisions in 441—subrule 41.22(6).

46.24(4) *Failure to cooperate.* Failure to cooperate in the investigation of alleged overpayments shall result in ineligibility for the months in question and the overpayment shall be the total amount of assistance received during those months.

46.24(5) *Overpayment in special alien cases.*

a. Overpayment in special alien cases when the sponsor is an individual. An overpayment due to client error regarding the income and resources of the alien's sponsor and the sponsor's spouse shall be recouped from the alien or from the resources of the sponsor and the sponsor's spouse which were available to the alien according to 441—subrule 41.26(9).

EXCEPTION: When the sponsor is found to have "good cause" or to be "without fault" recoupment shall be from the alien.

b. Overpayment in special alien cases when the sponsor is an agency or organization. An overpayment due to the sponsor's failure to provide correct information shall be recouped from the alien or from the resources of the sponsor. An overpayment due to client error regarding the sponsor's ability to support the alien shall be recouped from the alien or resources of the sponsor.

EXCEPTION: When the sponsor is found to have "good cause" or to be "without fault" the recoupment shall be from the alien.

46.24(6) *Real property exempted as a resource.* Excess assistance paid while real property is exempt as a resource in accordance with 441—paragraph 41.26(6)*"d"* shall be recouped. The amount of the overpayment shall be determined as follows:

a. If the applicant or recipient fails to reimburse the department from the net proceeds of the sale, the family investment program assistance paid during the period of exemption shall be considered an overpayment subject to recovery. The amount of the overpayment shall be either the amount of cash assistance received or the net proceeds from the sale, whichever is less.

b. If the property is not disposed of during the exemption period, or if eligibility no longer exists for some other reason, the entire amount of cash assistance received during the exemption period shall be considered an overpayment subject to recovery. Recoupment, however, shall not be initiated until the property is disposed of.

441—46.25(239) Source of recoupment. Recoupment shall be made from basic needs or in accordance with 46.24(5) above. The minimum recoupment amount shall be the amount prescribed in 46.25(3). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments when an agreement to do this is made with the department of inspections and appeals, or have repayment withheld from the grant. The client shall sign either Form PA-3164-0, Agreement to Repay Overpayment, or Form PA-3167-0, Agreement to Repay Overpayment after Probation, when requested to do so by the department of inspections and appeals. When the client fails to make the agreed upon payment, the agency shall reduce the grant. Recoupment, whether it be by a lump sum payment, periodic installment payments, or withholding from the grant, can be made from one or both of the following sources:

46.25(1) and **46.25(2)** Rescinded, effective February 8, 1984.

46.25(3) *Basic needs.*

a. Recoupment by withholding from basic needs for overpayments due to client error or a combination of client and agency errors shall be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.28(2).

b. Recoupment by withholding from basic needs for overpayments due to the continuation of benefits pending a decision on an appeal as provided under rule 441—7.9(217) or a combination of continued benefits and agency or client errors shall be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.28(2).

c. Recoupment by withholding from basic needs for overpayments due to agency error shall be 1 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.28(2).

d. When the client fails to reimburse the department in accordance with 441—paragraph 41.26(6)*"d"* recoupment shall be made. The amount of the overpayment shall be determined in accordance with subrule 46.24(6). The amount of recoupment from basic needs shall be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.28(2).

46.25(4) *Recoupment in special alien cases.*

a. Recoupment in special alien cases when the sponsor is an individual. Recoupment shall be made from the resources deemed to an alien according to 441—subrule 41.26(9) when

(1) The sponsor is financially responsible for the alien according to 441—subrule 41.27(10),

(2) The alien and sponsor failed to provide accurate information regarding the sponsor's income or resources, and

(3) An overpayment resulted.

When recoupment is to be made from the resources deemed to an alien, the case shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution.

b. Recoupment in special alien cases when the sponsor is an agency or organization. Recoupment shall be made from the resources of the sponsor when

(1) The sponsor is financially responsible for the alien in accordance with 441—subrule 41.25(6).

(2) The alien or sponsor failed to provide accurate information regarding the sponsor's ability to support the alien, and

(3) An overpayment resulted.

When recoupment is to be made from the sponsor's resources, the case shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution.

441—46.26 Rescinded, effective February 8, 1984.

441—46.27(239) Procedures for recoupment.

46.27(1) Rescinded IAB 2/8/89, effective 4/1/89.

46.27(2) *Referral.* When the local office determines that an overpayment exists, the case shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution.

46.27(3) Rescinded IAB 2/8/89, effective 4/1/89.

46.27(4) *Change of circumstances.* When financial circumstances change, the recoupment plan is subject to revision.

46.27(5) *Collection.* Recoupment for overpayments shall be made from the parent or nonparental relative who was the caretaker relative, as defined in 441—subrule 41.22(3), at the time the overpayment occurred, except as provided in 46.24(5). When both parents were in the home at the time the overpayment occurred, both parents are equally responsible for repayment of the overpayment.

[Filed 4/23/81, Notice 3/4/81—published 5/13/81, effective 8/1/81]
[Filed emergency 9/25/81—published 10/14/81, effective 10/1/81]
[Filed emergency 10/23/81—published 11/11/81, effective 11/1/81]
[Filed 1/28/82, Notice 11/11/81—published 2/17/82, effective 4/1/82]
[Filed emergency 5/21/82—published 6/9/82, effective 5/21/82]
[Filed 6/15/82, Notice 3/17/82—published 7/7/82, effective 9/1/82]
[Filed 7/30/82, Notice 5/26/82—published 8/18/82, effective 10/1/82]
[Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]
[Filed emergency 11/18/83 after Notice 10/12/83—published 12/7/83, effective 1/1/84]
[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
[Filed without Notice 9/28/84—published 10/24/84, effective 12/1/84]
[Filed emergency 1/21/85—published 2/13/85, effective 2/1/85]
[Filed emergency after Notice 3/22/85, Notice 2/13/85—published 4/10/85, effective 4/1/85]
[Filed 3/22/85, Notice 2/13/85—published 4/10/85, effective 6/1/85]
[Filed 4/29/85, Notice 10/24/84—published 5/22/85, effective 7/1/85]
[Filed 11/15/85, Notice 10/9/85—published 12/4/85, effective 2/1/86]
[Filed emergency 7/25/86 after Notice 6/4/86—published 8/13/86, effective 8/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 1/12/89, Notice 11/16/88—published 2/8/89, effective 4/1/89]
[Filed 4/13/89, Notice 3/8/89—published 5/3/89, effective 7/1/89]
[Filed 1/16/90, Notice 11/15/89—published 2/7/90, effective 4/1/90]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed 12/16/93, Notice 10/13/93—published 1/5/94, effective 3/1/94]
[Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
[Filed 8/15/96, Notice 5/8/96—published 9/11/96, effective 11/1/96]
[Filed emergency 1/15/97—published 2/12/97, effective 3/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 3/1/98]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 6/1/99]

b. A timely and adequate notice as defined in 441—subrule 7.7(1) shall be provided to the recipient informing the recipient of a decision to discontinue payment of the health insurance premium when the recipient no longer meets the eligibility requirements of the program or fails to cooperate in providing information to establish eligibility.

75.22(10) *Confidentiality.* The department shall protect the confidentiality of persons participating in the program in accordance with Iowa Code chapter 141. When it is necessary for the department to contact a third party to obtain information in order to determine initial or ongoing eligibility, a Consent to Release or Obtain Information, Form 470-0429, shall be signed by the recipient authorizing the department to make the contact.

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

441—75.23(249A) Disposal of assets for less than fair market value after August 10, 1993. In determining Medicaid eligibility for persons described in 441—Chapters 75, 83, and 86, a transfer of assets occurring after August 10, 1993, will affect Medicaid payment for medical services as provided in this rule.

75.23(1) *Ineligibility for services.*

a. If an institutionalized individual or the spouse of the individual disposed of assets for less than fair market value on or after the look-back date specified in 75.23(2), the institutionalized individual is ineligible for medical assistance for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and home- and community-based waiver services during the period beginning on the first day of the first month during or after which assets were transferred for less than fair market value and which does not occur in any other periods of ineligibility under this rule and equal to the number of months specified in 75.23(3).

b. If a noninstitutionalized individual or the spouse of the individual disposed of assets for less than fair market value on or after the look-back date specified in 75.23(2), the individual is ineligible for medical assistance for home health care services, home and community care for functionally disabled elderly individuals, personal care services, and other long-term care services during the period beginning on the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this rule and equal to the number of months specified in 75.23(3).

75.23(2) *Look-back date.* The look-back date is the date that is 36 months (or, in the case of payments from a trust or portion of a trust that are treated as assets disposed of by the individual, 60 months) before the date an institutionalized individual is both an institutionalized individual and has applied for medical assistance or the date the noninstitutionalized individual applies for medical assistance.

75.23(3) *Period of ineligibility.* The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private pay rate for nursing facility services at the time of application. The average statewide cost to a private pay resident shall be determined by the department and updated annually for nursing facilities. For the period from July 1, 1999, through June 30, 2000, this average statewide cost shall be $2,673 per month or $87.87 per day.

75.23(4) *Reduction of period of ineligibility.* The number of months of ineligibility otherwise determined with respect to the disposal of an asset shall be reduced by the months of ineligibility applicable to the individual prior to a change in institutional status.

75.23(5) *Exceptions.* An individual shall not be ineligible for medical assistance, under this rule, to the extent that:

a. The assets transferred were a home and title to the home was transferred to either:

(1) A spouse of the individual.

(2) A child who is under the age of 21 or is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c.

(3) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the individual became institutionalized.

(4) A son or daughter of the individual who was residing in the individual's home for a period of at least two years immediately before the date of institutionalization and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

b. The assets were transferred:

(1) To the individual's spouse or to another for the sole benefit of the individual's spouse.

(2) From the individual's spouse to another for the sole benefit of the individual's spouse.

(3) To a trust established solely for the benefit of a child who is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c.

(4) To a trust established solely for the benefit of an individual under 65 years of age who is disabled as defined in 42 U.S.C. Section 1382c.

c. A satisfactory showing is made that:

(1) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration.

(2) The assets were transferred exclusively for a purpose other than to qualify for medical assistance.

(3) All assets transferred for less than fair market value have been returned to the individual.

d. The denial of eligibility would work an undue hardship. Undue hardship shall exist only where both of the following conditions are met:

(1) The person who transferred the resource or the person's spouse has exhausted all means including legal remedies and consultation with an attorney to recover the resource.

(2) The person's remaining available resources (after the attribution for the community spouse) are less than the monthly statewide average cost of nursing facility services to a private pay resident. The value of all resources is counted except for:

1. The home if occupied by a dependent relative or if a doctor verifies that the person is expected to return home.
2. Household goods.
3. A vehicle required by the client for transportation.
4. Funds for burial of $4,000 or less.

Hardship will not be found if the resource was transferred to a person who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless the client demonstrates that payments cannot be obtained from the funds of the person who handled the financial affairs to pay for nursing facility services.

2. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

3. Any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" shall be defined by 42 U.S.C. Section 1382a.

"Institutionalized individual" shall mean an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is eligible for home- and community-based waiver services.

"Resources" shall be defined by 42 U.S.C. Section 1382b without regard (in the case of an institutionalized individual) to the exclusion of the home and land appertaining thereto.

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

441—75.24(249A) Treatment of trusts established after August 10, 1993. For purposes of determining an individual's eligibility for, or the amount of, medical assistance benefits, trusts established after August 10, 1993, (except for trusts specified in 75.24(3)) shall be treated in accordance with 75.24(2).

75.24(1) *Establishment of trust.*

a. For the purposes of this rule, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the principal of the trust and if any of the following individuals established the trust other than by will: the individual, the individual's spouse, a person (including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse), or a person (including a court or administrative body) acting at the direction or upon the request of the individual or the individual's spouse.

b. The term "assets," with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action by the individual or the individual's spouse, by a person (including a court or administrative body, with legal authority to act in place of or on behalf of the individual's spouse), or by any person (including a court or administrative body) acting at the direction or upon the request of the individual or the individual's spouse.

c. In the case of a trust, the principal of which includes assets of an individual and assets of any other person or persons, the provisions of this rule shall apply to the portion of the trust attributable to the individual.

d. This rule shall apply without regard to:

(1) The purposes for which a trust is established.

(2) Whether the trustees have or exercise any discretion under the trust.

(3) Any restrictions on when or whether distribution may be made for the trust.

(4) Any restriction on the use of distributions from the trust.

e. The term "trust" includes any legal instrument or device that is similar to a trust, including a conservatorship.

75.24(2) *Treatment of revocable and irrevocable trusts.*

a. In the case of a revocable trust:

(1) The principal of the trust shall be considered an available resource.

(2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual.

(3) Any other payments from the trust shall be considered assets disposed of by the individual, subject to the penalties described at rule 441—75.23(249A) and 441—Chapter 89.

b. In the case of an irrevocable trust:

(1) If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the principal from which, or the income on the principal from which, payment to the individual could be made shall be considered an available resource to the individual and payments from that principal or income to or for the benefit of the individual shall be considered income to the individual. Payments for any other purpose shall be considered a transfer of assets by the individual subject to the penalties described at rule 441—75.23(249A) and 441—Chapter 89.

(2) Any portion of the trust from which, or any income on the principal from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed of by the individual subject to the penalties specified at 75.23(3) and 441—Chapter 89. The value of the trust shall be determined for this purpose by including the amount of any payments made from this portion of the trust after this date.

75.24(3) *Exceptions.* This rule shall not apply to any of the following trusts:

a. A trust containing the assets of an individual under the age of 65 who is disabled (as defined in Section 1614(a)(3) of the Social Security Act) and which is established for the benefit of the individual by a parent, grandparent, legal guardian of the individual, or a court if the state will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual.

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual.

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from July 1, 1999, to June 30, 2000, shall be as follows:

(1) The average statewide charge to a private pay resident of a nursing facility is $2,536 per month.

(2) The average statewide charge to a private pay resident of a hospital-based skilled nursing facility is $8,013 per month.

(3) The average statewide charge to a private pay resident of a non-hospital-based skilled nursing facility is $4,097 per month.

(4) The average statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is $8,510 per month.

(5) The average statewide charge to a resident of a mental health institute is $11,924 per month.

(6) The average statewide charge to a private pay resident of a psychiatric medical institution for children is $4,218 per month.

(7) The average statewide charge to a home- and community-based waiver applicant or recipient shall be consistent with the level of care determination and correspond with the average charges and rates set forth in this paragraph.

c. A trust containing the assets of an individual who is disabled (as defined in 1614(a)(3) of the Social Security Act) that meets the following conditions:

(1) The trust is established and managed by a nonprofit association.

(2) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

f. The applicant or recipient shall cooperate in supplying verification of all unearned income. When the information is available, the county office shall verify job insurance benefits by using information supplied to the department by Iowa workforce development. When the county office uses this information as verification, job insurance benefits shall be considered received the second day after the date the check was mailed by Iowa workforce development. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day. When the client notifies the county office that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. The client must report the discrepancy prior to the eligibility month or within ten days of the date on the Notice of Decision, Form PA-3102-0, applicable to the eligibility month, whichever is later.

75.57(2) *Earned income.* Earned income is defined as income in the form of a salary, wages, tips, bonuses, commission earned as an employee, income from Job Corps, or profit from self-employment. Earned income from commissions, wages, tips, bonuses, Job Corps, or salary means the total gross amount irrespective of the expenses of employment. With respect to self-employment, earned income means the profit determined by comparing gross income with the allowable costs of producing the income. Income shall be considered earned income when it is produced as a result of the performance of services by an individual.

a. Each person in the assistance unit whose gross nonexempt earned income, earned as an employee or net profit from self-employment, considered in determining eligibility is entitled to one 20 percent earned income deduction of nonexempt monthly gross earnings. The deduction is intended to include work-related expenses other than child care. These expenses shall include, but are not limited to, all of the following: taxes, transportation, meals, uniforms, and other work-related expenses.

b. Each person in the assistance unit is entitled to a deduction for care expenses subject to the following limitations.

Persons in the eligible group and excluded parents shall be allowed care expenses for a child or incapacitated adult in the eligible group.

Stepparents as described at paragraph 75.57(8)*"b"* and self-supporting parents on underage parent cases as described at paragraph 75.57(8)*"c"* shall be allowed child care expenses for the ineligible dependents of the stepparent or self-supporting parent.

(1) Child care or care for an incapacitated adult shall be considered a work expense in the amount paid for care of an individual, not to exceed $175, or $200 in the case of a child under the age of two, per month for a full-time employee and $174, or $199 in the case of a child under the age of two, for a part-time employee or the going rate in the community, whichever is less.

(2) Full-time employment shall be defined as employment of 129 or more hours per month. Part-time employment shall be defined as employment of fewer than 129 hours per month. The determination as to whether self-employment income is full-time or part-time shall be made on the basis of whether the average net monthly income from self-employment is at least equal to the state or federal minimum wage, whichever is higher, multiplied by 129 hours a month. "Net monthly income" means income in a month remaining after deduction of allowable business expenses as described at paragraphs 75.57(2)*"f"* through *"j."*

(3) The deduction is allowable only when the care covers the actual hours of the individual's employment plus a reasonable period of time for commuting; or the period of time when the individual who would normally care for the child or incapacitated adult is employed at such hours that the individual is required to sleep during the waking hours of the child or incapacitated adult, excluding any hours a child is in school.

(4) Any special needs of a physically or mentally handicapped child or adult shall be taken into consideration in determining the deduction allowed.

(5) The expense shall be verified by receipt or a statement from the provider of care and shall be allowed when paid to any person except a parent or legal guardian of the child or another member of the eligible group, or to any person whose needs are met by diversion of income from any person in the eligible group.

c. After deducting the allowable work expenses as defined at paragraphs 75.57(2)*"a"* and *"b"* and income diversions as defined at subrules 75.57(4) and 75.57(8), 50 percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each individual whose income must be considered is deducted in determining eligibility for the family medical assistance program (FMAP) and those FMAP-related coverage groups subject to the three-step process for determining initial eligibility as described at rule 441—75.57(249A). The 50 percent work incentive deduction is not time-limited. Initial eligibility under the first two steps of the three-step process is determined without the application of the 50 percent work incentive deduction as described at subparagraphs 75.57(9)*"a"*(2) and (3).

Individuals whose needs have been removed from the eligible group for refusing to cooperate in applying for or accepting benefits from other sources, in accordance with the provisions of rule 441—75.2(249A), 441—75.3(249A), or 441—75.21(249A), are eligible for the 50 percent work incentive deduction but the individual is not eligible for Medicaid.

d. Ineligibility for expenses and disregards. Except for persons described at paragraphs 75.57(8)*"b"* and *"c,"* a person whose earned income must be considered is not eligible for the 20 percent earned income deduction or the care expense described at paragraphs 75.57(2)*"a"* and *"b"* for any month in which the individual failed, without good cause, to timely report a change in earned income or to timely report earned income on Form 470-0455, Public Assistance Eligibility Report (PAER), or Form 470-2881, Review/Recertification Eligibility Document (RRED). However, the individual is eligible for the 50 percent work incentive deduction described at paragraph 75.57(2)*"c."* Good cause for not timely returning a PAER or a RRED or for not timely reporting a change in earned income shall be limited to circumstances beyond the control of the individual, such as, but not limited to, a failure by the department to provide needed assistance when requested, to give needed information, to follow procedure resulting in a delay in the return of the PAER or the RRED, or when conditions require the forms to be mailed other than with the regular end-of-the-month mailing. Good cause shall also include, but not be limited to, circumstances when the individual was prevented from reporting by a physical or mental disability, death or serious illness of an immediate family member, or other unanticipated emergencies, or mail was not delivered due to a disruption of regular mail delivery. The applicant or recipient who returns the PAER or the RRED listing earned income by the sixteenth day of the report month shall be considered to have good cause for not timely returning the PAER or the RRED.

(2) To qualify for this disregard, the person shall not have earned more than $1,200 in the 12 calendar months prior to the month in which the new job begins, the income must be reported timely in accordance with rule 441—76.10(249A), and the new job must have started after the date the application is filed. For purposes of this policy, the $1,200 earnings limit applies to the gross amount of income without any allowance for exemptions, disregards, work deductions, diversions, or the costs of doing business used in determining net profit from any income test in rule 441—75.57(249A).

(3) If another new job or self-employment enterprise starts while a WTP is in progress, the exemption shall also be applied to earnings from the new source that are received during the original 4-month period, provided that the earnings were less than $1,200 in the 12-month period before the month the other new job or self-employment enterprise begins.

(4) An individual is allowed the 4-month exemption period only once in a 12-month period. An additional 4-month exemption shall not be granted until the month after the previous 12-month period has expired.

(5) If a person whose income is considered enters the household, the new job must start after the date the person enters the home or after the person is reported in the home, whichever is later, in order for that person to qualify for the exemption.

(6) When a person living in the home whose income is not considered subsequently becomes an assistance unit member whose income is considered, the new job must start after the date of the change that causes the person's income to be considered in order for that person to qualify for the exemption.

(7) A person who begins new employment or self-employment that is intermittent in nature may qualify for the WTP. "Intermittent" includes, but is not limited to, working for a temporary agency that places the person in different job assignments on an as-needed or on-call basis, or self-employment from providing child care for one or more families. However, a person is not considered as starting new employment or self-employment each time intermittent employment restarts or changes such as when the same temporary agency places the person in a new assignment or a child care provider acquires another child care client.

75.57(8) *Treatment of income in excluded parent cases, stepparent cases, and underage parent cases.*

a. Treatment of income in excluded parent cases. A parent who is living in the home with the eligible children but whose needs are excluded from the eligible group is eligible for the 20 percent earned income deduction, child care expenses for children in the eligible group, the 50 percent work incentive deduction described at paragraphs 75.57(2)*"a,"* *"b,"* and *"c,"* and diversions described at subrule 75.57(4), and shall be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except as described at subrule 75.57(10). All remaining nonexempt income of the parent shall be applied against the needs of the eligible group. Excluded parents are subject to the earned income sanction at paragraph 75.57(2)*"d."* The 20 percent earned income deduction and child care expenses described at paragraphs 75.57(2)*"a"* and *"b"* shall not be allowed for sanctioned earnings. However, the 50 percent work incentive deduction as at paragraph 75.57(2)*"c"* and diversions at subrule 75.57(4) shall be allowed.

b. Treatment of income in stepparent cases. The income of a stepparent who is not included in the eligible group, but is living with the parent in the home of the eligible children, shall be given the same consideration and treatment as that of a natural parent subject to the limitations of subparagraphs (1) through (11) below.

(1) The stepparent's monthly gross nonexempt earned income, earned as an employee or monthly net profit from self-employment, shall receive a 20 percent earned income deduction.

(2) The stepparent's monthly nonexempt earned income remaining after the 20 percent earned income deduction shall be allowed child care expenses for the stepparent's ineligible dependents in the home, subject to the restrictions described at subparagraphs 75.57(2)*"b"*(1) through (5).

(3) Any amounts actually paid by the stepparent to individuals not living in the home, who are claimed or could be claimed by the stepparent as dependents for federal income tax purposes, shall be deducted from nonexempt monthly earned and unearned income of the stepparent.

(4) The stepparent shall also be allowed a deduction from nonexempt monthly earned and unearned income for alimony and child support payments made to individuals not living in the home with the stepparent.

(5) Except as described at subrule 75.57(10), the nonexempt monthly earned and unearned income of the stepparent remaining after application of the deductions at subparagraphs 75.57(8)*"b"*(1) through (4) above shall be used to meet the needs of the stepparent and the stepparent's dependents living in the home, when the dependents' needs are not included in the eligible group and the stepparent claims or could claim the dependents for federal income tax purposes. These needs shall be determined in accordance with the schedule of needs for a family group of the same composition in accordance with subrule 75.58(2).

(6) The stepparent shall be allowed the 50 percent work incentive deduction from monthly earnings. The deduction shall be applied to earnings that remain after all other deductions at subparagraphs 75.57(8)*"b"*(1) through (5) have been subtracted from the earnings. However, the 50 percent work incentive deduction is not allowed when determining initial eligibility as described at subparagraphs 75.57(9)*"a"*(2) and (3).

(7) The deductions described in subparagraphs (1) through (6) shall first be subtracted from earned income in the same order as they appear above.

When the stepparent has both nonexempt earned and unearned income and earnings are less than the allowable deductions, then any remaining portion of the deductions in subparagraphs (3) through (5) shall be subtracted from unearned income. Any remaining income shall be applied as unearned income to the needs of the eligible group.

If the stepparent has earned income remaining after allowable deductions, then any nonexempt unearned income shall be added to the earnings and the resulting total counted as unearned income to the needs of the eligible group.

(8) A nonexempt nonrecurring lump sum received by a stepparent shall be considered as income in the budget month and counted in computing eligibility. Any portion of the nonrecurring lump sum retained by the stepparent in the month following the month of receipt shall be considered a resource to the stepparent.

(9) When the income of the stepparent, not in the eligible group, is insufficient to meet the needs of the stepparent and the stepparent's dependent but ineligible children living in the home, the income of the parent may be diverted to meet the unmet needs of the children of the current marriage except as described at subrule 75.57(10).

(10) When the needs of the stepparent, living in the home, are not included in the eligible group, the eligible group and any dependent but ineligible children of the parent shall be considered as one unit, and the stepparent and the stepparent's dependents, other than the spouse, shall be considered a separate unit.

(11) The earned income sanction described at paragraph 75.57(2)*"d"* does not apply to earnings of the stepparent.

c. Treatment of income in underage parent cases. In the case of a dependent child whose unmarried parent is under the age of 18 and living in the same home as the unmarried, underage parent's own self-supporting parents, the income of each self-supporting parent shall be considered available to the eligible group after appropriate deductions unless the provisions of rule 441—75.59(249A) apply. The deductions to be applied are the same as are applied to the income of a stepparent pursuant to subparagraphs 75.57(8)*"b"*(1) through (7). Child care expenses at subparagraph 75.57(8)*"b"*(2) shall be allowed for the self-supporting parent's ineligible children. Nonrecurring lump sum income received by the self-supporting parent(s) shall be treated in accordance with subparagraph 75.57(8)*"b"*(8).

When the self-supporting spouse of a self-supporting parent is also living in the home, the income of that spouse shall be attributable to the self-supporting parent in the same manner as the income of a stepparent is determined pursuant to subparagraphs 75.57(8)*"b"*(1) through (7) unless the provisions of rule 441—75.59(249A) apply. Child care expenses at subparagraph 75.57(8)*"b"*(2) shall be allowed for the ineligible dependents of the self-supporting spouse who is a stepparent of the minor parent. Nonrecurring lump sum income received by the spouse of the self-supporting parent shall be treated in accordance with subparagraph 75.57(8)*"b"*(8). The self-supporting parent and any ineligible dependents of that person shall be considered as one unit. The self-supporting spouse and the spouse's ineligible dependents, other than the self-supporting parent, shall be considered a separate unit.

The earned income sanction described at paragraph 75.57(2)*"d"* does not apply to earnings of self-supporting parents and their spouses.

75.57(9) *Budgeting process.*

a. Initial eligibility.

(1) At the time of application all earned and unearned income received and anticipated to be received by the eligible group during the month the decision is made shall be considered to determine eligibility, except income which is exempt. When income is prorated in accordance with subparagraph 75.57(9)*"c"*(1) and paragraphs 75.57(9)*"g"* and *"i,"* the prorated amount is counted as income received in the month of decision. Allowable work expenses during the month of decision shall be deducted from earned income, except when determining eligibility under the 185 percent test defined at rule 441—75.57(249A). The determination of eligibility in the month of decision is a three-step process as described at rule 441—75.57(249A).

When countable income, including the lump sum income, is less than the needs of the eligible group in accordance with the provisions of their current coverage group, the lump sum shall be counted as income for the budget month. For purposes of applying the lump sum provision, the eligible group is defined as all eligible persons and any other individual whose lump sum income is counted in determining the period of proration. During the period of proration, individuals not in the eligible group when the lump sum income was received may be eligible as a separate eligible group. Income of this eligible group plus income, excluding the lump sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility.

d. The third digit to the right of the decimal point in any calculation of income, hours of employment and work expenses for care, as defined at paragraph 75.57(2)*"b,"* shall be dropped.

e. In any month for which an individual is determined eligible to be added to a currently active family medical assistance (FMAP) or FMAP-related Medicaid case, the individual's needs shall be included. When adding an individual to an existing eligible group, any income of that individual shall be considered prospectively for the initial two months of that individual's eligibility and retrospectively for subsequent months. Any income considered in prospective budgeting shall be considered in retrospective budgeting only when the income is expected to continue. The needs of an individual determined to be ineligible to remain a member of the eligible group shall be removed prospectively effective the first of the following month if the timely notice of adverse action requirements as provided at 441—subrule 76.4(1) can be met.

f. Suspension. Medicaid shall continue for one month when income or circumstances in the retrospective budget month cause ineligibility under the current coverage group and the local office has knowledge or reason to believe that ineligibility under the current coverage group will exist for only one month.

g. Rescinded IAB 2/11/98, effective 2/1/98.

h. Income from self-employment received on a regular weekly, biweekly, semimonthly or monthly basis shall be budgeted in the same manner as the earnings of an employee. The countable income shall be the net income.

i. Income from self-employment not received on a regular weekly, biweekly, semimonthly or monthly basis that represents an individual's annual income shall be averaged over a 12-month period of time, even if the income is received within a short period of time during that 12-month period. Any change in self-employment shall be handled in accordance with subparagraphs (3) through (5) below.

(1) When a self-employment enterprise which does not produce a regular weekly, biweekly, semimonthly or monthly income has been in existence for less than a year, income shall be averaged over the period of time the enterprise has been in existence and the monthly amount projected for the same period of time. If the enterprise has been in existence for such a short time that there is very little income information, the worker shall establish, with the cooperation of the client, a reasonable estimate which shall be considered accurate and projected for three months, after which the income shall be averaged and projected for the same period of time. Any changes in self-employment shall be considered in accordance with subparagraphs (3) through (5) below.

(2) These policies apply when the self-employment income is received before the month of decision and the income is expected to continue, in the month of decision, after assistance is approved.

(3) A change in the cost of producing self-employment income is defined as an established permanent ongoing change in the operating expenses of a self-employment enterprise. Change in self-employment income is defined as a change in the nature of business.

(4) When a change in operating expenses occurs, the county office shall recalculate the expenses on the basis of the change.

(5) When a change occurs in the nature of the business, the income and expenses shall be computed on the basis of the change.

75.57(10) *Restriction on diversion of income.* No income may be diverted to meet the needs of a person living in the home who has been sanctioned under subrule 75.14(2) or who is required to be included in the eligible group according to paragraph 75.58(1)*"a"* and has failed to cooperate. This restriction applies to paragraph 75.57(4)*"a"* and subrule 75.57(8).

75.57(11) *Divesting of income.* Assistance shall not be approved when an investigation proves that income was divested and the action was deliberate and for the primary purpose of qualifying for assistance or increasing the amount of assistance paid.

441—75.58(249A) Need standards.

75.58(1) *Definition of eligible group.* The eligible group consists of all eligible persons living together, except when one or more of these persons have elected to receive supplemental security income under Title XVI of the Social Security Act or are voluntarily excluded in accordance with the provisions of rule 441—75.59(249A). There shall be at least one child, which may be an unborn child, in the eligible group except when the only eligible child is receiving supplemental security income.

a. The following persons shall be included (except as otherwise provided in these rules):

(1) The dependent child and any sibling of the child, of whole or half blood or adoptive, if the sibling is living in the same home as the dependent child and if the sibling meets the eligibility requirements of age and school attendance specified at subrule 75.54(1). When eligibility is being established under subrule 75.1(14), subparagraph 75.1(35)*"a"*(2), or 75.1(35)*"a"*(5), the child must be deprived as specified at subrule 75.54(3).

(2) Any natural or adoptive parent of such child, if the parent is living in the same home as the dependent child.

b. The following persons may be included:

(1) The needy relative who assumes the role of parent.

(2) The needy relative who acts as caretaker when the parent is in the home but is unable to act as caretaker.

(3) The incapacitated stepparent, upon request, when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common-law marriage and the stepparent does not have a child in the eligible group.

(4) The stepparent who is not incapacitated when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common-law marriage and the stepparent is required in the home to care for the dependent children. These services must be required to the extent that if the stepparent were not available, it would be necessary to allow for care as a deduction from earned income of the parent.

[Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
[Filed emergency 6/11/93 after Notice 4/28/93—published 7/7/93, effective 7/1/93]
[Filed 7/14/93, Notice 5/12/93—published 8/4/93, effective 10/1/93]
[Filed 8/12/93, Notice 7/7/93—published 9/1/93, effective 11/1/93]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed 9/17/93, Notice 7/21/93—published 10/13/93, effective 12/1/93]
[Filed emergency 11/12/93—published 12/8/93, effective 1/1/94]
[Filed emergency 12/16/93—published 1/5/94, effective 1/1/94]
[Filed without Notice 12/16/93—published 1/5/94, effective 2/9/94]
[Filed 12/16/93, Notices 10/13/93, 10/27/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notices 12/8/93, 1/5/94◊—published 3/2/94, effective 5/1/94]
[Filed 3/10/94, Notice 2/2/94—published 3/30/94, effective 6/1/94]
[Filed 4/14/94, Notice 2/16/94—published 5/11/94, effective 7/1/94]
[Filed 5/11/94, Notice 3/16/94—published 6/8/94, effective 8/1/94]
[Filed 6/16/94, Notice 4/27/94—published 7/6/94, effective 9/1/94]
[Filed 9/15/94, Notice 8/3/94—published 10/12/94, effective 11/16/94]
[Filed 10/12/94, Notice 8/17/94—published 11/9/94, effective 1/1/95]
[Filed emergency 12/15/94—published 1/4/95, effective 1/1/95]
[Filed 12/15/94, Notices 10/26/94, 11/9/94—published 1/4/95, effective 3/1/95]
[Filed 2/16/95, Notices 11/23/94, 12/21/94, 1/4/95—published 3/15/95, effective 5/1/95]
[Filed 4/13/95, Notices 2/15/95, 3/1/95—published 5/10/95, effective 7/1/95]
[Filed emergency 9/25/95—published 10/11/95, effective 10/1/95]
[Filed 11/16/95, Notices 9/27/95, 10/11/95—published 12/6/95, effective 2/1/96]
[Filed emergency 12/12/95—published 1/3/96, effective 1/1/96]
[Filed 12/12/95, Notice 10/25/95—published 1/3/96, effective 3/1/96]
[Filed 2/14/96, Notice 1/3/96—published 3/13/96, effective 5/1/96]
[Filed 4/10/96, Notice 2/14/96—published 5/8/96, effective 7/1/96]
[Filed emergency 9/19/96—published 10/9/96, effective 9/19/96]
[Filed 10/9/96, Notice 8/28/96—published 11/6/96, effective 1/1/97]
[Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]◊
[Filed 12/12/96, Notices 9/11/96, 10/9/96—published 1/1/97, effective 3/1/97]
[Filed 2/12/97, Notice 1/1/97—published 3/12/97, effective 5/1/97]
[Filed 3/12/97, Notice 1/1/97—published 4/9/97, effective 6/1/97]
[Filed 4/11/97, Notice 2/26/97—published 5/7/97, effective 7/1/97]
[Filed emergency 9/16/97—published 10/8/97, effective 10/1/97]
[Filed 9/16/97, Notice 7/16/97—published 10/8/97, effective 12/1/97]
[Filed emergency 12/10/97—published 12/31/97, effective 1/1/98]
[Filed emergency 12/10/97 after Notices 10/22/97, 11/5/97—published 12/31/97, effective 1/1/98]
[Filed emergency 1/14/98 after Notice 11/19/97—published 2/11/98, effective 2/1/98]
[Filed 2/11/98, Notice 12/31/97—published 3/11/98, effective 5/1/98]◊
[Filed 3/11/98, Notice 1/14/98—published 4/8/98, effective 6/1/98]
[Filed 4/8/98, Notice 2/11/98—published 5/6/98, effective 7/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed emergency 6/25/98—published 7/15/98, effective 7/1/98]
[Filed 7/15/98, Notices 6/3/98—published 8/12/98, effective 10/1/98]
[Filed 8/12/98, Notices 6/17/98, 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 9/15/98, Notice 7/15/98—published 10/7/98, effective 12/1/98]

◊Two or more ARCs

[Filed 11/10/98, Notice 9/23/98—published 12/2/98, effective 2/1/99]
[Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
[Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 6/1/99]
[Filed 3/10/99, Notice 1/27/99—published 4/7/99, effective 7/1/99]

Prior authorization is required for all tretinoin prescription products for those patients over the age of 25 years. Alternatives such as topical benzoyl peroxide (OTC), and topical erythromycin, clindamycin, or oral tetracycline must first be tried (unless evidence is provided that use of these agents would be medically contraindicated) for the following conditions: endocrinopathy, mild to moderate acne (noninflammatory and inflammatory), and drug-induced acne. Prior authorization will not be required for those patients presenting with a preponderance of comedonal acne. Upon treatment failure with the above-mentioned products or if medically contraindicated, tretinoin products will be approved for three months. If tretinoin therapy is effective after the three-month period, approval will be granted for a one-year period. Skin cancer, lamellar ichthyosis, and Darier's Disease diagnoses will receive automatic approval for lifetime use of tretinoin products. (Cross-reference 78.28(1)*"d"*(6))

Prior authorization is required for all nonsedating antihistamines. Patients 21 years of age and older must have received two unsuccessful trials with other covered antihistamines (chlorpheniramine or diphenhydramine) unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of the nonsedating antihistamines. Patients 20 years of age and younger must have received one unsuccessful trial with another covered antihistamine (chlorpheniramine or diphenhydramine) unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of the nonsedating antihistamines. (Cross-reference 78.28(1)*"d"*(7))

Prior authorization is required for all dipyridamole prescriptions outside the hospital setting. Dipyridamole will only be approved if aspirin is medically contraindicated in a patient. (Cross-reference 78.28(1)*"d"*(8))

Prior authorization is required for all cephalexin hydrochloride monohydrate prescriptions. Treatment failure with cephalexin monohydrate will be required prior to the initiation of a cephalexin hydrochloride monohydrate prescription. (Cross-reference 78.28(1)*"d"*(9))

Prior authorization is required for epoetin prescribed for outpatients for the treatment of anemia. Patients who meet the following criteria may receive prior authorization for the use of epoetin:

1. Hematocrit less than 30 percent.
2. Transferrin saturation greater than 20 percent (transferrin saturation is calculated by dividing serum iron by the total iron binding capacity), or ferritin levels greater than 100 mg/ml.
3. Laboratory values must be current to within three months of the prior authorization request.
4. For AZT treated patients endogenous serum erythropoetin level needs to be greater than 500 mU/ml.
5. Patient should not have a demonstrated gastrointestinal bleed.
6. Exceptions may be made if the patient does not meet criteria "2," but is on aggressive oral iron therapy (i.e., twice or three times per day dosing). The prior authorization for this exception would be for a limited time. (Cross-reference 78.28(1)*"d"*(10))

Prior authorization is required for filgrastim prescribed for outpatients whose conditions meet the following indications for use:

1. Decrease the incidence of infection due to severe neutropenia caused by myelosuppressive anticancer therapy. For this indication the following criteria apply: Filgrastim therapy can continue until the postnadir, absolute neutrophil count is greater than 10,000 cells per cubic millimeter and routine CBC and platelet counts are required twice per week.
2. Decrease the incidence of infection due to severe neutropenia in AIDS patients on zidovudine. For this indication, the following criteria apply: Evidence of neutropenic infection exists or absolute neutrophil count is below 750 cells per cubic millimeter, filgrastim is adjusted to maintain absolute neutrophil count of approximately 1000 cells per cubic millimeter, and routine CBC and platelet counts are required once per week. (Cross-reference 78.28(1)*"d"*(11))

Prior authorization is required for drugs used for the treatment of male sexual dysfunction. For prior authorization to be granted, the patient must:

1. Be 21 years of age or older.

2. Have a confirmed diagnosis of impotence of organic origin or psychosexual dysfunction.

3. Not be taking any medications which are contraindicated for concurrent use with the drug prescribed for treatment of male sexual dysfunction.

Approval for these drugs, with the exception of yohimbine, will be limited to four doses in a 30-day period.

The 72-hour emergency supply rule found below and at paragraph 78.28(1)*"d"* does not apply for drugs used for the treatment of male sexual dysfunction. (Cross-reference 78.28(1)*"d"*(13))

For all drugs requiring prior authorization, in the event of an emergency situation when a prior authorization request cannot be submitted and a response received within 24 hours such as after regular working hours or on weekends, a 72-hour supply of the drug may be dispensed and reimbursement will be made.

Prior authorization is required for selected brand-name drugs as determined by the department for which there is available an "A" rated bioequivalent generic product as determined by the federal Food and Drug Administration. For prior authorization to be considered, evidence of a treatment failure with the bioequivalent generic drug must be provided. A copy of a completed Med Watch form, FDA Form 3500, as submitted to the federal Food and Drug Administration shall be considered as evidence of a treatment failure. Brand-name drugs selected by the department shall be obtained from those recommended by the Iowa Medicaid drug utilization review commission after consultation with the state associations representing physicians. The list of selected brand-name drugs shall be published in the Medicaid Prescribed Drug Manual and the Physician Manual.

b. Medical and sickroom supplies are payable when ordered by a legally qualified practitioner for a specific rather than incidental use. No payment will be approved for medical and sickroom supplies for a recipient receiving care in a Medicare-certified skilled nursing facility. When a recipient is receiving care in a nursing facility or residential care facility which is not a Medicare-certified skilled nursing facility, payment will be approved only for the following supplies when prescribed by a legally qualified practitioner:

(1) Colostomy and ileostomy appliances.
(2) Colostomy and ileostomy care dressings, liquid adhesive and adhesive tape.
(3) Disposable irrigation trays or sets.
(4) Disposable catheterization trays or sets.
(5) Indwelling Foley catheter.
(6) Disposable saline enemas.
(7) Diabetic supplies including needles and syringes, blood glucose test strips, and diabetic urine test supplies.

c. Prescription records are required for all drugs as specified in Iowa Code sections 155.33, 155.34 and 204.308. For the purposes of the medical assistance program, prescriptions for medical supplies are required and shall be subject to the same provisions.

d. When it is not therapeutically contraindicated, the legally qualified practitioner shall prescribe a quantity of medication sufficient for a 30-day supply. Maintenance drugs in the following therapeutic classifications for use in prolonged therapy may be prescribed in 90-day quantities:

(1) Oral contraceptives
(2) Cardiac drugs
(3) Hypotensive agents
(4) Vasodilating agents
(5) Anticonvulsants
(6) Diuretics
(7) Anticoagulants
(8) Thyroid and antithyroid agents
(9) Antidiabetic agents

Colostomy and ileostomy care dressings, liquid adhesive, and adhesive tape.
Commode pail.
Crutches.
Decubitus equipment.
Diabetic supplies (needles and syringes, blood glucose test strips and diabetic urine test supplies).
Dialysis supplies.
Diapers (for recipients aged four and above).
Diaphragm (contraceptive device).
Disposable catheterization trays or sets (sterile).
Disposable irrigation trays or sets (sterile).
Disposable saline enemas (e.g., sodium phosphate type).
Disposable underpads.
Dressings.
Elastic antiembolism support stocking.
Enema.
Hearing aid batteries.
Hospital bed accessories.
Respirator supplies.
Surgical supplies.
Urinal (portable).
Urinary collection supplies.
Vaporizer.

b. No payment will be made for sickroom supplies for a recipient receiving care in a skilled nursing facility. Only the following types of sickroom supplies will be approved for payment for recipients receiving care in an intermediate care facility or an intermediate care facility for the mentally retarded when prescribed by the physician, physician assistant, or advanced registered nurse practitioner:

Catheter (indwelling Foley).
Colostomy and ileostomy appliances.
Colostomy and ileostomy care dressings, liquid adhesive and adhesive tape.
Diabetic supplies (needles and syringes, blood glucose test strips and diabetic urine test supplies).
Disposable catheterization trays or sets (sterile).
Disposable irrigation trays or sets (sterile).
Disposable saline enemas (e.g., sodium phosphate type).

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.12.

441—78.11(249A) Ambulance service. Payment will be approved for ambulance service if it is required by the recipient's condition and the recipient is transported to the nearest hospital with appropriate facilities or to one in the same locality, from one hospital to another, to the patient's home or to a skilled nursing home. Payment for ambulance service to the nearest hospital for outpatient service will be approved only for emergency treatment. Ambulance service must be medically necessary and not merely for the convenience of the patient.

78.11(1) Partial payment may be made when an individual is transported beyond the destinations specified, and is limited to the amount that would have been paid had the individual been transported to the nearest institution with appropriate facilities. When transportation is to the patient's home, partial payment is limited to the amount that would have been paid from the nearest institution with appropriate facilities. When a recipient who is a resident of a nursing care facility is hospitalized and later discharged from the hospital, payment will be made for the trip to the nursing care facility where the recipient resides even though it may not in fact be the nearest nursing care facility.

78.11(2) The fiscal agent shall determine that the ambulance transportation was medically necessary and that the condition of the patient precluded any other method of transportation. Payment can be made without the physician's confirmation when:

a. The individual is admitted as a hospital inpatient or in an emergency situation.

b. Previous information on file relating to the patient's condition clearly indicates ambulance service was necessary.

78.11(3) When a patient is transferred from one nursing home to another because of the closing of a facility or from a nursing home to a custodial home because the recipient no longer requires nursing care, the conditions of medical necessity and the distance requirements shall not be applicable. Approval for transfer shall be made by the local office of the department of human services prior to the transfer. When such a transfer is made, the following rate schedule shall apply:

One patient - normal allowance

Two patients - 3/4 normal allowance per patient

Three patients - 2/3 normal allowance per patient

Four patients - 5/8 normal allowance per patient

78.11(4) Transportation of hospital inpatients. When an ambulance service provides transport of a hospital inpatient to a provider and returns the recipient to the same hospital (the recipient continuing to be an inpatient of the hospital), the ambulance service shall bill the hospital for reimbursement as the hospital's DRG reimbursement system includes all costs associated with providing inpatient services as stated in 79.1(5)*"j."*

78.11(5) In the event that more than one ambulance service is called to provide ground ambulance transport, payment shall be made only to one ambulance company. When a paramedic from one ambulance service joins a ground ambulance company already in transport, coverage is not available for the services and supplies provided by the paramedic.

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

441—78.12(249A) Skilled nursing homes. Rescinded IAB 8/8/90, effective 10/1/90.

441—78.13(249A) Transportation to receive medical care. Payment will be approved for transportation to receive services covered under the program only to the nearest institution or practitioner having appropriate facilities for care of the recipient when the following conditions are met.

78.13(1) The source of the care is located outside the city limits of the community in which the recipient resides; or

78.13(2) The recipient resides in a rural area and must travel to a city to receive necessary care; and

78.13(3) The type of care is not available in the community in which the recipient resides, or the recipient has been referred by the attending physician to a specialist in another community; and

78.13(4) There is no resource available to the recipient through which necessary transportation might be secured free of charge.

78.13(5) Transportation may be of any type and may be provided from any source. When transportation is by car, the maximum payment which may be made will be the actual charge made by the provider for transportation to and from the source of medical care, but not in excess of the rate per mile payable to state employees for official travel. When public transportation is utilized, the basis of payment will be the actual charge made by the provider of transportation, not to exceed the charge that would be made by the most economical available source of public transportation. In all cases where public transportation is reasonably available to or from the source of care and the recipient's condition does not preclude its use, it must be utilized. When the recipient's condition precludes the use of public transportation, a statement to the effect shall be included in the case record.

78.13(6) In the case of a child too young to travel alone, or an adult or child who because of physical or mental incapacity is unable to travel alone, payment subject to the above conditions shall be made for the transportation costs of an escort. The worker is responsible for making a decision concerning the necessity of an escort and recording the basis for the decision in the case record.

78.13(7) When meals and lodging or other travel expenses are required in connection with transportation, payment will be subject to the same conditions as for a state employee and the maximum amount payable shall not exceed the maximum payable to a state employee for the same expenses in connection with official travel within the state of Iowa.

78.13(8) When the services of an escort are required subject to the conditions outlined above, payment may be made for meals and lodging, when required, on the same basis as for the recipient.

78.13(9) Payment will not be made in advance to a recipient or a provider of medical transportation.

78.13(10) Payment for transportation to receive medical care is made to the recipient with the following exceptions:

a. Payment may be made to the agency which provided transportation if the agency is certified by the department of transportation and requests direct payment by submitting Form 625-5297, Claim Order/Claim Voucher, within 90 days after the trip. Reimbursement for transportation shall be based on a fee schedule by mile or by trip.

b. In cases where the local office has established that the recipient has persistently failed to reimburse a provider of medical transportation, payment may be made directly to the provider.

c. In all situations where one of the department's volunteers is the provider of transportation.

78.13(11) Medical Transportation Claim, MA-3022-1, shall be completed by the recipient and the medical provider and submitted to the local office for each trip for which payment is requested. All trips to the same provider in a calendar month may, at the client's option, be submitted on the same form.

78.13(12) No claim shall be paid if presented after the lapse of three months from its accrual unless it is to correct payment on a claim originally submitted within the required time period. This time limitation is not applicable to claims with the date of service within the three-month period of retroactive Medicaid eligibility on approved applications.

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

441—78.14(249A) Hearing aids. Payment shall be approved for a hearing aid and examinations subject to the following conditions:

78.14(1) *Physician examination.* The recipient shall have an examination by a physician to determine that the recipient has no condition which would contraindicate the use of a hearing aid. This report shall be made on Form MA-2113-0, part 1, Report of Examination for a Hearing Aid.

78.14(2) *Audiological testings.* Specified audiological testing shall be performed by a physician or an audiologist as a part of making a determination that a recipient could benefit from the use of a hearing aid. The audiological testing shall be reported on Form MA-2113-0, part 2.

78.14(3) *Hearing aid evaluation.* A hearing aid evaluation establishing that a recipient could benefit from a hearing aid shall be made by a physician or audiologist. The hearing aid evaluation shall be reported on Form XIX-Audio-2, Hearing Aid Selection Report. When a hearing aid is recommended for a recipient the physician or audiologist recommending the hearing aid shall see the recipient at least one time within 30 days subsequent to purchase of the hearing aid to determine that the aid is adequate.

78.14(4) *Hearing aid selection.* A physician or audiologist may recommend a specific brand or model appropriate to the recipient's condition. When a general hearing aid recommendation is made by the physician or audiologist, a hearing aid dealer may perform the tests to determine the specific brand or model appropriate to the recipient's condition. The hearing aid selection shall be reported on Form XIX-Audio-2, Hearing Aid Selection Report.

78.14(5) *Travel.* When a recipient is unable to travel to the physician or audiologist because of health reasons, payment shall be made for travel to the recipient's place of residence or other suitable location. Payment to physicians shall be made as specified in 78.1(8) and payment to audiologists shall be made at the same rate at which state employees are reimbursed for travel.

78.14(6) *Purchase of hearing aid.* Payment shall be made for the type of hearing aid recommended when purchased from an eligible licensed hearing aid dealer pursuant to rule 441—77.13(249A). Payment for binaural amplification shall be made when:

a. A child needs the aid for speech development, or

b. The aid is needed for educational or vocational purposes, or

c. The aid is for a blind individual.

Payment for binaural amplification shall also be approved where the recipient's hearing loss has caused marked restriction of daily activities and constriction of interests resulting in seriously impaired ability to relate to other people, or where lack of binaural amplification poses a hazard to a recipient's safety.

78.14(7) *Payment for hearing aids.*

a. Payment for hearing aids shall be acquisition cost plus a dispensing fee covering the fitting and service for six months. Payment will be made for routine service after the first six months. Dispensing fees and payment for routine service shall not exceed the fee schedule appropriate to the place of service.

b. Payment for ear mold and batteries shall be at the current audiologist's fee schedule.

c. Payment for repairs shall be made for the charge to the dealer for parts and labor by the manufacturer or manufacturer's depot and for a service charge when this charge is made to the general public.

d. Payment for the replacement of a hearing aid less than four years old shall require prior approval except when the recipient is under 21 years of age. Payment shall be approved when the original hearing aid is lost or broken beyond repair or there is a significant change in the person's hearing which would require a different hearing aid. (Cross-reference 78.28(4)*"a"*)

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

78.28(2) Dental services. Dental services which require prior approval are as follows:

a. The following periodontal services:

(1) Payment for periodontal scaling and root planing will be approved when interproximal and subgingival calculus is evident in X-rays or when justified and documented that curettage, scaling or root planing is required in addition to routine prophylaxis. (Cross-reference 78.4(4)*"b"*)

(2) Payment for periodontal surgical procedures will be approved after periodontal scaling and root planing has been provided, a reevaluation examination has been completed, and the patient has demonstrated reasonable oral hygiene, unless the patient is unable to demonstrate reasonable oral hygiene because of physical or mental disability or in cases which demonstrate gingival hyperplasia resulting from drug therapy. (Cross-reference 78.4(4)*"c"*)

(3) Payment for periodontal maintenance therapy may be approved after periodontal scaling and root planing or periodontal surgical procedures have been provided. Periodontal maintenance therapy may be approved once per three-month interval for moderate to advanced cases if the condition would deteriorate without treatment. (Cross-reference 78.4(4)*"d"*)

b. Surgical endodontic treatment which includes an apicoectomy, performed as a separate surgical procedure; an apicoectomy, performed in conjunction with endodontic procedure; an apical curettage; a root resection; or excision of hyperplastic tissue will be approved when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated. Surgical endodontic procedures may be indicated when:

(1) Conventional root canal treatment cannot be successfully completed because canals cannot be negotiated, debrided or obturated due to calcifications, blockages, broken instruments, severe curvatures, and dilacerated roots.

(2) Correction of problems resulting from conventional treatment including gross underfilling, perforations, and canal blockages with restorative materials. (Cross-reference 78.4(5)*"c"*)

c. The following prosthetic services:

(1) A removable partial denture replacing posterior teeth will be approved when the recipient has fewer than eight posterior teeth in occlusion or the recipient has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one removable partial denture brings eight posterior teeth in occlusion, no additional removable partial denture will be approved. A removable partial denture replacing posterior teeth is payable only once in a five-year period unless the removable partial denture is broken beyond repair, lost or stolen, or no longer fits due to growth or changes in jaw structure, and is required to prevent significant dental problems. (Cross-reference 78.4(7)*"c"*)

(2) A fixed partial denture (including an acid etch fixed partial denture) replacing anterior teeth will be approved for recipients whose medical condition precludes the use of a removable partial denture. High noble or noble metals will be approved only when the recipient is allergic to all other restorative materials. A fixed partial denture replacing anterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.4(7)*"d"*)

(3) A fixed partial denture (including an acid etch fixed partial denture) replacing posterior teeth will be approved for recipients whose medical condition precludes the use of a removable partial denture and who have fewer than eight posterior teeth in occlusion or if the recipient has a full denture in one arch and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one fixed partial denture brings eight posterior teeth in occlusion, no additional fixed partial denture will be approved. High noble or noble metals will be approved only when the recipient is allergic to all other restorative materials. A fixed partial denture replacing posterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.4(7)*"e"*)

d. Orthodontic services will be approved when it is determined that a patient has the most handicapping malocclusion. This determination is made in a manner consistent with the "Handicapping Malocclusion Assessment to Establish Treatment Priority," by J. A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968.

A handicapping malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the patient by causing impaired mastication, dysfunction of the temporomandibular articulation, susceptibility to periodontal disease, susceptibility to dental caries, and impaired speech due to malpositions of the teeth. Treatment of handicapping malocclusions will be approved only for the severe and the most handicapping. Assessment of the most handicapping malocclusion is determined by the magnitude of the following variables: degree of malalignment, missing teeth, angle classification, overjet and overbite, openbite, and crossbite.

A request to perform an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the fiscal agent.

Approval may be made for eight units of a three-month active treatment period. Additional units may be approved by the fiscal agent's orthodontic consultant if found to be medically necessary. (Cross-reference 78.4(8)*"a"*)

78.28(3) Optometric services and ophthalmic materials which must be submitted for prior approval are as follows:

a. A second lens correction within a 24-month period. Payment will be approved when the recipient's vision has at least a five-tenths diopter of change in sphere or cylinder or ten-degree change in axis in either eye.

b. Visual therapy may be authorized when warranted by case history or diagnosis for a period of time not greater than 90 days. Should continued therapy be warranted, the prior approval process should be reaccomplished, accompanied by a report showing satisfactory progress. Approved diagnoses are convergence insufficiency and amblyopia.

c. Subnormal visual aids where near visual acuity is better than 20/100 at 16 inches, 2M print. Prior authorization is not required if near visual acuity as described above is less than 20/100. Subnormal aids include, but are not limited to, hand magnifiers, loupes, telescopic spectacles or reverse Galilean telescope systems.

For all of the above, the optometrist shall furnish sufficient information to clearly establish that these procedures are necessary in terms of the visual condition of the patient. (Cross-references 78.6(2) and 78.1(18))

78.28(4) Hearing aids which must be submitted for prior approval are:

a. Replacement of a hearing aid less than four years old (except when the recipient is under 21 years of age). Payment shall be approved when the original hearing aid is lost or broken beyond repair or there is a significant change in the person's hearing which would require a different hearing aid. (Cross-reference 78.14(7)*"b"*)

b. Rescinded IAB 4/7/99, effective 6/1/99.

[Filed emergency 11/10/92—published 12/9/92, effective 11/10/92]
[Filed 11/10/92, Notice 9/30/92—published 12/9/92, effective 2/1/93]
[Filed 1/14/93, Notices 10/28/92, 11/25/92—published 2/3/93, effective 4/1/93]
[Filed emergency 4/15/93 after Notice 3/3/93—published 5/12/93, effective 5/1/93]
[Filed 4/15/93, Notice 3/3/93—published 5/12/93, effective 7/1/93]
[Filed emergency 5/14/93 after Notice 3/31/93—published 6/9/93, effective 6/1/93]
[Filed 5/14/93, Notice 3/31/93—published 6/9/93, effective 8/1/93]
[Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
[Filed emergency 7/13/93 after Notice 5/12/93—published 8/4/93, effective 8/1/93]
[Filed emergency 7/14/93—published 8/4/93, effective 8/1/93]
[Filed without Notice 8/12/93—published 9/1/93, effective 11/1/93]
[Filed 8/12/93, Notice 7/7/93—published 9/1/93, effective 11/1/93]
[Filed 9/17/93, Notice 8/4/93—published 10/13/93, effective 12/1/93]
[Filed 10/14/93, Notice 8/18/93—published 11/10/93, effective 1/1/94]
[Filed 11/12/93, Notice 9/15/93—published 12/8/93, effective 2/1/94]
[Filed emergency 12/16/93 after Notice 10/13/93—published 1/5/94, effective 1/1/94]
[Filed 12/16/93, Notice 9/1/93—published 1/5/94, effective 3/1/94]
[Filed 1/12/94, Notice 11/10/93—published 2/2/94, effective 4/1/94]
[Filed emergency 2/10/94 after Notice 12/22/93—published 3/2/94, effective 3/1/94]
[Filed 3/10/94, Notice 2/2/94—published 3/30/94, effective 6/1/94]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed 8/12/94, Notice 6/22/94—published 8/31/94, effective 11/1/94]
[Filed 9/15/94, Notices 7/6/94, 8/3/94—published 10/12/94, effective 12/1/94]
[Filed 11/9/94, Notice 9/14/94—published 12/7/94, effective 2/1/95]
[Filed 12/15/94, Notices 10/12/94, 11/9/94—published 1/4/95, effective 3/5/95]
[Filed 5/11/95, Notices 3/29/95—published 6/7/95, effective 8/1/95]
[Filed 6/7/95, Notice 4/26/95—published 7/5/95, effective 9/1/95]
[Filed 6/14/95, Notice 5/10/95—published 7/5/95, effective 9/1/95]
[Filed 10/12/95, Notice 8/30/95—published 11/8/95, effective 1/1/96]
[Filed 11/16/95, Notices 8/2/95, 9/27/95◊—published 12/6/95, effective 2/1/96]
[Filed 12/12/95, Notice 10/25/95—published 1/3/96, effective 3/1/96]
[Filed 5/15/96, Notice 2/14/96—published 6/5/96, effective 8/1/96]
[Filed 6/13/96, Notice 4/24/96—published 7/3/96, effective 9/1/96]
[Filed 7/10/96, Notice 4/24/96—published 7/31/96, effective 10/1/96]
[Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
[Filed 9/17/96, Notice 7/31/96—published 10/9/96, effective 12/1/96]
[Filed 1/15/97, Notice 12/4/96—published 2/12/97, effective 4/1/97]
[Filed 3/12/97, Notices 1/1/97, 1/29/97—published 4/9/97, effective 6/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed emergency 5/14/97 after Notice 3/12/97—published 6/4/97, effective 7/1/97]

◊ Two ARCs

[Filed emergency 6/12/97—published 7/2/97, effective 7/1/97]
[Filed 6/12/97, Notice 4/23/97—published 7/2/97, effective 9/1/97]
[Filed 7/9/97, Notice 5/21/97—published 7/30/97, effective 10/1/97]
[Filed 9/16/97, Notice 7/2/97—published 10/8/97, effective 12/1/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 1/14/98, Notice 11/19/97—published 2/11/98, effective 4/1/98]
[Filed 4/8/98, Notices 2/11/98, 2/25/98—published 5/6/98, effective 7/1/98]
[Filed 5/13/98, Notice 3/25/98—published 6/3/98, effective 8/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 6/10/98]
[Filed without Notice 6/10/98—published 7/1/98, effective 8/15/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 9/15/98, Notice 7/15/98—published 10/7/98, effective 12/1/98]
[Filed 10/14/98, Notice 7/1/98—published 11/4/98, effective 12/9/98]
[Filed 12/9/98, Notice 10/7/98—published 12/30/98, effective 3/1/99]
[Filed 1/13/99, Notice 11/4/98—published 2/10/99, effective 4/1/99]
[Filed 2/10/99, Notice 12/16/98—published 3/10/99, effective 5/1/99]
[Filed 3/10/99, Notice 1/27/99—published 4/7/99, effective 6/1/99]

CHAPTER 86
HEALTHY AND WELL KIDS IN IOWA (HAWK-I) PROGRAM

PREAMBLE

These rules define and structure the department of human services healthy and well kids in Iowa (HAWK-I) program. The purpose of this program is to provide transitional health care coverage to children ineligible for Title XIX (Medicaid) assistance or other health insurance. The program is implemented and administered in compliance with Title XXI of the federal Social Security Act. The rules establish requirements for the third-party administrator responsible for the program administration and for the participating health plans which will be delivering services to the enrollees.

441—86.1(514I) Definitions.

"Administrative contractor" shall mean the person or entity with whom the department contracts to administer the healthy and well kids in Iowa (HAWK-I) program.

"Benchmark benefit package" shall mean any of the following:

1. The standard Blue Cross Blue Shield preferred provider option service benefit plan, described in and offered under 5 U.S.C. Section 8903(1).
2. A health benefits coverage plan that is offered and generally available to state employees in this state.
3. The plan of a health maintenance organization, as defined in 42 U.S.C. Section 300e, with the largest insured commercial, nonmedical assistance enrollment of covered lives in the state.

"Capitation rate" shall mean the fee the department pays monthly to a participating health plan for each enrollee for the provision of covered medical services whether or not the enrollee received services during the month for which the fee is intended.

"Contract" shall mean the contract between the department and the person or entity selected as the third-party administrator or the contract between the department and the participating health plan for the provision of medical services to HAWK-I enrollees for whom the participating health plans assume risk.

"Cost sharing" shall mean the payment of a premium or copayment as provided for by Title XXI of the federal Social Security Act and Iowa Code section 514I.10.

"Covered services" shall mean all or a part of those medical and health services set forth in rule 441—86.14(514I).

"Department" shall mean the Iowa department of human services.

"Director" shall mean the director of the Iowa department of human services.

"Eligible child" shall mean an individual who meets the criteria for participation in the HAWK-I program as set forth in rule 441—86.2(514I).

"Emergency medical condition" shall mean a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

1. Placing the health of the person or, with respect to a pregnant woman, the health of the woman and her unborn child, in serious jeopardy,
2. Serious impairment to bodily functions, or
3. Serious dysfunction of any bodily organ or part.

"Emergency services" shall mean, with respect to an individual enrolled with a plan, covered inpatient and outpatient services which are furnished by a provider qualified to furnish these services and which are needed to evaluate and stabilize an emergency medical condition.

"Enrollee" shall mean a HAWK-I recipient who has been enrolled with a participating health plan.

"Federal poverty level" shall mean the poverty income guidelines revised annually and published in the Federal Register by the United States Department of Health and Human Services.

"Good cause" shall mean the family has demonstrated that one or more of the following conditions exist:

1. There was a serious illness or death of the enrollee or a member of the enrollee's family.
2. There was a family emergency or household disaster, such as a fire, flood, or tornado.
3. There was a reason beyond the enrollee's control.
4. There was a failure to receive the third-party administrator's request for a reason not attributable to the enrollee. Lack of a forwarding address is attributable to the enrollee.

"HAWK-I board" or *"board"* shall mean the entity that adopts rules, establishes policy, and directs the department regarding the HAWK-I program.

"HAWK-I program" or *"program"* shall mean the healthy and well kids in Iowa program implemented in this chapter to provide health care coverage to eligible children.

"Health insurance coverage" shall mean health insurance coverage as defined in 42 U.S.C. Section 300gg(c).

"Institution for mental diseases" shall mean a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services as defined at 42 CFR Section 435.1009 as amended November 10, 1994.

"Nonmedical public institution" shall mean an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control as defined in 42 CFR Section 435.1009 as amended November 10, 1994.

"Participating health plan" shall mean any entity licensed by the division of insurance of the department of commerce to provide health insurance in Iowa or an organized delivery system licensed by the director of public health that has contracted with the department to provide health insurance coverage to eligible children under this chapter.

"Physician" shall be defined as provided in Iowa Code subsection 135.1(4).

"Provider" shall mean an individual, firm, corporation, association, or institution that is providing or has been approved to provide medical care or services to an enrollee pursuant to the HAWK-I program.

"Regions" shall mean the six regions of the state as follows:

- Region 1: Lyon, Osceola, Dickinson, Emmet, Sioux, O'Brien, Clay, Palo Alto, Plymouth, Cherokee, Buena Vista, Woodbury, Ida, Sac, Monona, Crawford, and Carroll.
- Region 2: Kossuth, Winnebago, Worth, Mitchell, Howard, Hancock, Cerro Gordo, Floyd, Pocahontas, Humboldt, Wright, Franklin, Calhoun, Webster, Hamilton, Hardin, Greene, Boone, Story, Marshall, and Tama.
- Region 3: Winneshiek, Allamakee, Chickasaw, Fayette, Clayton, Butler, Bremer, Grundy, Black Hawk, Buchanan, Delaware, Dubuque, Jones, Jackson, Cedar, Clinton, and Scott.

• Region 4: Harrison, Shelby, Audubon, Pottawattamie, Cass, Mills, Montgomery, Fremont, and Page.

• Region 5: Guthrie, Dallas, Polk, Jasper, Adair, Madison, Warren, Marion, Adams, Union, Clarke, Lucas, Taylor, Ringgold, Decatur, and Wayne.

• Region 6: Benton, Linn, Poweshiek, Iowa, Johnson, Muscatine, Mahaska, Keokuk, Washington, Louisa, Monroe, Wapello, Jefferson, Henry, Des Moines, Appanoose, Davis, Van Buren, and Lee.

"Third-party administrator" shall mean the person or entity with which the department contracts to provide administrative services for the HAWK-I program.

441—86.2(514I) Eligibility factors. A child must meet the following eligibility factors to participate in the HAWK-I program.

86.2(1) *Age.* The child shall be under 19 years of age. Eligibility for the program ends the first day of the month following the month of the child's nineteenth birthday.

86.2(2) *Income.* Countable income shall not exceed 185 percent of the federal poverty level for a family of the same size when determining initial and ongoing eligibility for the program.

a. Countable income. When determining initial and ongoing eligibility for the HAWK-I program, all earned and unearned income, unless specifically exempted, shall be countable.

(1) Earned income. The earned income of all parents, spouses, and children under the age of 19 who are not students shall be countable. Income shall be countable earned income when an individual produces it as a result of the performance of services. Earned income is income in the form of a salary, wages, tips, bonuses, and commissions earned as an employee, or net profit from self-employment.

1. Earned income from employment. Earned income from employment means total gross income.

2. Earned income from self-employment. Earned income from self-employment means the net profit determined by comparing gross income with the allowable costs of producing the income. The net profit from self-employment income shall be determined according to the provisions of 441—paragraph 75.57(2)*"f."* A person is considered self-employed when the person:

• Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions; or

• Establishes the person's own working hours, territory, and methods of work; or

• Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

(2) Unearned income. The unearned income of all parents, spouses, and children under the age of 19 shall be counted. Unearned income is any income in cash that is not gained by labor or service. The available unearned income shall be the amount remaining after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes). Examples of unearned income include, but are not limited to:

1. Social security benefits. Social security income is the amount of the entitlement before withholding of a Medicare premium.

2. Child support and alimony payments received for a member of the family.

3. Unemployment compensation.

4. Veterans benefits.

(3) Recurring lump sum income. Earned and unearned lump sum income that is received on a regular basis shall be counted and prorated over the time it is intended to cover. These payments may include, but are not limited to:

1. Annual bonuses.

2. Lottery winnings that are paid out annually.

b. Exempt income. The following shall not be counted toward the income limit when establishing eligibility for the HAWK-I program.

(1) Nonrecurring lump sum income. Nonrecurring lump sum income is income that is not expected to be received more than once. These payments may include, but are not limited to:

1. An inheritance.
2. A one-time bonus.
3. Lump sum lottery winnings.
4. Other one-time payments.

(2) Food reserves from home-produced garden products, orchards, domestic animals, and the like, when used by the household for its own consumption.

(3) The value of the coupon allotment in the Food Stamp Program.

(4) The value of the United States Department of Agriculture donated foods (surplus commodities).

(5) The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.

(6) Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.

(7) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981.

(8) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.

(9) Interest and dividend income.

(10) Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe.

(11) Payments to volunteers participating in the Volunteers in Service to America (VISTA) program.

(12) Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.

(13) Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.

(14) Experimental housing allowance program payments.

(15) The income of a Supplemental Security Income (SSI) recipient.

(16) Income of an ineligible child if the family chooses not to include the child in the eligibility determination in accordance with the provisions of paragraph 86.2(3)"*c.*"

(17) Unearned income in kind.

(18) Family support subsidy program payments.

(19) All earned and unearned educational funds of an undergraduate or graduate student or a person in training. However, any additional amount of educational funds received for the person's dependents that are in the eligible group shall be considered as nonexempt income.

(20) Bona fide loans.

(21) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

(22) Payment for major disaster and emergency assistance provided under the Disaster Relief Act of 1974 as amended by Public Law 100-707, the Disaster Relief and Emergency Assistance Amendments of 1988.

(23) Payments made to certain United States citizens of Japanese ancestry and resident Japanese aliens under Section 105 of Public Law 100-383, and payments made to certain eligible Aleuts under Section 206 of Public Law 100-383 entitled Wartime Relocation of Civilians.

(24) Payments received from the Radiation Exposure Compensation Act.

(25) Reimbursements from a third party or from an employer for job-related expenses.

(26) Payments received for providing foster care when the family is operating a licensed foster home.

(27) Any payments received as a result of an urban renewal or low-cost housing project from any governmental agency.

(28) Retroactive corrective payments.

(29) The training allowance issued by the division of vocational rehabilitation, department of education.

(30) Payments from the PROMISE JOBS program.

(31) The training allowance issued by the department for the blind.

(32) Payments from passengers in a car pool.

(33) Compensation in lieu of wages received by a child under the Job Training Partnership Act of 1982.

(34) Any amount for training expenses included in a payment issued under the Job Training Partnership Act of 1982.

(35) Earnings of a child aged 19 or younger who is a student.

(36) Incentive payments received from participation in the adolescent pregnancy prevention programs.

(37) Payments received from the comprehensive child development program, funded by the Administration for Children, Youth, and Families, provided the payments are considered complementary assistance by federal regulations.

(38) Incentive allowance payments received from the work force investment project, provided the payments are considered complementary assistance by federal regulation.

(39) Honorarium income and all moneys paid to an eligible family in connection with the welfare reform longitudinal study.

(40) Family investment program (FIP) benefits.

(41) Moneys received through pilot self-sufficiency grants or diversion programs.

c. Verification of income. Earnings from the past 30 days may be used to verify earned income if it is representative of the income expected in future months. Pay stubs or employers' statements are acceptable forms of verification of earned income. Unearned income shall be verified through data matches when possible, award letters, warrant copies, or other acceptable means of verification. Self-employment income shall be verified using business records or income tax returns from the previous year if they are representative of anticipated earnings.

d. Changes in income. Once initial eligibility is established, changes in income during the 12-month enrollment period shall not affect the child's eligibility to participate in the HAWK-I program. However, if income has decreased, the family may request a review of their income to establish whether they are required to continue paying a premium in accordance with rule 441—86.8(514I).

86.2(3) *Family size.* For purposes of establishing initial and ongoing eligibility under the HAWK-I program, the family size shall consist of all persons living together who are children and who are parents of those children as defined below.

EXCEPTION: Persons who are receiving Supplemental Security Income (SSI) under Title XVI of the Social Security Act or who are voluntarily excluded in accordance with the provisions of paragraph *"c"* below are not considered in determining family size.

a. Children. A child under the age of 19 and any siblings of whole or half blood or adoptive shall be considered together unless the child is emancipated due to marriage, in which case, the emancipated child is not included in the family size unless the marriage has been annulled. Emancipated children, their spouses, and children who live together shall be considered as a separate family when establishing eligibility for the HAWK-I program.

b. Parents. Any parent living with the child under the age of 19 shall be included in the family size. This includes the biological parent, stepparent, or adoptive parent of the child and is not dependent upon whether the parents are married to each other.

c. Persons who may be excluded when determining family size. If a child is ineligible for coverage under the HAWK-I program because the child has insurance or is on Medicaid, the family may choose not to count the child in the family size if the child also has income. However, this rule shall not apply when the child is receiving Supplemental Security Income (SSI) benefits.

d. Temporary absence from the home. The following policies shall be applied to an otherwise eligible child under the age of 19 who is temporarily absent from the home.

(1) When a child is absent from the home to secure education or training (e.g., the child is attending college), the child shall be included when establishing the size of the family at home.

(2) When a child is absent from the home to secure medical care, the child shall be included when establishing the size of the family at home when the reason for the absence is expected to last less than 12 months.

(3) When the child is absent from the home because the child is an inmate in a nonmedical public institution (e.g., a penal institution) in accordance with the provisions of subrule 86.2(9), the child shall be included when establishing the size of the family at home if the absence is expected to be less than three months.

(4) When a child is absent from the home because the child is in foster care, the child shall not be included when establishing the size of the family at home.

(5) When a child is absent from the home for vacation or visitation of an absent parent, for example, the child shall be included in establishing the size of the family at home if the absence does not exceed three months.

86.2(4) *Uninsured status.* The child must be uninsured. A child who is currently enrolled in an individual or group health plan is not eligible to participate in the HAWK-I program. However, a child who is enrolled in a plan that provides coverage only for a specific disease or service (e.g., a vision- or dental-only policy or a cancer policy) shall not be considered insured for purposes of the HAWK-I program.

a. A child who has been enrolled in an employer-sponsored health plan in the six months prior to the month of application but who no longer is enrolled in an employer-sponsored health plan is not eligible to participate in the HAWK-I program for six months from the last date of coverage unless the coverage ended for one of the following reasons:

(1) Employment was lost due to factors other than voluntary termination.

(2) Coverage was lost due to the death of a parent.

(3) There was a change in employment to a new employer that does not provide an option for dependent coverage.

(4) The child moved to an area of the state where the plan does not have a provider network established.

(5) The employer discontinued health benefits to all employees.

(6) The coverage period allowed by COBRA expired.

(7) The parent became self-employed.

(8) Health benefits were terminated because of a long-term disability.

(9) Dependent coverage was terminated due to an extreme economic hardship on the part of either the employee or the employer.

Extreme economic hardship for employees shall mean that the employee's share of the premium for providing employer-sponsored dependent coverage exceeded 5 percent of the family's gross annual income.

(10) There was a substantial reduction in either lifetime medical benefits or benefit category available to an employee and dependents under an employer's health care plan.

(11) Child health insurance program (CHIP) coverage in another state was terminated due to the family's move to Iowa.

b. American Indian and Alaska Native. American Indian and Alaska Native children are eligible for the HAWK-I program on the same basis as other children in the state, regardless of whether or not they may be eligible for or served by Indian Health Services-funded care.

86.2(5) *Ineligibility for Medicaid.* The child shall not be receiving Medicaid or eligible to receive Medicaid if application were made except when the child would be required to meet a spenddown under the medically needy program in accordance with the provisions of 441—subrule 75.1(35). Additionally, a child who would be eligible for Medicaid except for the parent's failure or refusal to cooperate in establishing initial or ongoing eligibility shall not be eligible for coverage under the HAWK-I program.

86.2(6) *Iowa residency.* The child shall be a resident of the state of Iowa. A resident of Iowa is a person:

a. Who is living in Iowa voluntarily with the intention of making that person's home in Iowa and not for a temporary purpose; or

b. Who, at the time of application, is not receiving assistance from another state and entered Iowa with a job commitment or to seek employment or who is living with parents or guardians who entered Iowa with a job commitment or to seek employment.

86.2(7) *Citizenship and alien status.* The child shall be a citizen or lawfully admitted alien. The criteria established under Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997 shall be followed when determining whether a lawfully admitted alien child is eligible to participate in the HAWK-I program. The citizenship or alien status of the parents or other responsible person shall not be considered when determining the eligibility of the child to participate in the program.

86.2(8) *Dependents of state of Iowa employees.* The child shall not be eligible for the HAWK-I program if the child is eligible for health insurance coverage as a dependent of a state of Iowa employee.

86.2(9) *Inmates of nonmedical public institutions.* The child shall not be an inmate of a nonmedical public institution as defined at 42 CFR Section 435.1009 as amended November 10, 1994.

86.2(10) *Inmates of institutions for mental disease.* At the time of application or annual review of eligibility, the child shall not be an inmate of an institution for mental disease as defined at 42 CFR Section 435.1009 as amended November 10, 1994.

86.2(11) *Preexisting medical conditions.* The child shall not be denied eligibility based on the presence of a preexisting medical condition.

86.2(12) *Furnishing a social security number.* The child must furnish a social security number or, if one has not been issued or is not known, proof of application must be provided.

441—86.3(514I) Application process.

86.3(1) *Who may apply.* Each person wishing to do so shall have the opportunity to apply without delay. When the request is made in person, the requester shall immediately be given an application form. When a request is made that the application form be mailed, it shall be sent in the next outgoing mail.

a. Child lives with parents. When the child lives with the child's parents, including stepparents and adoptive parents, the parent shall file the application on behalf of the child unless the parent is unable to do so.

If the parent is unable to act on the child's behalf because the parent is incompetent or physically disabled, another person may file the application on behalf of the child. The responsible person shall be a family member, friend or other person who has knowledge of the family's financial affairs and circumstances and a personal interest in the child's welfare or a legal representative such as a conservator, guardian, executor or someone with power of attorney. The responsible person shall sign the application form and assume the responsibilities of the incompetent or disabled parent in regard to the application process and ongoing eligibility determinations.

b. Child lives with someone other than a parent. When the child lives with someone other than a parent (e.g., another relative, friend, guardian), the person who has assumed responsibility for the care of the child may apply on the child's behalf. This person shall sign the application form and assume responsibility for providing all information necessary to establish initial and ongoing eligibility for the child.

c. Child lives independently or is married. When a child under the age of 19 lives in an independent living situation or is married, the child may apply on the child's own behalf, in which case, the child shall be responsible for providing all information necessary to establish initial and ongoing eligibility. If the child is married, both the child and the spouse shall sign the application form.

86.3(2) *Application form.* An application for the HAWK-I program shall be submitted on Form 470-3526, Healthy and Well Kids in Iowa (HAWK-I) Application, unless the family applies for the Medicaid program first.

When an application has been filed for the Medicaid program in accordance with the provisions of rule 441—76.1(249A) and Medicaid eligibility does not exist in accordance with the provisions of rule 441—75.1(249A), or the family must meet a spenddown in accordance with the provisions of 441—subrule 75.1(35) before the child can attain eligibility, the Medicaid application shall be used to establish eligibility for the HAWK-I program in lieu of the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526. Applications may be obtained by telephoning the toll-free telephone number of the third-party administrator.

86.3(3) *Place of filing.* An application for the HAWK-I program shall be filed with the third-party administrator responsible for making the eligibility determination. Any local or area office of the department of human services, disproportionate share hospital, federally qualified health center, other facilities in which outstationing activities are provided, school nurse, Head Start, maternal and child health center, WIC office, or other entity may accept the application. However, all applications shall be forwarded to the third-party administrator.

86.3(4) *Date and method of filing.* The application is considered filed on the date an identifiable application is received by the third-party administrator unless the family has applied for Medicaid first and a referral is made to the third-party administrator by the county office of the department, in which case, the date the Medicaid application was originally filed with the department shall be the filing date. An identifiable application is an application containing a legible name, address, and signature.

86.3(5) *Right to withdraw application.* After an application has been filed, the applicant may withdraw the application at any time prior to the eligibility determination. Requests for voluntary withdrawal of the application shall be documented, and the applicant shall be sent a notice of decision confirming the request.

86.3(6) *Application not required.* An application shall not be required when a child becomes ineligible for Medicaid and the county office of the department makes a referral to the HAWK-I program, in which case, Form 470-3563, HAWK-I Referral, shall be accepted in lieu of an application. The original Medicaid application or the last review form, whichever is more current, shall suffice to meet the signature requirements.

86.3(7) *Information and verification procedure.* The decision with respect to eligibility shall be based primarily on information furnished by the applicant or enrollee. The third-party administrator shall notify the applicant or enrollee in writing of additional information or verification that is required to establish eligibility. This notice shall be provided to the applicant or enrollee personally or by mail or facsimile. Failure of the applicant or enrollee to supply the information or verification or refusal by the applicant or enrollee to authorize the third-party administrator to secure the information shall serve as a basis for rejection of the application or cancellation of coverage. Five working days shall be allowed for the applicant or enrollee to supply the information or verification requested by the third-party administrator. The third-party administrator may extend the deadline for a reasonable period of time when the applicant or enrollee is making every effort but is unable to secure the required information or verification from a third party.

86.3(8) *Time limit for decision.* The third-party administrator shall make a decision regarding the applicant's eligibility to participate in the HAWK-I program within ten working days from the date of receiving the completed application and all necessary information and verification unless the application cannot be processed within the period for a reason that is beyond the control of the third-party administrator.

EXCEPTION: When the application is referred to the county office of the department for a Medicaid eligibility determination and the application is denied, the third-party administrator shall determine HAWK-I eligibility no later than ten working days from the date of the notice of Medicaid denial.

86.3(9) *Applicant cooperation.* An applicant must cooperate with the third-party administrator in the application process, which may include providing verification or signing documents. Failure to cooperate with the application process shall serve as basis for a denial of the application.

86.3(10) *Waiting lists.* When funds appropriated for this purpose are obligated, pending applications for HAWK-I coverage shall be denied by the third-party administrator. A notice of decision shall be mailed by the third-party administrator. The notice shall state that the applicant meets eligibility requirements but no funds are available and that the applicant will be placed on a waiting list, or that the person does not meet eligibility requirements.

a. Applicants shall be entered on the waiting list on the basis of the date a completed Form 470-3564 is date-stamped by the third-party administrator. In the event that more than one application is received on the same day, applicants shall be entered on the waiting list on the basis of the day of the month of the oldest child's birthday, the lowest number being first on the list. Any subsequent ties shall be decided by the month of birth of the oldest child, January being month one and the lowest number.

b. If funds become available, applicants shall be selected from the waiting list based on the order of the waiting list and notified by the third-party administrator.

c. The third-party administrator shall establish that the applicant continues to be eligible for HAWK-I coverage.

d. After eligibility is reestablished, the applicant shall have 15 working days to enroll in the program. If the applicant does not enroll in the program within 15 working days, the applicant's name shall be deleted from the waiting list and the third-party administrator shall contact the next applicant on the waiting list.

86.3(11) *Falsification of information.* A person is guilty of falsification of information if that person, with the intent to gain HAWK-I coverage for which that person is not eligible, knowingly makes or causes to be made a false statement or representation or knowingly fails to report to the third-party administrator or the department any change in circumstances affecting that person's eligibility for HAWK-I coverage in accordance with rule 441—86.2(514I) and rule 441—86.10(514I).

In cases of founded falsification of information, the department may proceed with disenrollment in accordance with rule 441—86.7(514I) and require repayment for the amount that was paid to a health plan by the department and any amount paid out by the plan while the person was ineligible.

86.3(12) *Applications pended due to unavailability of a plan.* When there is no participating health plan in the applicant's county of residence, the application shall be held until a plan is available. The application shall be processed when a plan becomes available and coverage shall be effective the first day of the month the plan becomes available.

441—86.4(514I) Coordination with Medicaid.

86.4(1) *HAWK-I applicant appears eligible for Medicaid.* At the time of initial application, if it appears the child may be eligible for Medicaid in accordance with the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), a referral shall be made by the third-party administrator to the county department office for a determination of Medicaid eligibility as follows:

a. The original Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, and copies of any accompanying information and verification shall be forwarded to the county department office within 24 hours, or the next working day, whichever is sooner. The third-party administrator shall maintain a copy of all documentation sent to the department and a log to track the disposition of all referrals.

b. The third-party administrator shall notify the family that the referral has been made. The notice of the referral to the family shall be accompanied by a Medicaid Supplement to the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3564, and the third-party administrator shall return to the family any original verification and information that was submitted with the application.

c. The referral shall be considered an application for Medicaid in accordance with the provisions of rule 441—76.1(249A). The time limit for processing the referred application begins with the date the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, is date-stamped as being received by the third-party administrator.

86.4(2) *HAWK-I enrollee appears eligible for Medicaid.* At the time of the annual review, if it appears the child may be eligible for Medicaid in accordance with the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), a referral shall be made to the county department office for a determination of Medicaid eligibility as stated in subrule 86.4(1) above. However, the child shall remain eligible for the HAWK-I program pending the Medicaid eligibility determination unless the 12-month certification period expires first.

86.4(3) *Medicaid applicant not eligible.* If a child is not eligible for Medicaid under the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), the department shall make a referral to the third-party administrator for an eligibility determination under the HAWK-I program as follows:

a. A copy of the original application, copies of any accompanying information and verification, and a copy of the notice of decision shall be forwarded to the third-party administrator within 24 hours of the decision to deny Medicaid eligibility or the next working day, whichever is sooner.

b. The third-party administrator shall date-stamp the referral, notify the family of the referral, and proceed with an eligibility determination under the HAWK-I program.

c. The time frame for processing the application begins with the day on which the referred application is date-stamped as having been received by the third-party administrator.

d. If it is apparent that the child will not be eligible for the HAWK-I program (e.g., the child is the dependent of a state of Iowa employee), the referral shall not be made.

86.4(4) *Medicaid recipient becomes ineligible.* If a child becomes ineligible for Medicaid under the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), a referral shall be made to the third-party administrator for an eligibility determination under the HAWK-I program as follows:

a. The department shall complete a Referral to HAWK-I, Form 470-3563, and send it to the third-party administrator within 24 hours of the determination that the child is no longer eligible for Medicaid or that the child must meet a spenddown under the medically needy program.

b. The third-party administrator shall date-stamp the referral, notify the family of the referral, and proceed with an eligibility determination under the HAWK-I program. Form 470-3563, Referral to HAWK-I, shall be used as an application for the HAWK-I program. If needed, copies of supporting documentation and signatures shall be obtained from the case record at the county office of the department.

c. If it is apparent the child will not be eligible for the HAWK-I program (e.g., the child is the dependent of a state of Iowa employee), the referral shall not be made.

441—86.5(514I) Effective date of coverage. Coverage for children who are determined eligible for the HAWK-I program shall be effective the first day of the month following the month in which the application is filed, regardless of the day of the month the application is filed, or when a plan becomes available in the applicant's county of residence.

441—86.6(514I) Selection of a plan. At the time of initial application, if there is more than one participating plan available in the child's county of residence, the applicant shall select the plan in which the applicant wishes to enroll as part of the eligibility process. The enrollee may change plans only at the time of the annual review unless the provisions of subrule 86.7(1) apply. The applicant shall designate the plan choice in writing by completing Form 470-3574, Selection of Plan.

86.6(1) *Coverage in another county's plan.* If a child traditionally travels to another county to receive medical care, the applicant may choose to participate in the plan available in the county in which the child receives medical care.

86.6(2) *Period of enrollment.* Once enrolled in a plan, the child shall remain enrolled in the selected plan for a period of 12 months unless the child is disenrolled in accordance with the provisions of rule 441—86.7(514I). If a child is disenrolled from the plan and subsequently reapplies prior to the end of the original 12-month enrollment period, the child shall be enrolled in the plan from which the child was originally disenrolled unless the provisions of subrule 86.7(1) apply.

86.6(3) *Failure to select a plan.* When more than one plan is available, if the applicant fails to select a plan within ten working days of the written request to make a selection, the application shall be denied unless good cause exists.

441—86.7(514I) Disenrollment. The child shall be disenrolled from the selected plan prior to the end of the 12-month enrollment period for any of the following:

86.7(1) *Child moves from the service area.* The child may be disenrolled from the plan when the child moves to an area of the state in which the plan does not have a provider network established. If the child is disenrolled, the child shall be enrolled in a participating plan in the new location. The period of enrollment shall be the number of months remaining in the original certification period.

86.7(2) *Age.* The child shall be disenrolled from the plan and canceled from the HAWK-I program as of the first day of the month following the month in which the child attained the age of 19.

86.7(3) *Nonpayment of premiums.* The child shall be disenrolled from the plan and canceled from the program as of the first day of the month in which premiums are not paid in accordance with the provisions of subrules 86.8(3) and 86.8(5).

86.7(4) *Iowa residence abandoned.* The child shall be disenrolled from the plan and canceled from the program as of the first day of the month following the month in which the child relocated to another state. A child shall not be disenrolled when the child is temporarily absent from the state in accordance with the provisions of subrule 86.2(6).

86.7(5) *Eligible for Medicaid.* The child shall be disenrolled from the plan and canceled from the program as of the first day of the month following the month in which Medicaid eligibility is established.

86.7(6) *Enrolled in other health insurance coverage.* The child shall be disenrolled from the plan as of the first day of the month following the month in which the child attained other health insurance coverage.

86.7(7) *Admission to a nonmedical public institution.* The child shall be disenrolled from the plan and canceled from the program as of the first day of the month following the month in which the child enters a nonmedical public institution unless the temporary absence provisions of paragraph 86.2(3)*"d"* apply.

86.7(8) *Admission to an institution for mental disease.* The child shall be disenrolled from the plan and canceled from the program if the child is a patient in an institution for mental disease at the time of annual review.

86.7(9) *Employment with the state of Iowa.* The child shall be disenrolled from the plan and canceled from the HAWK-I program as of the first day of the month in which the child's parent became eligible to participate in a health plan available to state of Iowa employees.

441—86.8(514I) Premiums and copayments.

86.8(1) *Income limit.* No premium shall be assessed when countable income is less than 150 percent of the federal poverty level for a family of the same size. When countable income is equal to or greater than 150 percent of the federal poverty level for a family of the same size, participation in the program is contingent upon the payment of a monthly premium.

86.8(2) *Premium amount.* The premium amount shall be $10 per month per child up to a maximum of $20 per month per family.

86.8(3) *Due date.* When the third-party administrator notifies the applicant that the applicant is eligible to participate in the program, the applicant shall pay any premiums due within ten working days for the initial month of coverage. When the premium is received, the third-party administrator shall notify the plan of the enrollment. After the initial month of coverage, premiums shall be received no later than the last day of the month prior to the month of coverage. Failure to pay the premium by the last day of the month before the month of coverage shall result in disenrollment from the plan. At the request of the family, premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

86.8(4) *Reinstatement.* A child may be reinstated once in a 12-month period when the family fails to pay the premium by the last day of the month prior to the month of coverage. However, the reinstatement must occur within the calendar month following the month of nonpayment and the premium must be paid in full prior to reinstatement.

86.8(5) *Method of premium payment.* Premiums may be submitted in the form of cash, personal checks, automatic bank account withdrawals, or other methods established by the third-party administrator.

86.8(6) *Failure to pay premium.* Failure to pay the premium in accordance with subrules 86.8(3) and 86.8(5) shall result in disenrollment from the plan and cancellation from the program unless the reinstatement provisions of subrule 86.8(4) apply. Once a child is disenrolled and canceled from the program due to nonpayment of premiums, the family must reapply for coverage.

86.8(7) *Copayment.* There shall be a $25 copayment for each emergency room visit if the child's medical condition does not meet the definition of emergency medical condition.

441—86.9(514I) Annual reviews of eligibility. All eligibility factors shall be reviewed at least every 12 months to establish ongoing eligibility for the program. "Month one" shall be the first month in which coverage is provided.

86.9(1) *Review form.* The family shall complete Form 470-3526, Healthy and Well Kids in Iowa (HAWK-I) Application, and provide information and verification of current income as part of the review process.

86.9(2) *Failure to provide information.* The child shall not be enrolled for the next 12-month period if the family fails to provide information and verification of income or otherwise fails to cooperate in the annual review process.

86.9(3) *Change in plan.* At the time of the annual review of eligibility, if more than one plan is available, the family shall designate whether the child is to remain enrolled in the current plan or is to be enrolled in another plan. The plan choice shall be designated in writing by completing Form 470-3574, Healthy and Well Kids in Iowa (HAWK-I) Selection of Plan.

441—86.10(514I) Reporting changes. Changes that may affect eligibility shall be reported to the third-party administrator as soon as possible but no later than ten working days after the change. "Day one" shall begin with the date of the change. The parent, guardian, or other adult responsible for the child shall report the change. If the child is emancipated, married, or otherwise in an independent living situation, the child shall be responsible for reporting the change.

86.10(1) *Pregnancy.* The pregnancy of a child shall be reported when the pregnancy is diagnosed.

86.10(2) *Entry to a nonmedical public institution.* The entry of a child into a nonmedical public institution, such as a penal institution, shall be reported following entry to the institution.

86.10(3) *Iowa residence is abandoned.* The abandonment of Iowa residence shall be reported following the move from the state.

86.10(4) *Other insurance coverage.* Enrollment of the child in other health insurance coverage shall be reported.

86.10(5) *Employment with the state of Iowa.* The employment of the child's parent with the state of Iowa shall be reported.

86.10(6) *Decrease in income.* If the family reports a decrease in income, the third-party administrator shall ascertain whether the change affects the premium obligation of the family. If the change is such that the family is no longer required to pay a premium in accordance with the provisions of rule 441—86.8(514I), premiums will no longer be charged beginning with the month following the month of the report of the change.

86.10(7) *Failure to report changes.* Any benefits paid during a period of time in which the child was ineligible due to unreported changes will be subject to recoupment.

441—86.11(514I) Notice requirements. The applicant or enrollee shall be notified in writing of the decision of the third-party administrator regarding the applicant or enrollee's eligibility for the HAWK-I program. If the applicant or enrollee has been determined to be ineligible, an explanation of the reason shall be provided.

441—86.12(514I) Appeals and fair hearings. If the applicant or enrollee disputes a decision by the third-party administrator to reduce, cancel or deny participation in the HAWK-I program, the applicant or enrollee may appeal the decision in accordance with 441—Chapter 7.

441—86.13(514I) Third-party administrator. The third-party administrator shall have the following responsibilities:

86.13(1) *Determination of eligibility.* The third-party administrator shall determine eligibility in accordance with the provisions of rule 441—86.2(514I).

86.13(2) *Dissemination of application forms and information.* The third-party administrator shall disseminate the following:

a. Application forms to any organization or individual making a request in accordance with the provisions of subrule 86.3(1).

b. Outreach materials to any organization or individual making a request.

c. Participating health plan information.

d. Other materials as specified by the department.

86.13(3) *Toll-free dedicated customer services line.* The third-party administrator shall maintain a toll-free multilingual dedicated customer service line in accordance with the requirements of the department.

86.13(4) *HAWK-I program web site.* The third-party administrator shall work in cooperation with the department to maintain a web site providing information about the HAWK-I program.

86.13(5) *Application process.* The third-party administrator shall process applications in accordance with the provisions of rule 441—86.3(514I).

a. Processing applications and mailing of approvals and denials shall be completed within ten working days of receipt of the application and all necessary information and verification unless the application cannot be processed within this period for a reason beyond the control of the third-party administrator.

b. Original verification information shall be returned to the applicant or enrollee upon completion of review.

86.13(6) *Tracking of applications.* The third-party administrator shall track and maintain applications. This includes, but is not limited to, the following procedures:

a. Date-stamping all applications with the date of receipt.

b. Screening applications for completeness and requesting in writing any additional information or verification necessary to establish eligibility. All information or verification of information attained shall be logged.

c. Entering all applications received into the data system with an identifier status of pending, approved, or denied.

d. Referring applications to the county office of the department, when appropriate, and receiving application referrals from the department.

e. Tracking any waiting periods before coverage can begin in accordance with subrule 86.2(4).

f. Notifying the plans when the number of enrollees who speak the same non-English language equals or exceeds 10 percent of the number of enrollees in the plan.

86.13(7) *Effective date of coverage.* The third-party administrator shall establish effective date of coverage in accordance with the provisions of rule 441—86.5(514I).

86.13(8) *Selection of plan.* The third-party administrator shall provide participating health plan information to families of eligible children by telephone or mail and, if necessary, offer unbiased assistance in the selection of a plan in accordance with the provisions of rule 441—86.6(514I).

86.13(9) *Enrollment.* The third-party administrator shall notify participating health plans of enrollments.

86.13(10) *Disenrollments.* The third-party administrator shall disenroll an enrollee in accordance with the provisions of rule 441—86.7(514I). The third-party administrator shall notify the participating health plan when an enrollee is disenrolled.

86.13(11) *Annual reviews of eligibility.* The third-party administrator shall annually review eligibility in accordance with the provisions of rules 441—86.2(514I) and 86.9(514I).

86.13(12) *Acting on reported changes.* The third-party administrator shall ensure that all changes reported by the HAWK-I enrollee in accordance with rule 441—86.10(514I) are acted upon no later than ten working days from the date the change is reported.

86.13(13) *Premiums.* The third-party administrator shall:

a. Calculate premiums in accordance with the provisions of rule 441—86.8(514I).

b. Collect HAWK-I premium payments. The funds shall be deposited into an interest-bearing account maintained by the department for periodic transmission of the funds and any accrued interest to the HAWK-I trust fund in accordance with state accounting procedures.

c. Track the status of the enrollee premium payments and provide the data to the department.

d. Mail a reminder notice to the family if the premium is not received by the due date.

86.13(14) *Notices to families.* The third-party administrator shall develop and provide timely and adequate approval, denial, and cancellation notices to families that clearly explain the action being taken in regard to an application or an existing enrollment. Denial and cancellation notices shall clearly explain the appeal rights of the applicant or enrollee. All notices shall be available in English and Spanish.

86.13(15) *Records.* The third-party administrator shall at a minimum maintain the following records:

a. All records required by the department and the department of inspections and appeals.

b. Records which identify transactions with or on behalf of each enrollee by social security number or other unique identifier.

c. Application, case and financial records.

d. All other records as required by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

86.13(16) *Confidentiality.* The third-party administrator shall protect and maintain the confidentiality of HAWK-I applicants and enrollees in accordance with 441—Chapter 9.

86.13(17) *Reports to the department.* The third-party administrator shall submit reports as required by the department.

86.13(18) *Systems.* The third-party administrator shall maintain data files that are compatible with the department's and the health plans' data files and shall make the system accessible to department staff.

441—86.14(514I) Covered services. The benefits provided under the HAWK-I program shall meet a benchmark, benchmark equivalent, or benefit plan that complies with Title XXI of the federal Social Security Act.

86.14(1) *Required services.* The participating health plan shall cover at a minimum the following medically necessary services:

a. Inpatient hospital services (including medical, surgical, intensive care unit, mental health, and substance abuse services).

b. Physician services (including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits).

c. Outpatient hospital services (including emergency room, surgery, lab, and x-ray services and other services).

d. Ambulance services.

e. Physical therapy.

f. Nursing care services (including skilled nursing facility services).

g. Speech therapy.
h. Durable medical equipment.
i. Home health care.
j. Hospice services.
k. Prescription drugs.
l. Dental services (including restorative and preventative services).
m. Hearing services.
n. Vision services (including corrective lenses).

86.14(2) *Abortion.* Payment for abortion shall only be made under the following circumstances:

a. The physician certifies that the pregnant enrollee suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the enrollee in danger of death unless an abortion is performed.

b. The pregnancy was the result of an act of rape or incest.

441—86.15(514I) Participating health plans.

86.15(1) *Licensure.* The participating health plan must be licensed by the division of insurance of the department of commerce to provide health care coverage in Iowa or be an organized delivery system licensed by the director of public health to provide health care coverage.

86.15(2) *Services.* The participating health plan shall provide health care coverage for the services specified in rule 441—86.14(514I) to all children determined eligible by the third-party administrator.

a. The participating health plan shall make services it provides to HAWK-I enrollees at least as accessible to the enrollees (in terms of timeliness, duration and scope) as those services are accessible to other commercial enrollees in the area served by the plan.

b. Participating health plans shall ensure that emergency services (inpatient and outpatient) are available for treatment of an emergency medical condition 24 hours a day, seven days a week, either through the health plan's own providers or through arrangements with other providers.

c. If a participating plan does not provide statewide coverage, the plan shall participate in every county within the region in which the plan has contracted to provide services in which it is licensed and in which a provider network has been established. Regions are specified in rule 441—86.1(514I).

86.15(3) *Premium tax.* Premiums paid to participating health plans by the third-party administrator are exempt from premium tax.

86.15(4) *Provider network.* The participating health plan shall establish a network of providers. Providers contracting with the participating health plan shall comply with HAWK-I requirements, which shall include collecting copayments, if applicable.

86.15(5) *Medical cards.* Medical identification cards shall be issued by the participating health plan to the enrollees for use in securing covered services.

86.15(6) *Marketing.*

a. Participating health plans may not distribute directly or through an agent or independent contractor any marketing materials.

b. All marketing materials require prior approval from the department.

c. At a minimum, participating health plans must provide the following written material:

(1) A current member handbook that fully explains the services available, how and when to obtain them, and special factors applicable to the HAWK-I enrollees. At a minimum the handbook shall include covered services, network providers, exclusions, emergency services procedures, 24-hour toll-free number for certification of services, daytime number to call for assistance, appeal procedures, enrollee rights and responsibilities, and definitions of terms.

(2) All plan literature and brochures shall be available in English and any other language when enrollment in the plan by enrollees who speak the same non-English language equals or exceeds 10 percent of all enrollees in the plan and shall be made available to the third-party administrator for distribution.

d. All health plan literature and brochures shall be approved by the department.

e. The participating health plans shall not, directly or indirectly, conduct door-to-door, telephonic, or other "cold-call" marketing.

f. The participating health plan may make marketing presentations at the discretion of the department.

86.15(7) *Appeal process.* The participating health plan shall have a written procedure by which enrollees may appeal issues concerning the health care services provided through providers contracted with the plan and which:

a. Is approved by the department prior to use.

b. Acknowledges receipt of the appeal to the enrollee.

c. Establishes time frames which ensure that appeals be resolved within 60 days, except for appeals which involve emergency medical conditions, which shall be resolved within time frames appropriate to the situations.

d. Ensures the participation of persons with authority to take corrective action.

e. Ensures that the decision be made by a physician or clinical peer not previously involved in the case.

f. Ensures the confidentiality of the enrollee.

g. Ensures issuance of a written decision to the enrollee for each appeal which shall contain an adequate explanation of the action taken and the reason for the decision.

h. Maintains a log of the appeals which is made available to the department at its request.

i. Ensures that the participating health plan's written appeal procedures be provided to each newly covered enrollee.

j. Requires that the participating health plan make quarterly reports to the department summarizing appeals and resolutions.

86.15(8) *Appeals to the department.* Rescinded IAB 1/13/99, effective 1/1/99.

86.15(9) *Records and reports.* The participating health plan shall maintain records and reports as follows:

a. The plan shall comply with the provisions of rule 441—79.3(249A) regarding maintenance and retention of clinical and fiscal records and shall file a letter with the commissioner of insurance as described in Iowa Code section 228.7. In addition, the plan must maintain a medical records system that:

(1) Identifies each medical record by HAWK-I enrollee identification number.

(2) Maintains a complete medical record for each enrollee.

(3) Provides a specific medical record on demand.

(4) Meets state and federal reporting requirements applicable to the HAWK-I program.

(5) Maintains the confidentiality of medical records information and releases the information only in accordance with established policy below:

1. All medical records of the enrollee shall be confidential and shall not be released without the written consent of the enrollee or responsible party.

2. Written consent is not required for the transmission of medical records information to physicians, other practitioners, or facilities that are providing services to enrollees under a subcontract with the plan. This provision also applies to specialty providers who are retained by the plan to provide services which are infrequently used, which provide a support system service to the operation of the plan, or which are of an unusual nature. This provision is also intended to waive the need for written consent for department staff and the third-party administrator assisting in the administration of the program, reviewers from the peer review organization (PRO), monitoring authorities from the Health Care Financing Administration (HCFA), the plan itself, and other subcontractors which require information as described under numbered paragraph "5" below.

EXCEPTION: Written consent is required for the transmission of medical records relating to substance abuse, HIV, or mental health treatment in accordance with state and federal laws.

3. Written consent is not required for the transmission of medical records information to physicians or facilities providing emergency care pursuant to paragraph 86.15(2)*"b."*

4. Written consent is required for the transmission of the medical records information of a former enrollee to any physician not connected with the plan.

5. The extent of medical records information to be released in each instance shall be based upon a test of medical necessity and a "need to know" on the part of the practitioner or a facility requesting the information.

6. Medical records maintained by subcontractors shall meet the requirements of this rule.

b. Each plan shall provide at a minimum reports and plan information to the third-party administrator as follows:

(1) A list of providers of medical services under the plan.

(2) Information regarding the plan's appeals process.

(3) A plan for a health improvement program.

(4) Periodic financial, utilization and statistical reports as required by the department.

(5) Encounter data on a monthly basis as required by the department.

(6) Time-specific reports which define activity for child health care, appeals, and other designated activities which may, at the department's discretion, vary among plans, depending on the services covered and other differences.

(7) Other information as directed by the department.

86.15(10) *Systems.* The participating health plan shall maintain data files that are compatible with the department's and third-party administrator's systems.

86.15(11) *Payment to the participating health plan.*

a. In consideration for all services rendered by a plan, the plan shall receive a payment each month for each enrollee. This capitation rate represents the total obligation of the department with respect to the costs of medical care and services provided to the enrollees.

b. The capitation rate shall be actuarially determined by the department July of 2000 and each fiscal year thereafter using statistics and data assumptions and relevant experience derived from similar populations.

c. The capitation rate does not include any amounts for the recoupment of losses suffered by the plan for risks assumed under the current or any previous contract. The plan accepts the rate as payment in full for the contracted services. Any savings realized by the plan due to lower utilization from a less frequent incidence of health problems among the enrolled population shall be wholly retained by the plan.

d. If an enrollee has third-party coverage or a responsible party other than the HAWK-I program available for purposes of payment for medical expenses, it is the right and responsibility of the plan to investigate these third-party resources and attempt to obtain payment. The plan shall retain all funds collected through third-party sources. A complete record of all income from these sources must be maintained and made available to the department.

86.15(12) *Quality assurance.* The plan shall have in effect an internal quality assurance system.

These rules are intended to implement Iowa Code chapter 514I.

[Filed emergency 12/23/98 after Notice 11/4/98—published 1/13/99, effective 1/1/99]
[Filed emergency 12/23/98—published 1/13/99, effective 1/1/99]
[Filed 2/17/99, Notice 1/13/99—published 3/10/99, effective 5/1/99]
[Filed emergency 3/22/99—published 4/7/99, effective 4/1/99]

CHAPTER 93
PROMISE JOBS PROGRAM
[Prior to 7/1/89, see 441—Chapters 55, 59 and 90]

DIVISION I
FAMILY INVESTMENT PROGRAM—CONTROL GROUP
[Rescinded IAB 2/12/97, effective 3/1/97]

441—93.1 to **93.100** Reserved.

DIVISION II
FAMILY INVESTMENT PROGRAM—TREATMENT GROUP
[Prior to 10/13/93, 441—93.1(249C) to 93.52(249C)]

PREAMBLE

This chapter implements the PROMISE JOBS* program which is designed to increase the availability of employment and training opportunities to family investment program (FIP) recipients. It implements the family investment agreement (FIA) as directed in legislation passed by the Seventy-fifth General Assembly and signed by the governor on May 4, 1993, and approved under federal waiver August 13, 1993. The program also implements the federal Job Opportunities and Basic Skills (JOBS) program of the Family Support Act of 1988.

The program assigns responsibility for the provision of services to the department of workforce development (DWD) and the department of economic development (DED) as the administrative entity for the Job Training Partnership Act (JTPA) program, Iowa's two primary providers of employment-oriented services. In addition, the bureau of refugee services (BRS) of the department of human services is assigned the responsibility of providing program services, to the extent compatible with resources available, to all refugees.

PROMISE JOBS services, which are also FIA options, include orientation, assessment, job-seeking skills training, group and individual job search, classroom training programs ranging from basic education to postsecondary education opportunities, PROMISE JOBS on-the-job training, work experience, unpaid community service, parenting skills training, monitored employment, the FIP-unemployed parent work program, referral for family planning counseling, FaDSS, and other family development services. In addition, participants have access to all services offered by the provider agencies. Persons in other work and training programs outside of PROMISE JOBS or not approvable by PROMISE JOBS can use those as FIA options.

441—93.101(239B) Program area. The department of human services shall administer an employment and training program known as PROMISE JOBS. The PROMISE JOBS program shall include the family investment agreement (FIA). The program shall be available statewide. If the department determines that sufficient funds are not available to offer on-location services in each county, it shall prioritize the availability of services in those counties having the largest FIP populations.

441—93.102(249C) Agency responsibility for provision of each service. Rescinded IAB 12/8/93, effective 1/1/94.

*See definition in 441—40.21(239B)

441—93.103(239B) Contracts with provider agencies for provision of services. The department of human services shall contract with the departments of workforce development and economic development to provide PROMISE JOBS and FIA services to FIP recipients. Services shall include orientation, assessment, job-seeking skills training, group and individual job search, job placement and job development, high school completion, adult basic education (ABE), general educational development (GED), and English as second language (ESL), vocational classroom training, postsecondary education, PROMISE JOBS on-the-job training (OJT), work experience, unpaid community service, parenting skills training, monitored employment, FaDSS, other family development services, referral for family planning counseling, and the FIP-UP work program.

The bureau of refugee services shall provide the above services, to the extent compatible with resources available, to persons who entered the United States with refugee status.

441—93.104(239B) Registration and referral requirements. An application for assistance constitutes a registration for the PROMISE JOBS program and the FIA for all members of the FIP case and all other persons responsible for the FIA as specified at 441—41.24(239B) unless the county office determines a person is exempt as specified in 441—subrule 41.24(2).

93.104(1) All registrants may volunteer for services.

93.104(2) Applicants for FIP assistance may volunteer for and are eligible to receive job placement services prior to approval of the FIP application. Applicants who participate in the program shall receive a transportation allowance, as well as payment of child care, if required. The transportation allowance shall be paid at the start of participation. The income maintenance worker shall not refer an applicant to the program when it appears that the applicant will be ineligible for FIP.

93.104(3) Applicants in a limited benefit plan who must complete significant contact with or action in regard to PROMISE JOBS for FIP eligibility to be considered, as described at 441—paragraphs 41.24(8)*"a"* and *"d,"* are eligible for expense allowances for the 20 hours of activity. However, PROMISE JOBS services and allowances are only available when it appears the applicant will otherwise be eligible for FIP.

93.104(4) Volunteers and FIP participants who are responsible for the FIA shall contact the appropriate PROMISE JOBS office to schedule an appointment for PROMISE JOBS orientation within ten calendar days of notice that the FIP application is approved or that exempt status is lost and FIA responsibility has begun.

93.104(5) Registrants are exempt from referral when they qualify for exemption as specified in 441—subrule 41.24(1).

93.104(6) Only clients applying for or receiving FIP assistance are eligible for PROMISE JOBS services.

441—93.105(239B) Priority of service.

93.105(1) *Federal requirements.* Federal law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Title I—Temporary Assistance for Needy Families, Section 407, contains mandatory work requirements expressed as participation rate requirements:

a. Rescinded IAB 12/3/97, effective 2/1/98.

b. Federal law requires that each state shall achieve a minimum participation rate for all families as described in PRWORA, Title I, Section 407.

c. Federal law requires that each state shall achieve a minimum participation rate for two-parent families as described in PRWORA, Title I, Section 407.

93.105(2) *Service upon referral.* FIP applicants and participants who are referred to PROMISE JOBS shall initiate service for PROMISE JOBS orientation by contacting the appropriate PROMISE JOBS office within ten calendar days of the mailing date of the notice of FIP approval or within ten calendar days of notice that exempt status has been lost and FIA responsibility has begun, as required under 441—subrule 41.24(5).

PROMISE JOBS provider agencies shall schedule FIA orientation appointments at the earliest available times for FIP participants who contact the appropriate PROMISE JOBS office within the ten days except when the department exercises administrative authority to require prioritization of orientation services to ensure that specific groups receive services in order to achieve self-sufficiency in the shortest possible time, to meet federal minimum participation rate requirements and other TANF requirements.

Applicants who have chosen and are in a limited benefit plan are referred to PROMISE JOBS and must initiate service by contacting the department or the appropriate PROMISE JOBS office as described at 441—subrule 41.24(1). The applicants who communicate the desire to engage in PROMISE JOBS activities shall be scheduled at the earliest available time to begin or resume the family investment agreement process.

a. to *f.* Rescinded IAB 12/3/97, effective 2/1/98.

The department reserves the authority to prioritize orientation and other services to FIP applicants and participants in whatever order best fits the needs of applicants and participants and the PROMISE JOBS program.

Applicants and participants who are participating in the food stamp employment and training (FSET) program at the time of referral shall be allowed to use the FSET component in which they are currently enrolled as the first step in the FIA. This does not apply to persons who drop out of the FSET component.

93.105(3) *Waiting lists.* Because of state and federal budgetary limitations, federal mandatory work requirements and minimum participation rate requirements, and other TANF requirements on the PROMISE JOBS program, the department shall have the administrative authority to determine agency and geographical breakdowns for service, to designate specific groups for priority services, or to designate specific PROMISE JOBS components or supportive service levels for a waiting list. Persons shall be removed from these waiting lists and placed in components at the discretion of state-level PROMISE JOBS administrators in order to help participants achieve self-sufficiency in the shortest possible time, meet budgetary limitations, enable participants to make maximum use of other programs, fulfill the federal minimum participation rate requirements and meet other TANF requirements. Persons who are designated parents on FIP-UP cases shall not be placed on a waiting list provided sufficient funds are available to serve them.

a. and *b.* Rescinded IAB 12/3/97, effective 2/1/98.

c. Persons who are participating in a component who are canceled from FIP are not eligible for PROMISE JOBS services while FIP is canceled. However, the person can regain immediate eligibility for PROMISE JOBS services and shall not be placed on a postsecondary classroom training waiting list if the period of FIP ineligibility does not exceed four consecutive months and the participant is still satisfactorily participating in approvable training at the time that FIP eligibility is regained.

93.129(2) *Conciliation period for volunteers.* The purpose of the conciliation period is to identify and remove or resolve barriers to participation, to ensure that volunteer participants do not unknowingly lose their right to priority service, and to identify the steps that the participant and the PROMISE JOBS staff will take to ensure successful participation. Conciliation for volunteers shall be provided by a conciliation unit established by the PROMISE JOBS provider agencies in each local service delivery area. PROMISE JOBS staff from DWD shall conciliate decisions made by JTPA workers. PROMISE JOBS staff from JTPA shall conciliate DWD decisions. The bureau of refugee services shall arrange with PROMISE JOBS staff of DWD and JTPA to provide conciliation services when the need arises. If the local service delivery area assigns interagency teams, decisions by a team shall be conciliated by the other teams.

a. When the PROMISE JOBS worker determines that an exempt volunteer, after signing the FIA, has chosen not to carry out the activities or responsibilities of the FIA, the worker shall notify the conciliation unit of the PROMISE JOBS local service delivery area. This notice shall include documentation of the issues of participation or problems of participation which have not been resolved. The conciliation unit shall review the material to determine if the nonfinancial sanction of loss of priority service is applicable.

b. If the conciliation unit disagrees with the PROMISE JOBS worker, the conciliation unit shall contact the worker to resolve the issue.

c. If the conciliation unit agrees with the PROMISE JOBS worker, the conciliation unit shall initiate a 30-day conciliation period by issuing the Notice of Potential Loss of Priority Service—Exempt Volunteers, Form 470-3116, to the participant. The conciliation period begins the day following the day the Notice of Potential Loss of Priority Service—Exempt Volunteers is issued. During this 30-day period, the participant can present additional information to the conciliation unit to resolve the issues of participation or problems with participation, or identify barriers to participation which should be addressed in the FIA.

d. If the participant presents additional information which indicates resolution of issues of participation or problems with participation, or which indicates a barrier to participation which will be addressed in the FIA, the conciliation unit shall review these with the PROMISE JOBS worker, with conciliation staff having the final say. If the conciliation unit finds that the activities of the FIA can be resumed or the FIA can be renegotiated, the conciliation unit shall notify the PROMISE JOBS worker of that finding.

e. If the conciliation unit finds that the participant has chosen not to carry out the activities or responsibilities of the FIA, i.e., the issues and problems are not resolved, barriers to participation are not identified, or the participant indicates unwillingness to include the barriers to participation in a renegotiated FIA, the conciliation unit shall notify the PROMISE JOBS worker to apply the loss of priority services sanction.

441—93.130(249C) Sanctions for mandatory participants aged 16 or 17 who are required to participate in high school completion activities. Rescinded IAB 12/8/93, effective 1/1/94.

441—93.131(239B) Failure to participate in classroom training.

93.131(1) Rescinded IAB 9/11/96, effective 11/1/96.

93.131(2) *Participants aged 17 or younger.* A participant aged 17 or younger who chooses not to participate in high school completion activities shall be considered to have chosen the LBP. The participant may choose other FIA options only if the local education agency will not allow a participant to enroll in high school completion activities.

441—93.132(239B) Participation issues for FIA-responsible persons. PROMISE JOBS participants who do not carry out the responsibilities of the FIA are considered to have chosen the limited benefit plan, as described at 441—subrule 41.24(8).

The participation issues in this rule are those which are important for effective functioning in the workplace or training facility and to the completion of the FIA.

Participants aged 18 or older who, for reasons other than those described at rule 441—93.133(239B), do not resolve these issues shall be considered to have chosen the limited benefit plan, unless participant circumstances are revealed which indicate that a barrier to participation exists which should be addressed in the FIA.

Those who may be considered to have chosen the limited benefit plan are:

1. Participants who are more than 15 minutes late for a third time within three months of the first lateness, after receiving a written reminder of the importance of complying with the FIA at the time the second lateness occurred.

2. Participants who do not, for a second time after receiving a written reminder of the importance of complying with the FIA at the first occurrence, appear for scheduled appointments, participate in appraisal activities, complete required forms, or take required vocational or aptitude tests, or are absent from activities designated in the FIA or other self-sufficiency plan.

3. Participants who do not, for a second time after receiving written reminder of the importance of complying with the FIA at the first occurrence, notify work experience sponsors or PROMISE JOBS staff of absence within one hour of the time at which they are due to appear.

4. Participants who exhibit disruptive behavior for a second time after receiving a written reminder of the importance of complying with the FIA at the first occurrence. Disruptive behavior means the participant hinders the performance of other participants or staff, refuses to follow instructions, uses abusive language, or is under the influence of alcohol or drugs.

5. Participants who fail to secure required physical examinations after a written request to do so.

6. Participants who continue an offense after being notified that the behavior is disruptive and in what manner it is disruptive.

7. Participants whose performance continues to be unsatisfactory after being notified by program or provider agency staff of unacceptable performance and what is necessary to make performance acceptable. Notification of unsatisfactory performance may be oral initially, but shall be documented to the participant in writing.

8. Participants who make physical threats to other participants or staff. A physical threat is defined as having a dangerous weapon in one's possession and either threatening with or using the weapon or committing assault.

9. Participants who do not accept work experience assignments when the work experience option is part of the FIA or required under the FIP-UP work program.

10. Participants who do not, for a second time after receiving written reminder of the importance of complying with the FIA at the first occurrence, appear for work experience interviews.

11. Participants who do not follow up on job referrals, refuse offers of employment or terminate employment, or who are discharged from employment due to misconduct. For the purposes of these rules, "misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of the worker's contract of employment. To be considered "misconduct," the employee's conduct must demonstrate deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. Mere inefficiency, unsatisfactory conduct, failure to perform well due to inability or incapacity, ordinary negligence in isolated instances, or good-faith errors in judgement or discretion are not to be deemed misconduct for the purpose of these rules.

12. Participants who do not secure adequate child care when registered or licensed facilities are available.

13. Participants for whom child care, transportation, or educational services become unavailable as a result of failure to use PROMISE JOBS funds to pay the provider or failure to provide required receipts.

14. FIA-responsible persons who are required to participate in high school completion activities and who fail to provide grade transcripts or reports.

441—93.133(239B) Problems with participation of a temporary or incidental nature. Problems with participation as described below shall be considered to be of a temporary or incidental nature when participation can be easily resumed. These problems are acceptable instances when a participant is excused from participation or for refusing or quitting a job or limiting or reducing hours or for discharge from employment due to misconduct as described at rule 441—93.132(239B).

93.133(1) *Acceptable instances when a person is excused from participation.*

a. Illness. When a participant is ill more than three consecutive days or if illness is habitual, staff may require medical documentation of the illness.

b. Required in the home due to illness of another family member. Staff may require medical documentation for the same reasons as when a participant is ill.

c. Family emergency, using reasonable standards of an employer.

d. Bad weather, using reasonable standards of an employer.

e. Absent or late due to participant's or spouse's job interview. When possible, the participant shall provide notice of the interview at least 24 hours in advance including the name and address of the employer conducting the interview. When 24-hour notice is not possible, notice must be given as soon as possible and prior to the interview.

f. Leave due to the birth of a child. When a child is born after referral, necessary absence shall be determined in accordance with the Family Leave Act of 1993.

93.133(2) *Acceptable instances when a person is excused from participation or for refusing or quitting a job or limiting or reducing hours or for discharge from employment due to misconduct as described at rule 441—93.132(239B).*

a. Required travel time from home to the job or available work experience or unpaid community service site exceeds one hour each way. This does not include additional travel time necessary to take a child to a child care provider.

b. Except as described in 441—subrule 41.25(5) and 441—paragraph 42.24(1)"*c*," work offered is at a site subject to a strike or lockout, unless the strike has been enjoined under Section 208 of the Labor-Management Relations Act (29 U.S.C. 78A) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under Section 10 of the Railway Labor Act (45 U.S.C. 160).

c. Violates applicable state or federal health and safety standards or workers' compensation insurance is not provided.

d. Job is contrary to the participant's religious or ethical beliefs.

e. The participant is required to join, resign from or refrain from joining a legitimate labor organization.

f. Work requirements are beyond the mental or physical capabilities as documented by medical evidence or other reliable sources.

g. Discrimination by an employer based on age, race, sex, color, handicap, religion, national origin or political beliefs.

h. Work demands or conditions render continued employment unreasonable, such as working without being paid on schedule.

i. Circumstances beyond the control of the participant, such as disruption of regular mail delivery.

93.133(3) *Jobs that participants have the choice of refusing or quitting or limiting or reducing, or instances when participants are excused for discharge from the job due to misconduct as described at rule 441—93.132(239B).*

a. Employment change or termination is part of the FIA.

b. Job does not pay at least the minimum amount customary for the same work in the community.

c. Employment is terminated in order to take a better-paying job, even though hours of employment may be less than current.

d. The employment would result in the family of the participant experiencing a net loss of cash income. Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the person was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income, and cash assistance. Gross income does not include food stamp benefits and in-kind income.

e. The employment changes substantially from the terms of hire, such as a change in work hours, work shift, or decrease in pay rate.

93.133(4) *Instances when problems of participation could negatively impact the client's achievement of self-sufficiency.* There may be instances where staff determine that a participant's problems of participation are not described in 93.133(1) to 93.133(3), but may be circumstances which could negatively impact the participant's achievement of self-sufficiency. When this occurs, the case shall be referred to the administrator of the division of economic assistance for a determination as to whether the problems are acceptable instances for not participating or for refusing or quitting a job or for discharge from employment due to misconduct as described at rule 441—93.132(239B).

441—93.134(239B) Barriers to participation. Problems with participation of a permanent or long-term nature shall be considered barriers to participation and shall be identified in the FIA as issues to be resolved so that participation can result. These barriers may be identified during assessment and shall be part of the FIA from the beginning. When barriers are revealed by the participant during the FIA or are identified by problems which develop after the FIA is signed, the FIA shall be renegotiated and amended to provide for removal of the barriers. FIA-responsible persons who choose not to cooperate in removing identified barriers to participation shall be considered to have chosen the LBP.

Barriers to participation shall include, but not be limited to, the following:

1. Child or adult care is needed before a person can participate or take a job, and the care is not available. Participants are not required to do any activity unless suitable child or adult care has been arranged. In limited instances where special-needs care is not available, it may be most practical for the participant to develop the FIA to identify providing the child or adult care as the FIA option.
2. Lack of transportation.
3. Substance addiction.
4. Sexual or domestic abuse history.
5. Overwhelming family stress.

441—93.135(239B) Required client documentation. Documentation necessary to verify that the PROMISE JOBS participant is carrying out the terms of the FIA shall be provided by the participant.

93.135(1) *Written verification.* The client can be required to provide written verification of family emergency, lack of transportation, or job search activities. It is the responsibility of the client to notify program staff or work site supervisors as soon as possible that a lack of transportation or family emergency has occurred and the expected duration.

93.135(2) *Time and attendance.* The participant's hours of attendance in work and training activities shall be verified monthly.

a. When the participant is in the work experience (WEP) component, the hours of participation shall be verified monthly by the work site, within ten calendar days following the end of each month.

b. Rescinded IAB 3/3/93, effective 5/1/93.

c. When work and training services are provided by training institutions, organizations, agencies, or persons outside of the PROMISE JOBS program, unless some other method is agreed to by the provider and PROMISE JOBS staff, the participant's hours of attendance shall be verified on the PROMISE JOBS Time and Attendance Report, Form 470-2617, which shall be signed and dated by the training provider. When a training provider refuses or fails to verify the hours of attendance, a signed and dated statement from the participant on Form 470-2617 shall be accepted in lieu of a signed statement from the training provider. The form shall be returned by the training provider or client within ten calendar days following the end of each month. In those instances when a training provider refuses or fails to return a completed, signed and dated PROMISE JOBS Time and Attendance Report, Form 470-2617, and it is necessary to request that the form be completed by the participant instead, the participant shall be allowed five working days to provide the form, even if the fifth working day falls on or after the tenth calendar day following the end of the month.

d. In those instances where the participant is involved in an activity, other than job search, which is not directly monitored by the PROMISE JOBS worker or an outside training provider, the participant shall record the hours of participation on the PROMISE JOBS Time and Attendance Report, Form 470-2617, and shall sign and date the form. The PROMISE JOBS worker shall review the form. The participant's hours shall be accepted unless the PROMISE JOBS worker has justifiable cause to doubt the accuracy of the hours. If the PROMISE JOBS worker accepts the hours, the PROMISE JOBS worker shall also sign and date the form. The form shall be returned within ten calendar days following the end of each month. If the hours reported are questioned, the PROMISE JOBS worker shall meet with the participant to resolve the discrepancy. The participant shall provide further verification, if required.

e. When a participant involved in any PROMISE JOBS component fails to verify the participant's hours of attendance as described above, the participant shall lose the right to priority service if a volunteer participant, or enter the limited benefit plan if a mandatory participant. Policies at subrule 93.138(3) apply.

93.135(3) *Job search documentation.* Documentation of any job search activities which cannot be documented by the PROMISE JOBS worker shall be provided by the participant using Form 470-3099, Job Search Record. The Job Search Record shall include the name and address of the employer, the name and telephone number of the contact person, the date on which contact was made, and the outcome of the contact. It shall also contain authorization for PROMISE JOBS staff to telephone any listed employer to verify the contact.

The Job Search Record shall be provided within five working days after the last working day of any week during which the participant has made a job search. Participants who fail to provide all information described above on the Job Search Record or do not provide the documentation timely have chosen the limited benefit plan. Policies at rule 441—93.132(239B), numbered paragraph "7," rules 441—93.133(239B) and 441—93.134(239B), and subrule 93.138(3) apply.

93.135(4) *Employment verification.* When the information is not available from any other source, participants shall verify scheduled and actual hours of employment at the time that employment begins and on a monthly basis thereafter. Participants may use employer statements, copies of pay stubs, or may sign Form MH-2201-0, Consent to Release or Obtain Information, so that the employer may provide information directly to the PROMISE JOBS worker.

Participants shall provide verification of scheduled and actual hours of employment within ten calendar days following the end of each month for ongoing employment.

441—93.136(249C) Duration of probationary periods. Rescinded IAB 12/8/93, effective 1/1/94.

441—93.137(239B) Written notification. Clients shall be notified in writing of all scheduled meetings, component assignments, work site assignments, and participation issues as described at rule 441—93.132(239B). Written notice to the participant shall also be provided when a physical examination, doctor's statement, employment verification, or other verification is required. Participants shall be allowed 45 calendar days from the date notice is mailed to provide a physical examination report. Five working days shall be allowed from the date notice is mailed for a participant to appear for scheduled meetings, component or work site assignments, provide a doctor's statement, employment verification, or provide other verification. Additional time shall be allowed when it is verified that a participant is making every effort but is unable to fulfill requirements within the established time frames.

441—93.138(239B) Resolution of disputes around the FIA and PROMISE JOBS participation.

93.138(1) *Informal resolution process.* When there is a disagreement between the participant and the immediate PROMISE JOBS worker regarding the participant's FIA or participation in PROMISE JOBS components, the participant can request to talk to the supervisor and request a decision on the dispute. The supervisor shall schedule a face-to-face interview with the participant within 7 days and issue a decision in writing within 14 days of the participant's request.

93.138(2) *Resolution process for FIP participants who choose a first limited benefit plan.* Before a notice of decision establishing a first limited benefit plan is issued, the case shall be reviewed in a procedure approved by the division of workforce development administration in the workforce development department. The procedure may include review by state-level division of workforce development administration staff or by a regional PROMISE JOBS manager, a PROMISE JOBS supervisor, an income maintenance supervisor, a person designated to coordinate services for FIP participants in the area, or a combination of any of the above. Approval of any review procedure at less than the state level for participants choosing a limited benefit plan by not carrying out the FIA responsibilities shall occur only after the service delivery region demonstrates satisfactory performance of the resolution process. The department of human services retains control and oversees review procedures through its contract with the workforce development department.

The notice of decision establishing a first limited benefit plan shall inform the FIP participant that the participant may reconsider at any time from the date timely and adequate notice is issued establishing the limited benefit plan. The notice of decision shall inform the participant that the participant shall contact the department or appropriate PROMISE JOBS office to reconsider the limited benefit plan.

a. For participants who choose a first limited benefit plan, the notice of decision shall inform the participant of the action needed to reconsider the limited benefit plan as described at 441—subparagraph 41.24(8)*"d"*(1).

(1) When the participant contacts either the income maintenance worker or the PROMISE JOBS office, the participant shall be scheduled to begin or resume development of the FIA as described elsewhere in these rules.

(2) When the FIA is signed, the PROMISE JOBS worker shall notify the department and the limited benefit plan shall be terminated. FIP benefits shall be effective as described at 441—subparagraph 41.24(8)*"d"*(1).

b. For participants who choose a first limited benefit plan by not carrying out the FIA responsibilities, the PROMISE JOBS worker shall make every effort to negotiate for a solution, clearing misunderstanding of expectations or identifying barriers to participation which should be addressed in the FIA. The PROMISE JOBS supervisor shall be involved to provide further advocacy, counseling, or negotiation support, such as when a participant fails to respond to the PROMISE JOBS worker's request to renegotiate the FIA when the participant has not attained self-sufficiency by the date established in the FIA. An LBP shall be imposed regardless of whether the request to renegotiate is made prior to or after expiration of the FIA.

(1) Local PROMISE JOBS management shall have the option to involve an impartial third party to assist in a resolution process. Arrangements shall be indicated in the local services plan of the local service delivery region.

(2) If the above resolution actions do not lead to fulfillment of the FIA, the case shall be referred for review as previously stated in this rule.

(3) If the above steps do not lead to fulfillment of the FIA, the FIP participant is considered to have chosen the limited benefit plan and the notice of decision shall be initiated. The notice of decision shall inform the participant of the action needed to reconsider the limited benefit plan as described at 441—subparagraph 41.24(8)*"d"*(1).

(4) When the participant contacts either the income maintenance worker or the PROMISE JOBS office, the participant shall be scheduled to sign a new or updated FIA as described elsewhere in these rules.

(5) When the FIA is signed and the participant has satisfactorily completed significant action, the PROMISE JOBS worker shall notify the department and the limited benefit plan shall be terminated. FIP benefits shall be effective as described at 441—subparagraph 41.24(8)*"d"*(1).

c. Appeal rights under the limited benefit plan are described at rule 441—93.140(239B), and judicial review upon petition of the participant is always available.

93.138(3) *Resolution process for FIP participants who choose a subsequent limited benefit plan.* The notice of decision establishing a subsequent limited benefit plan shall inform the FIP participant of the six-month ineligibility period and that the participant may reconsider at any time following the six-month ineligibility period. To reconsider, the participant must complete significant contact with or action in regard to the PROMISE JOBS program as described at 441—subparagraph 41.24(8)*"d"*(3). When the six-month ineligibility period ends, and the participant contacts either the income maintenance worker or the PROMISE JOBS office, the participant shall be scheduled to sign a new or updated FIA and to begin significant action as described at 441—subparagraph 41.24(8)*"d"*(3). When the FIA is signed and the participant has satisfactorily completed the significant action, the PROMISE JOBS worker shall notify the department and the limited benefit plan shall be terminated. FIP benefits shall be effective as described at 441—subparagraph 41.24(8)*"d"*(3).

a. For participants who choose a subsequent limited benefit plan as described at 441—subparagraph 41.24(8)*"c"*(1), the PROMISE JOBS supervisor shall send the participant one letter to explain the consequences of a subsequent limited benefit plan and to offer the participant an additional ten calendar days to schedule an orientation appointment before a notice of decision establishing the subsequent limited benefit plan is issued.

b. For participants who choose a subsequent limited benefit plan by not carrying out the FIA responsibilities, the PROMISE JOBS worker shall make every effort to negotiate for a solution, clearing misunderstanding of expectations or identifying barriers to participation which should be addressed in the FIA, such as when a participant fails to respond to the PROMISE JOBS worker's request to renegotiate the FIA when the participant has not attained self-sufficiency by the date established in the FIA. An LBP shall be imposed regardless of whether the request to renegotiate is made prior to or after expiration of the FIA.

(1) The PROMISE JOBS supervisor shall be involved to provide further advocacy, counseling, or negotiation support. The resolution actions of the supervisor shall be documented in the participant case file.

(2) Local PROMISE JOBS management shall have the option to involve an impartial third party to assist in a resolution process. Arrangements shall be indicated in the local services plan of the local service delivery region.

c. Before a notice of decision to establish a second limited benefit plan is issued, the case shall be referred to the division of workforce development administration for a review by state-level workforce development department staff. The department of human services retains control and oversees review procedures through its contract with the workforce development department.

d. If the above steps do not lead to fulfillment of the FIA, the FIP participant is considered to have chosen a subsequent limited benefit plan and the notice of decision establishing the limited benefit plan shall be initiated. The notice of decision shall inform the participant of the action needed to reconsider the limited benefit plan as described at 441—subparagraph 41.24(8)*"d"*(3).

e. Appeal rights under the limited benefit plan are described at rule 441—93.140(239B), and judicial review upon petition of the participant is always available.

f. A qualified professional shall attempt to visit with the participant family with a focus upon the children's well-being as described at subrule 93.138(4).

93.138(4) *Check on the well-being of the children in subsequent LBP households.* For FIP households who have chosen a subsequent LBP, a qualified professional shall attempt to visit with the participant family with a focus upon the children's well-being. The visit shall be performed during or within four weeks of the second month of the start of the subsequent benefit plan. The department may contract out for these services.

All visits to the FIP household shall be made in the spirit of supporting families who have chosen the LBP. The instructions for the visits shall be written to make it clear that these visits are an extension of the FIP and FIA philosophy of supporting families as they move toward self-sufficiency. If at any of the visits, initial or follow-up, the family denies entry to the qualified professional, this fact shall be reported to the department and no further action shall be taken.

a. The qualified professional shall visit the family in a spirit of supporting the family to move toward self-sufficiency, which could mean exploring with the family their alternative plan, identifying areas where the qualified professional can help.

The qualified professional's home visit shall include, but is not limited to, discussing reasons for not participating in the FIA; offering to problem solve with perceived problems of the FIA participation; being a liaison with PROMISE JOBS and IM; recommending to IM when conditions seem to warrant exemption; assessing family ability to assess their situation and plan for the well-being of the family; discussing specific future plans, for example, child care, to ensure that the family has realistic plans; using the minimum sufficient level of care concept as the standard for evaluating the family plan for the future; planning appropriate follow-up visits or referrals for services if the minimum sufficient level of care standard is not met.

b. Rescinded IAB 4/7/99, effective 5/31/99.

c. The qualified social services professional shall report results of the home visits to the department, using the following categories of response:

(1) Qualified social services professional was denied entry to the home.

(2) Why no further involvement is needed.

(3) The qualified social services professional needs to provide follow-up services or referral to other services, identifying services needed.

(4) Referral to child protective investigations is warranted based on allegations of child abuse or neglect.

441—93.139(239B) Notice of decision. PROMISE JOBS will send written notice to each client in accordance with 441—Chapter 7 when:

1. Services are approved, rejected, renewed, changed, canceled, or terminated for failure to cooperate or participate. PROMISE JOBS services are considered to be approved at that point in time when the client is assigned to begin participation in the assessment component or when assessment has been waived and the participant is assigned to another PROMISE JOBS component.

2. An expense allowance is offset or the offset amount is changed due to action to recover an overpayment.

441—93.140(239B) Right of appeal. Each applicant and recipient is entitled to appeal and be granted a hearing over disputes regarding services being received or services which have been requested and denied, reduced, canceled, or inadequately provided, and acts of discrimination on the basis of race, sex, national origin, religion, age or handicapping condition according to 441—Chapter 7.

93.140(1) *Right to appeal alleged violation of PROMISE JOBS program policy.* Participants shall have the right to file a written appeal concerning any alleged violation of PROMISE JOBS program policy as set forth in these administrative rules which is imposed as a condition of participation. The responsible agency (workforce development department or Job Training Partnership Act program) shall provide the participant with written documentation which specifies the participation requirement in dispute.

93.140(2) *Appeal rights under the limited benefit plan.* A participant only has the right to appeal the establishment of the limited benefit plan once at the time the department issues the timely and adequate notice that establishes the limited benefit plan.

However, when the reason for the appeal is based on incorrect grant computation, an error in determining the eligible group, or another worker error, a hearing shall be granted when the appeal otherwise meets the criteria for hearing.

These rules are intended to implement Iowa Code Supplement sections 239B.17 to 239B.22.

[Filed emergency 6/29/89 after Notice 5/3/89—published 7/26/89, effective 7/1/89]
[Filed 12/15/89, Notice 7/26/89—published 1/10/90, effective 3/1/90]
[Filed 4/13/90, Notice 2/21/90—published 5/2/90, effective 7/1/90]
[Filed without Notice 7/13/90—published 8/8/90, effective 10/1/90]
[Filed 9/28/90, Notice 8/8/90—published 10/17/90, effective 12/1/90]
[Filed 5/17/91, Notice 3/20/91—published 6/12/91, effective 8/1/91]
[Filed emergency 6/14/91—published 7/10/91, effective 7/1/91]
[Filed 9/18/91, Notice 7/10/91—published 10/16/91, effective 12/1/91]
[Filed emergency 10/10/91 after Notice 8/21/91—published 10/30/91, effective 11/1/91]
[Filed 11/15/91, Notice 9/18/91—published 12/11/91, effective 2/1/92]
[Filed 4/16/92, Notice 2/19/92—published 5/13/92, effective 7/1/92]
[Filed 2/10/93, Notice 1/6/93—published 3/3/93, effective 5/1/93]
[Filed 6/9/93, Notice 4/14/93—published 6/23/93, effective 8/1/93]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed emergency 11/12/93—published 12/8/93, effective 1/1/94]
[Filed 12/16/93, Notice 10/13/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notice 12/8/93—published 3/2/94, effective 5/1/94]
[Filed emergency 7/12/95 after Notice 6/7/95—published 8/2/95, effective 8/1/95]
[Filed without Notice 9/25/95—published 10/11/95, effective 12/1/95]
[Filed emergency 11/16/95—published 12/6/95, effective 12/1/95]
[Filed emergency 1/10/96 after Notice 10/11/95—published 1/31/96, effective 2/1/96]
[Filed 1/10/96, Notice 10/11/95—published 1/31/96, effective 4/1/96]
[Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]
[Filed emergency 8/15/96 after Notice 6/19/96—published 9/11/96, effective 9/1/96]
[Filed 8/15/96, Notices 5/8/96, 7/3/96—published 9/11/96, effective 11/1/96]
[Filed 12/12/96, Notice 11/6/96—published 1/1/97, effective 3/1/97]
[Filed emergency 1/15/97—published 2/12/97, effective 3/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed 9/16/97, Notice 7/16/97—published 10/8/97, effective 11/12/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed emergency 7/15/98 after Notice 6/3/98—published 8/12/98, effective 8/1/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 5/31/99]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 6/1/99]

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51.9(8) The nursing service shall have adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care essential for the proper treatment, well-being, and recovery of the patient.

51.9(9) Written policies and procedures shall be established for the administrative and technical guidance of the personnel in the hospital. Each employee shall be familiar with these policies and procedures.

51.9(10) Each hospital shall have a minimum of one registered nurse on duty at all times.

481—51.10(135B) Water supply. Rescinded IAB 12/22/93, effective 1/26/94.

481—51.11(135B) Sewage disposal. Rescinded IAB 12/22/93, effective 1/26/94.

481—51.12(135B) Records and reports.

51.12(1) *Medical records.* Accurate and complete medical records shall be written for all patients and signed by the attending physician. These records shall be filed and stored in an accessible manner in the hospital and in accordance with the statute of limitations as specified in Iowa Code chapter 614.

51.12(2) *Hospital records.*

a. Admission records. A register of all admissions to the hospital shall be maintained.

b. Death records. A record of all deaths in the hospital shall be kept, including all information required on a standard death certificate as specified in Iowa Code chapter 144.

c. Birth records. A record of all births in the hospital shall be kept, including all information required on a standard birth certificate as specified in Iowa Code chapter 144.

d. Controlled substance records. Controlled substance records shall be maintained in accordance with state and federal laws, rules and regulations.

51.12(3) *Annual reports.* Annual reports shall be filed with the Iowa department of public health within three months after termination of each fiscal year in accordance with Iowa Code section 135.75.

481—51.13(135B) Sterilizing equipment. Rescinded IAB 12/22/93, effective 1/26/94; see 481—51.50(135B).

481—51.14(135B) Pharmaceutical service.

51.14(1) *General requirements.* Hospital pharmaceutical services shall be licensed in accordance with Iowa board of pharmacy examiners rules in 657—Chapter 7.

51.14(2) *Medication administration.* All drugs and biologicals must be administered by, or under the supervision of, nursing or other trained personnel in accordance with hospital policies and procedures. The person assigned the responsibility of medication administration must complete the entire procedure by personally preparing the dose from a multiple-dose container or using a prepackaged unit dose, personally administering it to the patient, and observing the act of the medication being taken.

51.14(3) *Medication orders.* All orders for drugs and biologicals must be in writing and signed by the prescribing practitioner within 72 hours of prescribing the drug or biological. When telephone, oral or electronic mechanisms are used to transmit medication orders, they must be accepted only by personnel that are authorized to do so by hospital policies and procedures in a manner consistent with federal and state law.

51.14(4) *Standing orders.* Standing orders for drugs may be used for specified patients when authorized by the prescribing practitioner. These standing orders shall be in accordance with policies and procedures established by the appropriate committee within each hospital. At a minimum, the standing orders shall:

a. Specify the circumstances under which the drug is to be administered;

b. Specify the types of medical conditions of the patients for whom the standing orders are intended;

c. Be reviewed and revised by the prescribing practitioner on a regular basis as specified by hospital policies and procedures;

d. Be specific as to the drug, dosage, route, and frequency of administration; and

e. Be dated, signed by the prescribing practitioner within 72 hours, and included in the patient's medical record.

51.14(5) *Self-administration of medications.* Patients shall only be permitted to self-administer medications when specifically ordered by the prescribing practitioner and the prescribing practitioner has determined this practice is safe for the specific patient. The hospital shall develop policies and procedures regarding storage and documentation of the administration of drugs.

481—51.15(135B) Screens. Rescinded IAB 12/22/93, effective 1/26/94; see 481—51.50(135B).

481—51.16(135B) Radiological services.

51.16(1) The hospital must maintain, or have available, radiological services to meet the needs of the patients.

51.16(2) All radiological services including diagnostic, fluoroscopy, mammography, therapeutic, and nuclear medicine furnished by the hospital or its agent shall be furnished in compliance with 641 IAC Chapters 38 to 42.

481—51.17(135B) Laundry. Rescinded IAB 12/22/93, effective 1/26/94; see 481—51.50(135B).

481—51.18(135B) Laboratory service.

51.18(1) The hospital must maintain, or have available, adequate laboratory and pathology services and facilities to meet the needs of its patients. The medical staff shall determine which laboratory tests are necessary to be performed on site to meet the needs of the patients.

51.18(2) Emergency laboratory services must be available 24 hours a day.

51.18(3) The hospital must ensure that all laboratory services provided to its patients are performed in a laboratory certified in accordance with the Code of Federal Regulations in 42 CFR, Part 493, October 1, 1997.

51.18(4) All laboratory services shall be under the supervision of a physician, preferably a clinical pathologist.

481—51.19 Reserved.

481—51.20(135B) Food and nutrition services.

51.20(1) *Food and nutrition service definition.* Food service means providing safe, satisfying, and nutritionally adequate food for patients through the provision of appropriate staff, space, equipment, and supplies. Nutrition service means providing assessment and education to ensure the nutritional needs of the patients are met.

51.20(2) *General requirements.*

a. The food service shall provide food of the quality and quantity to meet the patient's needs in accordance with physician's orders and, to the extent medically possible, to meet the current Recommended Daily Dietary Allowances, 1989 Edition, adopted by the Food and Nutrition Board of the National Research Council, National Academy of Sciences and the following:

(1) Not less than three meals shall be served daily unless contraindicated.

(2) Not more than 14 hours shall elapse between the evening meal and breakfast of the following day.

(3) Nourishment between meals shall be available to all patients unless contraindicated by the physician.

(4) Patient food preferences shall be respected as much as possible and substitutes shall be offered through use of appropriate food groups.

(5) When food is provided by a contract food service, all applicable requirements herein set forth shall be met. The hospital shall maintain adequate space, equipment, and staple food supplies to provide patient food service in emergencies.

51.51(8) *Radiology suite.* The suite shall be designed and equipped in accordance with the following references:

a. National Council on Radiation Protection and Measurements Reports (NCRP), Nos. 33 and 49.

b. Iowa department of public health 641—Chapters 38 to 41.

51.51(9) *Waste processing services—storage and disposal.* In lieu of the waste processing service requirements in the "Guidelines for Construction and Equipment of Hospital and Healthcare Facilities" in paragraph 51.51(2)"*a,*" space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal or a combination of these techniques. These techniques must comply with the following environmental protection commission rules: rules 567—64.2(455B) and 64.3(455B); solid waste requirements of rules 567—101.1(455B,455D), 102.1(455B), 104.1(455B), and 567—Chapters 106, 118 and 119; and air quality requirements of 567—subrules 22.1(1) and 23.4(12).

51.51(10) *Codes and standards.* See 481—subrule 51.50(10).

481—51.52(135B) Critical access hospitals. Critical access hospitals shall meet the following criteria:

51.52(1) The hospital shall be no less than 35 miles from another hospital or no less than 15 miles over secondary roads or shall be designated by the department of public health as a necessary provider of health care.

51.52(2) The hospital shall be a public or nonprofit hospital and shall be located in a county in a rural area.

51.52(3) The hospital shall provide 24-hour emergency care services as described in 481 IAC 51.30(135B).

51.52(4) The hospital shall maintain no more than 15 acute care inpatient beds or, in the case of a hospital having a swing-bed agreement, no more than 25 inpatient beds; and the number of beds used for acute inpatient services shall not exceed 15 beds.

51.52(5) The hospital shall meet the Medicare conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F as of October 1, 1997.

51.52(6) The hospital shall continue to comply with all general hospital license requirements as defined in 481 IAC 51.

These rules are intended to implement Iowa Code chapter 135B.

[Filed June 30, 1948]
[Filed 9/9/76, Notice 6/14/76—published 10/6/76, effective 11/15/76]
[Filed 11/12/76, Notice 10/6/76—published 12/1/76, effective 1/5/77]
[Filed 11/10/77, Notice 9/7/77—published 11/30/77, effective 1/4/78]
[Filed 12/28/84, Notice 10/10/84—published 1/16/85, effective 4/3/85]
[Filed 1/10/86, Notice 11/6/85—published 1/29/86, effective 3/5/86]
[Filed 4/1/86, Notice 1/1/86—published 4/23/86, effective 5/28/86]
[Filed 5/15/86, Notice 2/26/86—published 6/4/86, effective 7/9/86]
[Filed 5/16/86, Notice 1/1/86—published 6/4/86, effective 7/9/86]
[Filed 1/20/87, Notice 12/3/86—published 2/11/87, effective 3/18/87]
[Filed 3/12/87, Notice 12/31/86—published 4/8/87, effective 5/13/87]
[Filed 5/12/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]*
[Filed 5/13/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]
[Filed 5/13/88, Notice 4/6/88—published 6/1/88, effective 7/6/88]
[Filed 11/17/88, Notice 8/10/88—published 12/14/88, effective 1/18/89]

*Hospital Protocol for Donor Requests as it appeared in IAC 641—Chapter 180 prior to 4/4/90.

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

◊Three ARCs
††Two ARCs

CHAPTER 13
TELECOMMUNICATOR
TRAINING STANDARDS

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13.3(80B) Basic training
13.4(80B) Minimum in-service training requirements
13.5(80B) Instructors for basic training courses
13.6(80B) Telecommunicator status forms furnished to academy

CHAPTER 3
CERTIFICATION OF LAW ENFORCEMENT OFFICERS

[Appeared as Ch 1 prior to 4/10/85]
[Prior to 3/11/87, Law Enforcement Academy[550] Ch 3]

501—3.1(80B) Certification through training required for all law enforcement officers.

3.1(1) All law enforcement officers must be certified through the successful completion of training at an approved law enforcement training facility in order to remain eligible for employment. As a condition precedent to enrollment in a certifying training program, the Iowa law enforcement academy must be provided with verification by the enrollee's hiring agency that the minimum standards for Iowa law enforcement officers have been met as provided in rule 501—2.1(80B), except for a person elected or appointed as sheriff who may choose to be exempted from the requirement of 501—subrule 2.1(6), and may determine not to participate in physical training and who shall then be eligible only for certification as provided in subrule 3.1(2). Officers must be certified within one year of their employment, except sheriffs who must be certified within one year of taking office. (See rule 501—3.8(80B) for certification by testing requirements.)

3.1(2) A person elected or appointed sheriff who otherwise successfully completes a basic training course except for the physical training requirements, as provided by Iowa Code section 331.651(1), shall be granted certification limited to and valid only for the position of sheriff of the county in which the person was elected or appointed.

3.1(3) The academy council may, at the council's discretion, extend the one-year time period in which an officer must become certified for up to 180 days after a showing of "undue hardship" by the officer or the officer's hiring agency. To be considered for an extension of the one-year certification period, the person or agency requesting the extension must initiate the request in writing, not less than 10 days prior to the council meeting at which it is to be discussed, and then make a presentation to the council at the next regularly scheduled meeting of the council. Extensions shall not be liberally granted and shall only be granted after a showing that all other alternatives to an extension have been considered and rejected.

31.1(4) In accordance with Iowa Code section 80B.17, the one-year time period in which an officer must become certified is automatically extended for up to 180 days for an officer who is enrolled in training within 12 months of initial appointment. For purposes of this subrule, "enrolled" means physically present in and currently attending a basic certification training class.

501—3.2(80B) Law enforcement status forms furnished to academy. Within ten days of any of the following occurrences, the academy will be so advised by use of prescribed forms:

1. Any hiring or termination of personnel.
2. Change of status of existing personnel (e.g., promotions).
3. Satisfactory completion of all law enforcement training not sponsored by the academy.
4. Accrual of college credits.

501—3.3(80B) Standard certifying courses for approved law enforcement facilities. The standard certifying courses of study at an approved law enforcement training facility are:

1. The long course, consisting of 417 hours to be completed within a 20-week period; and
2. The short course, consisting of 326 hours to be completed within a 16-week period.

501—3.4(80B) Qualifications for attendance at short course. In order to be eligible for enrollment in the certification through the short course, the individual officer must possess at least one of the following qualifications:

3.4(1) Have satisfactorily completed a two-year or four-year police science or criminal justice program at an accredited educational institution and documentation furnished to the academy.

3.4(2) Have satisfactorily completed law enforcement training in another state commensurate with basic training required in Iowa, and be able to provide verification of same.

This rule is intended to implement Iowa Code section 80B.11.

501—3.5(80B) Curriculum for long course.

3.5(1) *Program administration* ..... 22 hours

a. Registration.
b. Orientation.
c. Counselor meetings.
d. Tests and review.
e. Moot court.
f. Graduation.

3.5(2) *Patrol and traffic* ..... 65 hours

a. Techniques of patrol and beat assignments.
b. Observation and perception.
c. Radio communications.
d. Vehicle stops (of which 2 hours must be night vehicle stops).
e. Building searches.
f. Traffic direction.
g. Accident investigation.
h. Traffic law enforcement.
i. Radar.
j. OWI (enforcement techniques).
k. Standardized field sobriety testing (horizontal gaze nystagmus).
l. Chemical testing.
m. Intoxilyzer.
n. Hazardous materials.

3.5(3) *Officer survival* ..... 141 hours

a. Firearms/use of force (a minimum of 6 hours must be night fire).
b. Defensive tactics/baton.
c. Vehicle operations.
d. Physical training.
e. Chemical agents.
f. Risk assessment in officer survival.
g. Risk management in calls for service (felony calls).

3.5(4) *Skills* ..... 69 hours

a. Crash injury management.
b. Fingerprints.
c. Interviews and interrogations.
d. Crime scene, searching and recording.
e. Notetaking.
f. Report writing.

3.5(5) *Investigation of specific crimes* ..... 25 hours
a. Street intoxication.
b. Narcotics investigation.
c. Vehicle theft.
d. Hate crimes.
e. Domestic abuse.
f. Death investigation.
g. Sex abuse.
h. Burglary.
i. Gangs.

3.5(6) *The law and the courts* ..... 65 hours
a. Criminal law.
b. Procedural due process.
c. Law of arrest.
d. Court organization.
e. Search and seizure.
f. Juvenile law.
g. Rules of evidence.
h. OWI law.
i. Motor vehicle law.
j. Narcotics law.
k. Confessions and admissions.
l. Civil liability.
m. Testifying in court.

3.5(7) *Human behavior* ..... 30 hours
a. Self-understanding and handling stress.
b. Community relations/crime prevention.
c. Ethics and professionalism.
d. Discretion.
e. Minority groups.
f. Special needs population.
g. Crisis intervention.
h. Moral aspects of the use of force.
i. Death notification.
j. Mandatory reporting of dependent adult and child abuse.
k. Blood-borne pathogens.

TOTAL HOURS: 417

501—3.6(80B) Curriculum for short course.

3.6(1) *Skills—traffic and patrol* ..... 64 hours
a. Vehicle operations.
b. Accident investigation.
c. Radar.
d. Traffic direction.
e. Hazardous materials.
f. Vehicle stops (of which 2 hours must be night vehicle stops).

g. OWI enforcement.
(1) Implied consent.
(2) Chemical testing.
(3) Intoxilyzer certification.
h. Felony calls.

3.6(2) *Skills—investigative* ..... 16 hours
a. Crime scene search and recording.
b. Fingerprinting.
c. Interviewing and interrogations.
d. Photography.

3.6(3) *Skills—general* ..... 140 hours
a. Firearms/use of force (of which 6 hours must be night fire).
b. Defensive tactics.
c. First responder.
d. Physical fitness.

3.6(4) *Legal and investigative* ..... 66 hours
a. Criminal law.
b. Search and seizure.
c. Law of arrest.
d. Rules of evidence.
e. Confessions and admissions.
f. Motor vehicle law.
g. Juvenile law.
h. OWI (legal).
i. Narcotics law.
j. Death investigation.
k. Narcotics investigation.
l. Vice investigation.
m. Sexual abuse investigation.

3.6(5) *Human relations and communications* ..... 24 hours
a. Report writing.
b. Crisis intervention (including domestic abuse).
c. Minority relations.
d. Mandatory reporting (dependent adult and child).
e. AIDS.
f. Testifying in court.

3.6(6) *Program administration* ..... 16 hours
a. Registration and orientation.
b. Testing.
c. Graduation.
d. Miscellaneous.

TOTAL HOURS: 326

501—3.7(80B) Special certification. The director of the academy, subject to the approval of the council may develop special certifying training courses in consideration of the varying factors and special requirements of certain law enforcement agencies.

501—3.8(80B) Certification through examination. Law enforcement officers who have been certified in another state may, upon application to the director with council approval, take a competency test or tests to gain Iowa law enforcement officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests will be prepared and administered by the academy or its designee, and the passing score will be determined by the academy. The required test or tests will be based upon the officer's prior law enforcement training and experience as follows:

3.8(1) *Five or more years of law enforcement experience.* Officers with more than five years of full-time law enforcement experience will be required to pass a test or tests which will primarily measure the officer's knowledge of Iowa laws. The test or tests will include, but need not be limited to, such topics as criminal law, motor vehicle law, juvenile law, law of arrest, law of search and seizure, and law regarding the use of force.

3.8(2) *Less than five years of law enforcement experience.* Officers with less than five years of full-time law enforcement experience will be required to pass a comprehensive test or tests which will focus on all phases of law enforcement. The test or tests will include, but need not to be limited to, such topics as criminal law, juvenile law, motor vehicle law, law of arrest, law of search and seizure, law regarding the use of force, confessions and admissions, crime prevention, community relations, minority relations, crime scene investigation, vehicle stops, and rules of evidence.

3.8(3) *Tabulating previous law enforcement experience.* In tabulating whether an officer has met the law enforcement experience requirement, no credit will be given for experience received from the officer's current employment.

3.8(4) *Criteria to be eligible to certify through examination.* The following will be prerequisites for certification through examination:

a. Successful completion of a minimum 160-hour certifying basic law enforcement training school in another state, which certification has not been withdrawn by the certifying state.

b. Firing a verified score of 80 percent or greater with the officer's service handgun since the individual's appointment as an Iowa law enforcement officer, and which course of fire was prescribed by the academy and administered by the Iowa law enforcement academy or its designee.

c. Possession of a current crash injury management card, first responder, or another appropriate certification recognized by the Iowa law enforcement academy.

3.8(5) *Application and testing periods.* Application for certification through examination shall be made within 120 days of the applicant's hiring date, unless a determination is made by the academy council that this time period should be extended for "good cause." Failure to make timely application for certification through examination may result in the applicant's being required to attend an academy certifying school.

3.8(6) *Retesting requirements.* Failure to successfully complete this examination will require retesting within 60 days in the areas failed. If any area is failed a second time, it will be necessary for the individual to attend and satisfactorily complete training at the academy covering those areas of deficiency. Successful completion of the training will result in law enforcement officer certification by the academy council.

3.8(7) *One year's absence from law enforcement shall require training.* An officer who has not served as a regular law enforcement officer during the 12-month period preceding the officer's hiring date will be required to attend a certifying school.

501—3.9(80B) Special certification through examination. This rule is promulgated by the academy in compliance with 1996 Iowa Acts, chapter 1201. Persons having successfully completed the Federal Bureau of Investigation National Academy, having corrected Snellen vision in both eyes of 20/20 or better, and having been employed on or before January 1, 1996, as chief of police of a city in the state of Iowa with a population of 20,000 or more may, upon application to the director with council approval, take a competency test or tests to gain Iowa law enforcement officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests will be prepared and administered by the academy and the passing score will be determined by the academy. Persons eligible under this rule who successfully complete the long form examination shall be granted certification limited to and valid only for the position for which the person was hired.

3.9(1) *Criteria.* The following will be prerequisites for special certification through examination under this rule:

a. Firing a verified score of 80 percent or greater with the officer's service handgun which course of fire was prescribed and administered by the Iowa law enforcement academy.

b. The applicant must possess or obtain current first responder or more advanced certification recognized by the Iowa department of public health and approved by the academy, and current cardiopulmonary resuscitation certification from the American Heart Association, Module "C," or American Red Cross Professional Rescuer Level, with documentation furnished to the academy.

3.9(2) *Application and testing periods.* Application shall be made within 120 days of the effective date of this rule. Failure to make timely application will result in the applicant's being required to attend an academy certifying school.

3.9(3) *Retesting requirements.* Failure to successfully complete the examination will require retesting within 60 days in the areas failed. If any area is failed a second time, the applicant will be required to attend and satisfactorily complete training at the academy covering those areas of deficiency. Successful completion of the training will result in law enforcement officer certification by the academy council.

501—3.10(80B) More extensive certifying course curricula not prohibited. While no law enforcement training facility will be approved by the Iowa law enforcement academy council which does not meet the minimum requirements of these certifying course curricula, this in no way limits or restricts any law enforcement training facility in instituting a certifying course curriculum that surpasses the curriculum established pursuant to Iowa Code chapter 80B.

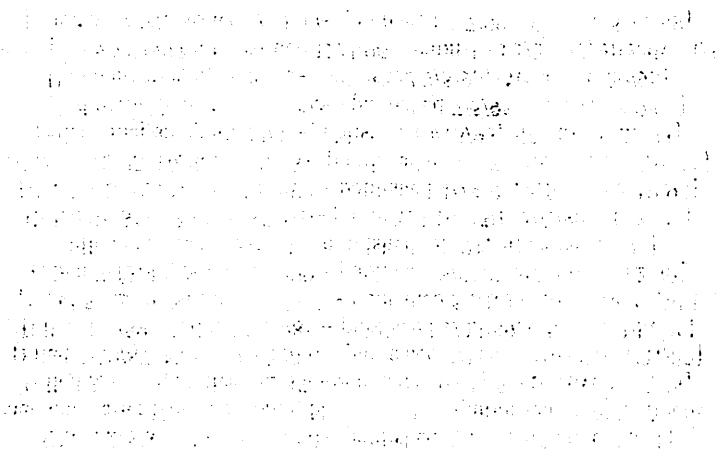
This rule is intended to implement Iowa Code chapter 80B.

501—3.11(80B) Time frame—tolled. The time frame requirements for completion of any mandatory training are tolled during the period a law enforcement officer is called to active military service.

These rules are intended to implement Iowa Code chapter 80B.

[Filed 7/22/69]
[Filed 2/5/81, Notice 10/1/80—published 3/4/81, effective 7/1/81]
[Filed emergency after Notice 5/18/84, Notice 2/1/84—published 6/6/84, effective 6/1/84]
[Filed 3/18/85, Notice 1/2/85—published 4/10/85, effective 5/15/85]
[Filed 2/20/87, Notice 10/22/86—published 3/11/87, effective 4/21/87]
[Filed 1/5/89, Notice 11/16/88—published 1/25/89, effective 3/1/89*]
[Filed 5/12/89, Notice 12/14/88—published 5/31/89, effective 7/5/89]
[Filed 7/13/90, Notice 5/2/90—published 8/8/90, effective 9/12/90]
[Filed emergency 3/5/91—published 4/3/91, effective 3/5/91]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 3/18/93, Notice 12/9/92—published 4/14/93, effective 5/19/93]
[Filed 3/18/93, Notice 1/20/93—published 4/14/93, effective 6/30/93**]
[Filed emergency 9/22/93—published 10/13/93, effective 9/22/93]
[Filed 6/15/95, Notice 4/12/95—published 7/5/95, effective 8/9/95]
[Filed emergency 6/20/95—published 7/5/95, effective 6/20/95]
Filed emergency 1/10/97 after Notice 12/4/96—published 1/29/97, effective 1/10/97]
[Filed 3/17/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

*Effective date of 3/1/89 for rescission of 3.4(1) delayed 70 days by the Administrative Rules Review Committee.
**Effective date delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held May 12, 1993.



CHAPTER 13
TELECOMMUNICATOR TRAINING STANDARDS

501—13.1(80B) Telecommunicator training board. There is established a telecommunicator training board under the authority of Iowa Code section 7E.3(3) which shall be an advisory board to the director as to matters arising under this chapter and the provisions of Iowa Code sections 80B.11(9) and 80B.11C. This board shall consist of a minimum of one representative of and named by each of those organizations and departments listed in Iowa Code section 80B.11C, and such other persons appointed at the discretion of the director. Members of the board shall not be considered to be state employees for the purpose of the board and shall serve without compensation. The board will meet at the call of the director, and may establish such internal procedures as it may deem appropriate, subject to the approval of the director. A chairperson and such other officers of the board to be determined by the board shall be selected by majority vote of the board. The board may establish bylaws for its operation.

501—13.2(80B) Telecommunicator training.

13.2(1) *Basic training.* All persons employed primarily as telecommunicators after July 1, 1998, shall successfully complete an approved basic training course within one year of employment. For purposes of this chapter, a telecommunicator is defined as a person who receives requests for, or dispatches requests to, emergency response agencies which include, but are not limited to, law enforcement, fire, rescue, and emergency medical services agencies.

13.2(2) *In-service training requirements for former telecommunicators who return to a telecommunicator position.* Any individual who leaves and then returns to an Iowa telecommunicator position must receive, within one year of the individual's rehiring date, in-service training as follows:

Period Outside Iowa Telecommunications	Training Required
6 months to 12 months	8 hours
More than 12 months to 36 months	20 hours
More than 36 months	40 hours

501—13.3(80B) Basic training.

13.3(1) *Approved basic training course.* Approved basic training course means a 40-hour course of instruction which has been approved in advance by the Iowa law enforcement academy through the telecommunicator training board, which includes at a minimum the following topics:

1. Introduction to public safety services and the role of the telecommunicator.
2. Human relations and communications skills.
3. 911 systems, communications equipment, terminology.
4. Understanding and taking different types of calls.
5. Basic dispatch/broadcast techniques.
6. Dispatching and managing the response to a call for service.
7. Multiple tasking and prioritization.
8. Liability and legal issues.
9. Resource awareness.
10. Stress management and motivation.

13.3(2) *Approval of courses.* Requests for approval of basic training courses shall be timely submitted to the academy on prescribed forms.

13.3(3) *Agency administrator responsibility.* It shall be the responsibility of agency administrators to ensure that all telecommunicators under their direction receive the training required by these rules.

13.3(4) *Period of validity.* The approval of courses under this rule shall be valid for a period of 36 months.

501—13.4(80B) Minimum in-service training requirements.

13.4(1) *In-service training for newly hired telecommunicators.* During each full fiscal year of employment following completion of the required basic training as set forth in subrule 13.3(1), telecommunicators shall complete a minimum of eight hours of in-service training.

13.4(2) *In-service training for incumbents.* During each fiscal year beginning July 1, 1998, currently employed telecommunicators are required to complete a minimum of eight hours of in-service training.

13.4(3) *Required in-service course content.* To qualify as in-service training, the course content must consist of a topic or topics as listed in subrule 13.3(1) or other subject matter approved by the telecommunicator training board.

13.4(4) *Agency responsibility.* Agency administrators shall ensure that all telecommunicators under their direction receive the minimum hours of in-service training required by these rules and that current and accurate in-service training records are regularly kept and maintained. The agency administrator shall make these records available for inspection upon request by the director of the Iowa law enforcement academy or the director's designee.

13.4(5) *In-service training records.* In-service training records shall include the following data:

a. The date and location of the training.

b. The subject matter of the training.

c. The instructor for the training.

d. The individual who took the training.

e. The number of credit hours received from the training.

f. The scores, if any, achieved by the telecommunicator to show proficiency in, or understanding of, the subject matter.

501—13.5(80B) Instructors for basic training courses.

13.5(1) *Experience.* Instructors must have a minimum of two years of telecommunicator experience. This requirement may be modified by the telecommunicator's agency administrator with telecommunicator training board approval in exceptional cases reflecting outstanding education or experience.

13.5(2) *Education.* Instructors must have a minimum of a high school education with a diploma or possess a GED equivalency certificate.

13.5(3) *Training.* Instructors must have successfully completed an instructor training course consisting of a minimum of 40 hours of instruction or have provided a minimum of 80 hours of telecommunicator instruction within the past two years and can verify same.

13.5(4) *Period of validity.* Instructor approval shall be valid for a period of 36 months.

501—13.6(80B) Telecommunicator status forms furnished to academy. Within ten days of any of the following occurrences, the academy will be notified by the use of prescribed forms:

1. Any hiring, termination or retirement of personnel.
2. Change of status of existing personnel (e.g., promotions, name changes).
3. Training received by telecommunicators not provided at or by personnel of the Iowa law enforcement academy.

These rules are intended to implement Iowa Code sections 80B.11(9) and 80B.11C.

[Filed 5/29/97, Notice 3/26/97—published 6/18/97, effective 7/23/97]
[Filed 3/17/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

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The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

j. Residential wood heaters, cookstoves, or fireplaces.

k. Asbestos demolition and renovation projects subject to 40 CFR 61.145 as amended through January 16, 1991.

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

m. Gasoline storage tanks with a capacity of 5,000 gallons or less and an annual throughput less than 40,000 gallons, and coolant, diesel fuel, detergents, fuel oil, LPG, lubricating oils, and other nonhazardous air pollutant emitting storage tanks with a capacity of less than 10,570 gallons and an annual throughput less than 40,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems which include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only hand-held aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: Comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft. For the purposes of this exemption, the manufacturer's nameplate rating at full load shall be defined as the brake horsepower output at the shaft.

s. A facility claiming to be exempt under the provisions of paragraph *"g"* or *"i"* above shall provide the information listed in 22.1(2)*"s"*(1) through 22.1(2)*"s"*(8) to the department. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed in 22.1(2)*"s"*(1) through 22.1(2)*"s"*(8) shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed in 22.1(2)*"s"*(1) through 22.1(2)*"s"*(8) is provided to the department.

(1) A detailed emissions estimate of the actual and potential emissions for the project for all regulated pollutants (as defined in 22.100(455B)), accompanied by documentation of the basis for the emission estimate;

(2) A detailed description of each change being made;

(3) The name and location of the facility;

(4) The height of the emission point or stack and the height of the highest building within 50 feet;

(5) The date for beginning actual construction and the date that operation will begin after the changes are made;

(6) A statement that the provisions of rules 22.4(455B) and 22.5(455B) do not apply;

(7) A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)*"i,"* when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences) have not exceeded significant levels as defined in 40 CFR 52.21(b)(23) as amended through March 12, 1996, and adopted in rule 22.4(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

(8) The written statement shall contain certification by a responsible official as defined in rule 22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

22.1(3) *Construction permits.* The owner or operator of a new or modified stationary source shall apply for a construction permit unless a conditional permit is required by Iowa Code chapter 455B or subrule 22.1(4) or requested by the applicant in lieu of a construction permit. Two copies of a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322. The owner or operator of any new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation as defined in rule 567—65.1(455B) shall apply for a construction permit. Two copies of a construction permit application for an anaerobic lagoon shall be presented or mailed to Department of Natural Resources, Water Quality Bureau, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319.

a. New equipment design in concept review. If requested in writing, the director will review the design concepts of proposed new equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the proposed equipment. If the review is requested, the requester shall supply the following information:

(1) Preliminary plans and specifications of proposed equipment and related control equipment.

(2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.

(3) The estimated emission rates of any air contaminants which are to be considered.

(4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.

(5) An estimate of when construction would begin and when construction would be completed.

b. Construction permit applications. Each application for a construction permit shall be submitted to the department on the form "Application for a Permit to Install or Alter Equipment or Control Equipment." Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer registered in the state of Iowa in conformance with Iowa Code chapter 542B. The application for a permit to construct shall include the following information:

(1) A description of the equipment or control equipment covered by the application;

(2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;

(3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;

(4) The physical and chemical characteristics of the air contaminants;

(5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;

(6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 22.4(455B) and 22.5(455B); and

(8) Application for a case-by-case MACT determination. If the source meets the definition of construction or reconstruction of a major source of hazardous air pollutants, as defined in paragraph 22.1(1)*"b,"* then the owner or operator shall submit an application for a case-by-case MACT determination, as required in subparagraph 23.1(4)*"b"*(1), with the construction permit application. In addition to this paragraph, an application for a case-by-case MACT determination shall include the following information:

1. The hazardous air pollutants (HAP) emitted by the constructed or reconstructed major source, and the estimated emission rate for each HAP, to the extent this information is needed by the permitting authority to determine MACT;

2. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source;

3. The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the permitting authority to determine MACT;

4. The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity to the extent this information is needed by the permitting authority to determine MACT;

5. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 40 CFR Part 63.43(d) as amended through December 27, 1996;

6. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the permitting authority);

7. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology;

8. An identification of any listed source category or categories in which the major source is included.

(9) A signed statement that ensures the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects which are intended to be located at a site only for the duration of the specific, identified construction project.

c. Application requirements for anaerobic lagoons. The application for a permit to construct an anaerobic lagoon shall include the following information:

(1) The source of the water being discharged to the lagoon;

(2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;

(3) In the case of an animal feeding operation, the information required in rule 567—65.15(455B);

(4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;

(5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in 567—60.2(455B);

(6) A description of available water supplies to prove that adequate water is available for dilution;

(7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;

(8) Any additional information needed by the department to determine compliance with these rules.

22.1(4) *Conditional permits.* The owner or operator of any new or modified major stationary source may elect to apply for a conditional permit in lieu of a construction permit. Electric power generating facilities with a total capacity of 100 megawatts or more are required to apply for a conditional permit.

a. Applicability determination. If requested in writing, the director will make a preliminary determination of nonattainment applicability pursuant to rules 22.4(455B) and 22.5(455B), based upon the information supplied by the requester.

b. Conditional permit applications. Each application for a conditional permit shall be submitted to the department in writing and shall consist of the following items:

(1) The results of an air quality impact analysis which characterizes preconstruction air quality and the air quality impacts of facility construction and operation. A quality assurance plan for the preconstruction air monitoring where required in accordance with 40 Code of Federal Regulations Part 58 as amended through July 18, 1997, shall also be submitted.

(2) A description of equipment and pollution control equipment design parameters.

(3) Preliminary plans and specifications showing major equipment items and location.

(4) The fuel specifications of any anticipated energy source, and assurances that any proposed energy source will be utilized.

(5) Certification that the preliminary plans and specifications for the equipment and related control equipment have been prepared by or under the direct supervision of a professional engineer registered in the state of Iowa in conformance with Iowa Code chapter 542B.

(6) An estimate of when construction would begin and when construction would be completed.

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 22.4(455B) and 22.5(455B).

This rule is intended to implement Iowa Code section 455B.133.

567—22.2(455B) Processing permit applications.

22.2(1) *Incomplete applications.* The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

22.2(2) *Public notice and participation.* A notice of intent to issue a conditional or construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

22.2(3) *Final notice.* The department shall notify the applicant in writing of the issuance or denial of a construction or conditional permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

This rule is intended to implement Iowa Code section 455B.133.

567—22.3(455B) Issuing permits.

22.3(1) *Stationary sources other than anaerobic lagoons.* In no case shall a construction permit or conditional permit which results in an increase in emissions be issued to any facility which is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan. If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit or conditional permit. A construction or conditional permit shall be issued when the director concludes that the preceding requirement has been met and:

a. That the required plans and specifications represent equipment which reasonably can be expected to comply with all applicable emission standards, and

b. That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28, and

c. That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(4), and

d. That the applicant has met all other applicable requirements.

22.3(2) *Anaerobic lagoons.* A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of rule 567—65.15(455B).

22.3(3) *Conditions of approval.* A permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications compliance testing, continuous monitoring, and excess emission reporting.

a. Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

b. Each permit shall require the department to be notified of intended startup at least ten days before the equipment or control equipment involved is placed in operation. The department shall also be notified in writing of the actual startup.

c. Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

d. A conditional permit shall require the submittal of final plans and specifications for the equipment or control equipment designed to meet the specified emission limits prior to installation of the equipment or control equipment.

e. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

f. A permit is not transferable from one location to another or from one piece of equipment to another, unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least 30 days prior to transferring to the new location. The owner or operator will be notified at least 10 days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case a supplemental permit shall be obtained prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit or conditional permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirement under local, state or federal law.

22.3(4) *Denial of a permit.*

a. When an application for a construction or conditional permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

22.3(5) *Modification of a permit.* The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard.

22.3(6) *Limits on hazardous air pollutants.* The department may limit a source's hazardous air pollutant potential to emit, as defined at 567—22.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

22.3(7) *Revocation of a permit.* The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

This rule is intended to implement Iowa Code section 455B.133.

567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). Except as provided in subrule 22.4(1), the following federal regulations pertaining to the prevention of significant deterioration are adopted by reference, 40 CFR Subsection 52.21 as amended through March 12, 1996.

22.4(1) Federal rules 40 CFR 52.21(a) (Plan Approval), 52.21(q) (Public Participation), 52.21(s) (Environmental Impact Statement), and 52.21(u) (Delegation of Authority) are not adopted by reference. Also, for the purposes of 40 CFR 52.21(1), the department adopts by reference Appendix W to 40 CFR 51, Guideline on Air Quality Models (Revised), as adopted August 9, 1995.

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

[Filed 8/24/70; amended 5/2/72, 12/11/73, 12/17/74]
[Filed 3/1/76, Notice 11/3/75—published 3/22/76, effective 4/26/76]
[Filed 5/27/77, Notice 3/9/77—published 6/15/77, effective 1/1/78]
[Filed without Notice 10/28/77—published 11/16/77, effective 12/21/77]
[Filed 4/27/78, Notice 11/16/77—published 5/17/78, effective 6/21/78*]
[Filed emergency 10/12/78—published 11/1/78, effective 10/12/78]
[Filed 6/29/79, Notice 2/7/79—published 7/25/79, effective 8/29/79]
[Filed 4/10/80, Notice 12/26/79—published 4/30/80, effective 6/4/80]
[Filed 9/26/80, Notice 5/28/80—published 10/15/80, effective 11/19/80]
[Filed 12/12/80, Notice 10/15/80—published 1/7/81, effective 2/11/81]
[Filed 4/23/81, Notice 2/18/81—published 5 /13 /81, effective 6/17/81]
[Filed 9/24/82, Notice 3/17/82—published 10/13/82, effective 11/17/82]
[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed 7/25/84, Notice 5/9/84—published 8/15/84, effective 9/19/84]
[Filed 12/20/85, Notice 7/17/85—published 1/15/86, effective 2/19/86]
[Filed 5/2/86, Notice 1/15/86—published 5/21/86, effective 6/25/86]
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
[Filed 2/20/87, Notice 12/3/86—published 3/11/87, effective 4/15/87]
[Filed 7/22/88, Notice 5/18/88—published 8/10/88, effective 9/14/88]
[Filed 10/28/88, Notice 7/27/88—published 11/16/88, effective 12/21/88]
[Filed 1/19/90, Notice 11/15/89—published 2/7/90, effective 3/14/90]
[Filed 9/28/90, Notice 6/13/90—published 10/17/90, effective 11/21/90]
[Filed 12/30/92, Notice 9/16/92—published 1/20/93, effective 2/24/93]
[Filed 2/25/94, Notice 10/13/93—published 3/16/94, effective 4/20/94]
[Filed 9/23/94, Notice 6/22/94—published 10/12/94, effective 11/16/94]
[Filed 10/21/94, Notice 4/13/94—published 11/9/94, effective 12/14/94]
[Filed without Notice 11/18/94—published 12/7/94, effective 1/11/95]
[Filed emergency 2/24/95—published 3/15/95, effective 2/24/95]
[Filed 5/19/95, Notices 12/21/94, 3/15/95—published 6/7/95, effective 7/12/95]◊
[Filed 8/25/95, Notice 6/7/95—published 9/13/95, effective 10/18/95**]◊
[Filed emergency 10/20/95—published 11/8/95, effective 10/20/95]
[Filed emergency 11/16/95—published 12/6/95, effective 11/16/95]
[Filed 1/26/96, Notices 11/8/95, 12/6/95—published 2/14/96, effective 3/20/96]
[Filed 1/26/96, Notice 11/8/95—published 2/14/96, effective 3/20/96]◊
[Filed 4/19/96, Notice 1/17/96—published 5/8/96, effective 6/12/96***]
[Filed 5/31/96, Notice 3/13/96—published 6/19/96, effective 7/24/96]
[Filed 8/23/96, Notice 5/8/96—published 9/11/96, effective 10/16/96]
[Filed 11/1/96, Notice 8/14/96—published 11/20/96, effective 12/25/96]

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

**Effective date of 22.100(455B), definition of "12-month rolling period"; 22.200(455B); 22.201(1)"*a*," "*b*,"; 22.201(2)"*a*"; 22.206(2)"*c*," delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

***Effective date of 22.300 delayed 70 days by the Administrative Rules Review Committee at its meeting held June 11, 1996; delay lifted by this Committee at its meeting held June 12, 1996, effective June 12, 1996.

◊Two ARCs

[Filed 3/20/97, Notice 10/9/96—published 4/9/97, effective 5/14/97]
[Filed 3/20/97, Notice 11/20/96—published 4/9/97, effective 5/14/97]
[Filed 6/27/97, Notice 3/12/97—published 7/16/97, effective 8/20/97]
[Filed 3/19/98, Notice 1/14/98—published 4/8/98, effective 5/13/98]
[Filed emergency 5/29/98—published 6/17/98, effective 6/29/98]
[Filed 6/26/98, Notice 3/11/98—published 7/15/98, effective 8/19/98]
[Filed 8/21/98, Notice 6/17/98—published 9/9/98, effective 10/14/98]◊
[Filed 10/30/98, Notice 8/26/98—published 11/18/98, effective 12/23/98]
[Filed 3/19/99, Notice 12/30/98—published 4/7/99, effective 5/12/99]

◊Two ARCs

23.4(13) *Painting and surface-coating operations.* No person shall allow, cause or permit painting and surface-coating operations in a manner such that particulate matter in the gas discharge exceeds 0.01 grain per standard cubic foot of exhaust gas.

This rule is intended to implement Iowa Code section 455B.133.

567—23.5(455B) Anaerobic lagoons.

23.5(1) Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of rules 567—65.9(455B) and 65.15(455B) to 65.17(455B).

23.5(2) Criteria for approval of industrial anaerobic lagoons.

a. Lagoons designed to treat 100,000 gpd or less.

(1) The sulfate content of the water supply shall not exceed 250 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

b. Lagoons designed to treat more than 100,000 gpd.

(1) The sulfate content of the water supply shall not exceed 100 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

This rule is intended to implement Iowa Code section 455B.133.

567—23.6(455B) Alternative emission limits (the "bubble concept"). Emission limits for individual emission points included in 23.3(455B) (except 23.3(2)*"d,"* 23.3(2)*"b"*(3), and 23.3(3)*"a"*(3)) and 23.4(455B) (except 23.4(12)*"b"* and 23.4(6)) may be replaced by alternative emission limits. The alternative emission limits must be consistent with 567—22.7(455B) and 567—subrule 25.1(12). Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

Rules 23.3(455B) to 23.6(455B) are intended to implement Iowa Code section 455B.133.

[Filed 8/24/70; amended 5/2/72, 12/11/73, 12/17/74]
[Filed 3/1/76, Notice 11/3/75—published 3/22/76, effective 4/26/76]
[Filed 5/28/76, Notice 12/15/75, 1/12/76, 1/26/76, 2/23/76—published 6/14/76, effective 7/19/76]
[Filed 11/24/76, Notice 8/9/76—published 12/15/76, effective 1/19/77]
[Filed 12/22/76, Notice 8/9/76—published 1/12/77, effective 2/16/77]
[Filed 2/25/77, Notice 8/9/76—published 3/23/77, effective 4/27/77*]
[Filed 5/27/77, Notice 8/9/76, 12/29/76—published 6/15/77, effective 7/20/77]
[Filed 5/27/77, Notice 1/12/76, 3/9/77—published 6/15/77, effective 1/1/78 and 1/1/79]
[Filed without Notice 10/28/77—published 11/16/77, effective 12/21/77]
[Filed 4/27/78, Notice 11/16/77—published 5/17/78, effective 6/21/78]
[Filed 3/16/79, Notice 10/18/78—published 4/4/79, effective 5/9/79]
[Filed 4/12/79, Notice 9/6/78—published 5/2/79, effective 6/6/79]
[Filed 6/29/79, Notice 2/7/79—published 7/25/79, effective 8/29/79]
[Filed without Notice 6/29/79—published 7/25/79, effective 8/29/79]
[Filed 10/26/79, Notices 5/2/79, 8/8/79—published 11/14/79, effective 12/19/79]

*Objection, see filed rule [DEQ, 4.2(4)] published IAC Supp. 1/22/77, 3/9/77.

[Filed 4/10/80, Notices 12/26/79, 1/23/80—published 4/30/80, effective 6/4/80]
[Filed 7/31/80, Notice 12/26/79—published 8/20/80, effective 9/24/80]
[Filed 9/26/80, Notice 5/28/80—published 10/15/80, effective 11/19/80]
[Filed 12/12/80, Notice 10/15/80—published 1/7/81, effective 2/11/81]
[Filed 4/23/81, Notice 2/4/81—published 5/13/81, effective 6/17/81]
[Filed 5/21/81, Notice 3/18/81—published 6/10/81, effective 7/15/81]
[Filed 7/31/81, Notices 12/10/80, 5/13/81—published 8/19/81, effective 9/23/81]
[Filed emergency 9/11/81—published 9/30/81, effective 9/23/81]
[Filed 9/11/81, Notice 7/8/81—published 9/30/81, effective 11/4/81]
[Filed emergency 6/18/82—published 7/7/82, effective 7/1/82]
[Filed 9/24/82, Notice 6/23/82—published 10/13/82, effective 11/17/82]
[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed 7/28/83, Notice 2/16/83—published 8/17/83, effective 9/21/83**]
[Filed 11/30/83, Notice 9/14/83—published 12/21/83, effective 1/25/84]
[Filed 8/24/84, Notice 5/9/84—published 9/12/84, effective 10/18/84]
[Filed 9/20/84, Notice 7/18/84—published 10/10/84, effective 11/14/84]
[Filed 11/27/85, Notice 7/31/85—published 12/18/85, effective 1/22/86]
[Filed 5/2/86, Notice 1/15/86—published 5/21/86, effective 6/25/86]
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
[Filed 8/21/87, Notice 6/17/87—published 9/9/87, effective 10/14/87]
[Filed 1/22/88, Notice 11/18/87—published 2/10/88, effective 3/16/88]
[Filed 3/30/89, Notice 1/11/89—published 4/19/89, effective 5/24/89]
[Filed 5/24/90, Notice 3/21/90—published 6/13/90, effective 7/18/90]
[Filed 7/19/90, Notice 4/18/90—published 8/8/90, effective 9/12/90]
[Filed 3/29/91, Notice 1/9/91—published 4/17/91, effective 5/22/91]
[Filed 12/30/92, Notice 9/16/92—published 1/20/93, effective 2/24/93]
[Filed 11/19/93, Notice 9/15/93—published 12/8/93, effective 1/12/94]
[Filed 2/25/94, Notice 10/13/93—published 3/16/94, effective 4/20/94]
[Filed 7/29/94, Notice 3/16/94—published 8/17/94, effective 9/21/94]
[Filed 9/23/94, Notice 6/22/94—published 10/12/94, effective 11/16/94]
[Filed without Notice 2/24/95—published 3/15/95, effective 4/19/95]
[Filed 5/19/95, Notice 3/15/95—published 6/7/95, effective 7/12/95]
[Filed 8/25/95, Notice 6/7/95—published 9/13/95, effective 10/18/95]
[Filed 4/19/96, Notice 1/17/96—published 5/8/96, effective 6/12/96]
[Filed 9/20/96, Notice 6/19/96—published 10/9/96, effective 11/13/96]
[Filed 3/20/97, Notice 11/20/96—published 4/9/97, effective 5/14/97]
[Filed 6/27/97, Notice 3/12/97—published 7/16/97, effective 8/20/97]
[Filed 3/19/98, Notice 1/14/98—published 4/8/98, effective 5/13/98]
[Filed emergency 5/29/98—published 6/17/98, effective 6/29/98]
[Filed 8/21/98, Notice 6/17/98—published 9/9/98, effective 10/14/98]◊
[Filed 10/30/98, Notice 8/26/98—published 11/18/98, effective 12/23/98]
[Filed 3/19/99, Notice 12/30/98—published 4/7/99, effective 5/12/99]

**Effective date of 23.2(4) delayed 70 days by the Administrative Rules Review Committee on 9/14/83.
◊Two ARCs

CHAPTER 65
ANIMAL FEEDING OPERATIONS

[Prior to 7/1/83, DEQ Ch 20]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—65.1(455B) Definitions. In addition to the definitions in Iowa Code sections 455B.101 and 455B.171 and Iowa Code section 455B.161, the following definitions shall apply to this chapter:

"Abandoned animal feeding operation structure" means the animal feeding operation structure has been razed, removed from the site, filled in with earth, or converted to uses other than an animal feeding operation structure so that it cannot be put back into service without significant construction activity.

"Adjacent" means, for the purpose of determining separation distance requirements pursuant to 65.11(455B), that two or more confinement feeding operations are adjacent if they have animal feeding operation structures that are separated at their closest points by less than the following:

1. 1,250 feet for confinement feeding operations with animal weight capacity less than 1,250,000 pounds for animals other than bovine, or less than 4,000,000 pounds for bovine.
2. 1,500 feet for confinement feeding operations with animal weight capacity from 1,250,000 pounds to less than 2,000,000 pounds for animals other than bovine; from 1,250,000 pounds to less than 2,500,000 pounds for swine in a farrow-to-finish operation; or 4,000,000 pounds to less than 6,000,000 pounds for bovine.
3. 2,500 feet for confinement feeding operations with animal weight capacity of 2,000,000 or more pounds for animals other than bovine; 2,500,000 or more pounds for swine in a farrow-to-finish operation; or 6,000,000 or more pounds for bovine.
4. These distances shall only be used to determine that two or more confinement feeding operations are adjacent if the animal feeding operation structure is constructed after March 20, 1996.
5. To determine if two or more confinement feeding operations are adjacent, the animal weight capacity of each individual operation shall be used. If two or more confinement feeding operations are not in the same animal weight capacity category, the greater animal weight capacity shall be used to determine the separation distance.

"Adjacent" means, for the purpose of determining whether a permit is required pursuant to 65.7(455B), that two or more confinement feeding operations are adjacent if they have animal feeding operation structures that are separated at their closest points by less than the following:

1. 1,250 feet for confinement feeding operations with combined animal weight capacity less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine.
2. 2,500 feet for confinement feeding operations with combined animal weight capacity of 625,000 or more pounds for animals other than bovine, or 1,600,000 or more pounds for bovine.
3. These distances shall only be used to determine that two or more confinement feeding operations are adjacent if the animal feeding operation structure is constructed or expanded on or after May 21, 1998.

"Aerobic structure" means an animal feeding operation structure other than an egg washwater storage structure which relies on aerobic bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment to digest organic matter. Aeration equipment shall be used and shall be capable of providing oxygen at a rate sufficient to maintain an average of 2 milligrams per liter dissolved oxygen concentration in the upper 30 percent of the depth of manure in the structure at all times.

"Agricultural drainage well" means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, boring, augering, jetting, washing, or coring and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

"Agricultural drainage well area" means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

"Anaerobic lagoon" means an impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic wastes, the impoundment is designed to receive wastes on a regular basis, and the impoundment's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

1. A confinement feeding operation structure.
2. A runoff control basin which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to areas which are unroofed or partially roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.
3. An anaerobic treatment system which includes collection and treatment facilities for all off gases.

"Animal" means a domesticated animal belonging to the bovine, porcine, ovine, caprine, equine, or avian species.

"Animal capacity" means the maximum number of animals which the owner or operator will confine in an animal feeding operation at any one time. In a confinement feeding operation, the animal capacity of all confinement buildings will be included in the determination of the animal capacity of the operation, unless the building has been abandoned in accordance with the definition of "abandoned animal feeding operation structure."

"Animal feeding operation" means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. An animal feeding operation does not include a livestock market. Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.

1. For purposes of water quality regulation, Iowa Code section 455B.171 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. For purposes of the separation distances in Iowa Code section 455B.162, Iowa Code section 455B.161 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of animal feeding operations for water quality purposes under the federal Clean Water Act. The Code of Federal Regulations at 40 CFR §122.23 (1995) sets out the requirements for an animal feeding operation and requires that two or more animal feeding operations under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for manure disposal. However, this federal regulation does not control regulation of animal feeding operations for the purposes of the separation distances in Iowa Code section 455B.162, and therefore the definition is not required by federal law to include common areas for manure disposal.
2. To determine if two or more animal feeding operations are deemed to be one animal feeding operation, the first test is whether the animal feeding operations are under common ownership or management. If they are not under common ownership or management, they are not one animal feeding operation. For purposes of water quality regulation, the second test is whether the two animal feeding operations are adjacent or utilize a common area or system for manure disposal. If the two operations are not adjacent and do not use a common area or system for manure disposal, they are not one animal feeding operation. For purposes of the separation distances in Iowa Code section 455B.162, the second test is whether the two animal feeding operations are adjacent or utilize a common system for manure storage. If the two operations are not adjacent and do not use the same system for manure storage, they are not one animal feeding operation.

"Animal feeding operation structure" means an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.

"Animal unit" means a unit of measurement used to determine the animal capacity of an animal feeding operation, based upon the product of multiplying the number of animals in each species by the following:

1.	Slaughter and feeder cattle	1.0
2.	Mature dairy cattle	1.4
3.	Butcher and breeding swine, over 55 pounds	0.4
4.	Swine between 15 and 55 pounds	0.1
5.	Sheep or lambs	0.1
6.	Horses	2.0
7.	Turkeys	0.018
8.	Broiler or layer chickens	0.01

"Animal weight capacity" means the sum of the average weight of all animals in a confinement feeding operation when the operation is at full animal capacity. For confinement feeding operations with only one species, the animal weight capacity is the product of multiplying the animal capacity by the average weight during a production cycle. For operations with more than one species, the animal weight capacity of the operation is the sum of the animal weight capacities for all species.

EXAMPLE 1. Bill wants to construct a confinement feeding operation with two confinement buildings and an earthen manure storage basin. The capacity of each building will be 900 market hogs. The hogs enter the building at 40 pounds and leave at 250 pounds. The average weight during the production cycle is then 145 pounds for this operation. The animal weight capacity of the operation is 145 pounds multiplied by 1800 for a total of 261,000 pounds.

EXAMPLE 2. Howard is planning to build a confinement feeding operation with eight confinement buildings and an egg washwater storage lagoon. The capacity of each building will be 125,000 laying hens. The hens enter the building at around 2.5 pounds and leave at around 3.5 pounds. The average weight during the production cycle for these laying hens is 3.0 pounds. Manure will be handled in dry form. The animal weight capacity of the operation is 3.0 pounds multiplied by 1,000,000 for a total of 3,000,000 pounds.

EXAMPLE 3. Carol has an animal feeding operation with four confinement buildings with below floor formed concrete manure storage tanks and one open feedlot. One confinement building is a farrowing building with a capacity of 72 sows. One confinement building is a nursery building with a capacity of 1,450 pigs. The open feedlot contains 425 sows. Two of the confinement buildings are finishing buildings with a capacity of 1,250 market hogs. The farrowing building contains 72 sows at an average weight of 400 pounds for an animal weight capacity of 28,800 pounds. The nursery building contains 1,450 pigs with an average weight over the production cycle of 25 pounds for an animal weight capacity of 36,250 pounds. The two finishing buildings contain 2,500 market hogs (combined) with an average weight over the production cycle of 150 pounds for an animal weight capacity of 375,000 pounds. The total animal weight capacity of the confinement feeding operation is 440,050 pounds. The weights of the animals in open lots are not included in the calculation of the animal weight capacity of the confinement feeding operation.

"Applicant" means the person applying for a construction or operation permit for an animal feeding operation. The applicant shall be the owner or owners of the animal feeding operation.

"Business" means a commercial enterprise.

"Cemetery" means a space held for the purpose of permanent burial, entombment or interment of human remains that is owned or managed by a political subdivision or private entity, or a cemetery regulated pursuant to Iowa Code chapter 523I or 566A. A cemetery does not include a pioneer cemetery where there have been six or fewer burials in the preceding fifty years.

"Church" means a religious institution.

"Commercial enterprise" means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

"Commercial manure applicator" means a person who engages in the business of and charges a fee for applying manure on the land of another person.

"Common management" means significant control by a person of the management of the day-to-day operations of each of two or more animal feeding operations.

"Common ownership" means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

"Confinement building" means a building used in conjunction with a confinement feeding operation to house animals.

"Confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed.

"Confinement feeding operation structure" means a formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.

"Confinement site" means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a small animal feeding operation.

"Confinement site manure applicator" means a person who applies manure stored at a confinement site other than a commercial manure applicator.

"Construction permit" means a written approval of the department to construct an animal feeding operation structure.

"Controlling interest" means ownership of a confinement feeding operation as a sole proprietor or a majority ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a controlling interest when it is held directly, indirectly through a spouse or dependent child, or both. The majority ownership interest must be a voting interest or otherwise control management of the confinement feeding operation.

"Covered" means organic or inorganic material, placed upon an animal feeding operation structure used to store manure, which significantly reduces the exchange of gases between the stored manure and the outside air. Organic materials include, but are not limited to, a layer of chopped straw, other crop residue, or a naturally occurring crust on the surface of the stored manure. Inorganic materials include, but are not limited to, wood, steel, aluminum, rubber, plastic, or Styrofoam. The materials shall shield at least 90 percent of the surface area of the stored manure from the outside air. Cover shall include an organic or inorganic material which current scientific research shows reduces detectable odor by at least 75 percent. A formed manure storage structure directly beneath a floor where animals are housed in a confinement feeding operation is deemed to be covered.

"Cropland" means any land suitable for use in agricultural production including, but not limited to, feed, grain and seed crops, fruits, vegetables, forages, sod, trees, grassland, pasture and other similar crops.

"Deep well" means a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

"Designated area" means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, lake, or a farm pond or privately owned lake as defined in Iowa Code section 462A.2. A designated area does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

"Discontinued animal feeding operation" means an animal feeding operation whose structures have been abandoned or whose use has been discontinued as evidenced by the removal of all animals and the owner or operator has no immediate plans to repopulate.

"Discontinued animal feeding operation structure" means an animal feeding operation structure that has been abandoned or whose use has been discontinued as evidenced by the removal of all animals from the structure and the owner or operator has no immediate plans to repopulate.

"Earthen manure storage basin" means an earthen cavity, either covered or uncovered, which, on a regular basis, receives manure discharges from a confinement feeding operation if accumulated manure from the basin is completely removed at least once each year.

"Earthen waste slurry storage basin" means an uncovered and exclusively earthen cavity which, on a regular basis, receives manure discharges from a confinement animal feeding operation if accumulated manure from the basin is completely removed at least twice each year and which was issued a permit, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995.

"Educational institution" means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade 12 and served by local school districts, accredited or approved nonpublic schools, area educational agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

"Egg washwater storage structure" means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs. It does not include a structure also used as a manure storage structure.

"Enforcement action" means an action against a confinement feeding operation initiated by the department or the attorney general to enforce the provisions of Iowa Code chapter 455B or rules adopted pursuant to the chapter. An enforcement action begins when the department issues an administrative order to the person, when the department notifies a person in writing of intent to recommend referral or the commission refers the action to the attorney general pursuant to Iowa Code section 455B.141 or 455B.191, or when the attorney general institutes proceedings pursuant to section 455B.112, whichever occurs first. An enforcement action is pending until final resolution of the action by satisfaction of an administrative order; rescission or other final resolution of an administrative order or satisfaction of a court order, for which all administrative and judicial appeal rights are exhausted, expired, or waived.

"Formed manure storage structure" means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Similar materials may include, but are not limited to, plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed manure storage structure shall have the structural integrity to withstand expected internal and external load pressures.

"Freeboard" means the difference in elevation between the liquid level and the top of the lowest point of animal feeding operation structure's berm or the lowest external outlet from a formed manure storage structure.

"Grassed waterway" means a natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.

"Highly erodible land" means a field that has one-third or more of its acres or 50 acres, whichever is less, with soils that have an erodibility index of eight or more, as determined by rules promulgated by the United States Department of Agriculture.

"Human sanitary waste" means wastewater derived from domestic uses including bathroom and laundry facilities generating wastewater from toilets, baths, showers, lavatories and clothes washing.

"Incidental" means a duty which is secondary or subordinate to a primary job or function.

"Incorporation" means a soil tillage operation following the surface application of manure which mixes the manure into the upper four inches or more of soil.

"Indemnity fund" means the manure storage indemnity fund created in Iowa Code section 455J.2.

"Injection" means the application of manure into the soil surface using equipment that discharges it beneath the surface.

"Interest" means ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is an interest when it is held directly, indirectly through a spouse or dependent child, or both.

"Livestock market" means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

"Low-pressure irrigation system" means spray irrigation equipment which discharges manure from a maximum height of 9 feet in a downward direction, and which utilizes spray nozzles which discharge manure at a maximum pressure of 25 pounds per square inch.

"Major water source" means a lake, reservoir, river or stream located within the territorial limits of the state, any marginal river area adjacent to the state which can support a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Table 1 and Table 2 at the end of this chapter.

"Man-made manure drainage system" means a drainage ditch, flushing system, or other drainage device which was constructed by human beings and is used for the purpose of transporting manure.

"Manure" means animal excreta or other commonly associated wastes of animals including, but not limited to, bedding, litter, or feed losses. Manure does not include wastewater resulting from the washing and in-shell packaging of eggs.

"Manure storage structure" means an aerobic structure, anaerobic lagoon, earthen manure storage basin, or formed manure storage structure used to store manure as a part of a confinement feeding operation. Manure storage structure does not include an egg washwater storage structure.

"New animal feeding operation" means an animal feeding operation whose construction was begun after July 22, 1987, or whose operation is resumed after having been discontinued for a period of 12 months or more.

"Nonpublic water supply" means a water system that has fewer than 15 service connections or serves fewer than 25 people, or one that has more than 15 service connections or serves more than 25 people for less than 60 days a year.

"Open feedlot" means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover is maintained during the period that animals are confined in the operation.

"Operation permit" means a written permit of the department authorizing the operation of a manure control facility or part of one.

"Owner" means the person who has title to the property where the animal feeding operation is located or the person who has title to the animal feeding operation structures. It does not include a person who has a lease to use the land where the animal feeding operation is located or to use the animal feeding operation structures.

"Permanent vegetation cover" means land which is maintained in perennial vegetative cover consisting of grasses, legumes, or both, and includes, but is not limited to, pastures, grasslands or forages.

"Public use area" means that portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time. Facilities include, but are not limited to, picnic grounds, campgrounds, cemeteries, lodges, shelter houses, playground equipment, lakes as listed in Table 2 at the end of this chapter, and swimming beaches. It does not include a highway, road right-of-way, parking areas, recreational trails or other areas where the public passes through, but does not congregate or remain in the area for significant periods of time.

"Public water supply" (also referred to as a system or a water system) means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the supplier of water and used primarily in connection with such system, and (2) any collection (including wells) or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water supply system is either a "community water system" or a "noncommunity water system."

"Qualified operation" means a confinement feeding operation constructed or expanded under a construction permit issued on or after May 31, 1995, and which has an animal weight capacity of 2,000,000 or more pounds for animals other than animals kept in a swine farrow-to-finish operation or bovine kept in a confinement feeding operation; a swine farrow-to-finish operation having an animal weight capacity of 2,500,000 or more pounds; or a confinement feeding operation having an animal weight capacity of 8,000,000 or more pounds for bovine.

"Release" means an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting or land-applying manure.

"Religious institution" means a building in which an active congregation is devoted to worship.

"Research college" means an accredited public or private college or university, including but not limited to a university under control of the state board of regents as provided in Iowa Code chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in Iowa Code chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

"Residence" means a house or other building, including all structures attached to the building, not owned by the owner of the animal feeding operation, which meets all of the following criteria at the location of the intended residence:

1. Used as a place of habitation for humans on a permanent and frequent basis.
2. Not readily mobile.
3. Connected to a permanent source of electricity, a permanent private water supply or a public water supply system and a permanent domestic sewage disposal system including a private, semipublic or public sewage disposal system.
4. Assessed and taxed as real property.

If a house or other building has not been occupied by humans for more than six months in the last two years, or if a house or other building has been constructed or moved to its current location within six months, the owner of the intended residence has the burden of proving that the house or other building is a residence. Paragraph "3" shall not apply to a house or other building inhabited by persons who are exempt from the compulsory education standards of Iowa Code section 299.24 and whose religious principles or tenets prohibit the use of the utilities listed.

"Restricted spray irrigation equipment" means spray irrigation equipment which disperses manure through an orifice at a rate of 80 pounds per square inch or more.

"Runoff control basin" means an impoundment designed and operated to collect and store runoff from an open feedlot.

"School" means an educational institution.

"Secondary containment barrier" means a structure used to retain accidental manure overflow from a manure storage structure.

"Shallow well" means a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

"Small animal feeding operation" means an animal feeding operation which has an animal weight capacity of 200,000 pounds or less for animals other than bovine, or 400,000 pounds or less for bovine.

"Solids settling facility" means a basin, terrace, diversion, or other structure which is designed and operated to remove settleable solids from open feedlot runoff.

"Spray irrigation equipment" means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for aerial application of water to aid the growing of general farm crops.

"Swine farrow-to-finish operation" means a confinement feeding operation in which porcine are produced and in which a primary portion of the phases of the production cycle is conducted at one confinement feeding operation. Phases of the production cycle include, but are not limited to, gestation, farrowing, growing and finishing. At a minimum, farrowing, growing, and finishing shall be conducted at the operation with a majority of the pigs farrowed at the site finished to market weight in order to qualify as a farrow-to-finish operation.

"Thoroughfare" means a road, street, bridge or highway open to the public and constructed or maintained by the state or a political subdivision.

"Unformed manure storage structure" means a covered or uncovered animal feeding operation structure in which manure is stored, other than a formed manure storage structure or egg washwater storage structure, which is an anaerobic lagoon, earthen aerobic structure or earthen manure storage basin.

"Watercourse" means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with water flow or the occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian. Watercourse does not include water flow or the occurrence of water in a terrace, grassed waterway, solids settling basin, road ditch, areas subject to rill erosion, or other similar areas.

"Wetted perimeter" means the outside edge of land where the direct discharge of manure occurs from spray irrigation equipment.

567—65.2(455B) Minimum manure control requirements and reporting of releases. Water pollution control facilities shall be constructed and maintained to meet the minimum manure control requirements stated in subrules 65.2(1) to 65.2(8) of this rule. A release shall be reported to the department as provided in subrule 65.2(9) of this rule.

65.2(1) The minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to discharge into a water of the state.

a. Settleable solids may be removed by use of solids-settling basins, terraces, diversions, or other solid-removal methods. Construction of solids-settling facilities shall not be required where existing site conditions provide adequate settleable solids removal.

b. Removal of settleable manure solids shall be considered adequate when the velocity of manure flows has been reduced to less than 0.5 foot per second for a minimum of five minutes. Sufficient capacity shall be provided in the solids-settling facilities to store settled solids between periods of manure application and to provide required flow-velocity reduction for manure flow volumes resulting from precipitation events of less intensity than the ten-year, one-hour frequency event. Solids-settling facilities receiving open feedlot runoff shall provide a minimum of 1 square foot of surface area for each 8 cubic feet of runoff per hour resulting from the ten-year, one-hour frequency-precipitation event.

65.2(2) The minimum level of manure control for an open feedlot covered by the operation-permit application requirements of 65.4(1) or 65.4(2) shall be retention of all manure flows from the feedlot areas and all other manure-contributing areas resulting from the 25-year, 24-hour precipitation event. Open feedlots which design, construct, and operate manure control facilities in accordance with the requirements of any of the manure control alternatives listed in Appendix A of these rules shall be considered to be in compliance with this rule, unless discharges from the manure control facility cause a violation of state water quality standards. If water quality standards violations occur, the department may impose additional manure control requirements upon the feedlot, as specified in subrule 65.2(4).

Control of manure from open feedlots may be accomplished through use of manure-retention basins, terraces, or other runoff control methods. Diversion of uncontaminated surface drainage prior to contact with feedlot or manure-storage areas may be required. Manure-solids-settling facilities shall precede the manure-retention basins or terraces.

65.2(3) The minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state.

a. Control of manure from confinement feeding operations may be accomplished through use of manure storage structures or other manure control methods. Sufficient capacity shall be provided in the manure storage structure to store all manure between periods of manure application. Additional capacity shall be provided if precipitation, manure or wastes from other sources can enter the manure storage structure.

b. Manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Manure stored in earthen manure storage structures (anaerobic lagoons, earthen manure storage basins, or earthen waste slurry storage basins) shall be removed from the structures as necessary to maintain a minimum of two feet of freeboard in the structure, unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. Manure stored in unroofed formed manure storage structures shall be removed from the structures as necessary to maintain a minimum of one foot of freeboard in the structure unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow.

c. To ensure that adequate capacity exists in the manure storage structure to retain all manure produced during periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors), the manure shall be removed from the manure storage structure as needed prior to these periods.

65.2(4) If site topography, operation procedures, experience, or other factors indicate that a greater or lesser level of manure control than that specified in subrule 65.2(1), 65.2(2), or 65.2(3) is required to provide an adequate level of water pollution control for a specific animal feeding operation, the department may establish different minimum manure control requirements for that operation.

65.2(5) In lieu of using the manure control methods specified in subrule 65.2(1), 65.2(2), or 65.2(3), the department may allow the use of manure treatment or other methods of manure control if it determines that an adequate level of manure control will result.

65.2(6) No direct discharge shall be allowed from an animal feeding operation into a publicly owned lake, a sinkhole, or an agricultural drainage well.

65.2(7) All manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. Application in accordance with the provisions of state law, and the rules and guidelines in this chapter, shall be deemed as compliance with this requirement.

65.2(8) As soon as practical but not later than six months after the use of an animal feeding operation is discontinued, all manure shall be removed from the discontinued animal feeding operation and its manure control facilities and be land-applied.

65.2(9) A release, as defined in rule 65.1(455B), shall be reported to the department as provided in this subrule. This subrule does not apply to land application of manure in compliance with these rules, or to precipitation or snowmelt-induced runoff from open feedlots which complies with the minimum control requirements of these rules.

a. Notification. A person storing, handling, transporting, or land-applying manure from an animal feeding operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release, as follows:

(1) During normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. It is preferable that the appropriate environmental protection division field office of the department be contacted by telephone.

(2) During other times, or if the field office cannot be reached, the department may be contacted at (515)281-8694, and the local police department or the office of the sheriff of the affected county shall be contacted. A sheriff or police chief who has been notified of a release shall immediately notify the department. Reports made pursuant to this rule shall be confirmed in writing as provided in 65.2(9)*"c."*

b. Verbal report. The verbal report of such a release should provide information on as many items listed in 65.2(9)*"c"* as available information will allow.

c. Written report. The written report of a release shall be submitted at the request of the department within 30 days after the verbal report of the release and contain at a minimum the following information:

(1) The approximate location of alleged release (including at a minimum the quarter-quarter section, township and county in which the release occurred or is discovered).

(2) The time and date of onset of the alleged release, if known, and the time and date of the discovery of the alleged release.

(3) The time and date of the verbal report to the department of the release.

(4) The name, mailing address and telephone number of the person reporting the release.

(5) The name, mailing address and telephone number of any other person with knowledge of the event who can be contacted for further information.

(6) The source of the manure allegedly released (e.g., formed storage, earthen storage, open feedlot retention basin).

(7) The estimated or known volume of manure allegedly released.

(8) The weather conditions at the time of the onset or discovery of the release.

(9) If known, the circumstances under which the alleged release occurred or exists (e.g., overflow, storage structure breach, equipment malfunction or breakdown, land runoff).

(10) The approximate location of the nearest stream or other water body which is or could be impacted by the alleged release, and the approximate location to the alleged release of any known tile intakes or tile lines which could be a direct conveyance to a surface water or groundwater.

(11) A description of any containment or remedial measures taken to minimize the impact of the release.

(12) Any information that may assist the department in evaluating the release.

d. Reporting of subsequent findings. All subsequent findings and laboratory results should be reported and submitted in writing to the department as soon as they become available.

e. A waiver from the notification requirement of paragraph *"a"* of this subrule may be granted by the department for a release to a specific drainage tile line or intake if sufficient information is provided to demonstrate that the drainage tile line or intake will not result in a discharge to a water of the state.

567—65.3(455B) Requirements and recommended practices for land application of manure.

65.3(1) *Application rate based on crop nitrogen use.* A confinement feeding operation that is required to submit a manure management plan to the department under rule 65.16(455B) shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. Calculations to determine the maximum manure application rate allowed under this subrule shall be performed pursuant to rule 65.17(455B).

65.3(2) *General requirements for application rates and practices.*

a. For confinement feeding operations required to submit a manure management plan to the department under rule 65.16(455B), application rates and practices shall be determined pursuant to rule 65.17(455B).

b. For manure originating from an anaerobic lagoon or aerobic structure, application rates and practices shall be used to minimize groundwater or surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. In determining appropriate application rates and practices, the person land-applying the manure shall consider the site conditions at the time of application including anticipated precipitation and other weather factors, field residue and tillage, site topography, the existence and depth of known or suspected tile lines in the application field, and crop and soil conditions, including a good-faith estimate of the available water holding capacity given precipitation events, the predominant soil types in the application field and planned manure application rate.

c. Spray irrigation equipment shall be operated in a manner and with an application rate and timing that does not cause runoff of the manure onto the property adjoining the property where the spray irrigation equipment is being operated.

d. For manure from an earthen waste slurry storage basin, earthen manure storage basin, or formed manure storage structure, restricted spray irrigation equipment shall not be used unless the manure has been diluted with surface water or groundwater to a ratio of at least 15 parts water to 1 part manure. Emergency use of spray irrigation equipment without dilution shall be allowed to minimize the impact of a release as approved by the department.

65.3(3) *Separation distance requirements for land application of manure.* Land application of manure shall be separated from objects and locations as specified in this subrule.

a. For liquid manure from a confinement feeding operation, the required separation distance from a residence not owned by the titleholder of the land, a business, a church, a school, or a public use area is 750 feet, as specified in Iowa Code section 455B.162. The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school, or public use area.

b. The separation distance specified in paragraph 65.3(3)*"a"* shall not apply if any of the following apply:

(1) The liquid manure is injected into the soil or incorporated within the soil not later than 24 hours after the original application.

(2) The titleholder of the land benefitting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

(3) The liquid manure originates from a small animal feeding operation.

(4) The liquid manure is applied by low-pressure spray irrigation equipment pursuant to paragraph 65.3(3)*"d."*

c. Separation distance for spray irrigation from property boundary line. Spray irrigation equipment shall be set up to provide for a minimum distance of 100 feet between the wetted perimeter as specified in the spray irrigation equipment manufacturer's specifications and the boundary line of the property where the equipment is being operated. The actual wetted perimeter, as determined by wind speed and direction and other operating conditions, shall not exceed the boundary line of the property where the equipment is being operated. For property which includes a road right-of-way, railroad right-of-way or an access easement, the property boundary line shall be the boundary line of the right-of-way or easement.

d. Distance from structures for low-pressure irrigation systems. Low-pressure irrigation systems shall have a minimum separation distance of 250 feet between the actual wetted perimeter and the closest point of a residence, a business, church, school or public use area.

e. Variances. Variances to paragraph *"c"* of this subrule may be granted by the department if sufficient and proposed alternative information is provided to substantiate the need and propriety for such action. Variances may be granted on a temporary or permanent basis. The request for a variance shall be in writing and include information regarding:

(1) The type of manure storage structure from which the manure will be applied by spray irrigation equipment.

(2) The spray irrigation equipment to be used in the application of manure.

(3) Other information as the department may request.

f. Agricultural drainage wells. Manure shall not be applied by spray irrigation equipment on land located within an agricultural drainage well area.

g. Designated areas. A person shall not apply manure on cropland within 200 feet from a designated area, unless one of the following applies:

(1) The manure is applied by injection or by surface application with incorporation occurring within 24 hours after application.

(2) An area of permanent vegetation cover exists for 50 feet surrounding the designated area and that area is not subject to manure application.

65.3(4) *Recommended practices.* Except as required by rule in this chapter, the following practices are recommended:

a. Nitrogen application rates. To minimize the potential for leaching to groundwater or runoff to surface waters, nitrogen application from all sources, including manure, legumes, and commercial fertilizers, should not be in excess of the nitrogen use levels necessary to obtain optimum crop yields for the crop being grown.

b. Phosphorous application rates. To minimize phosphorous movement to surface waters, manure should be applied at rates equivalent to crop uptake when soil tests indicate adequate phosphorous levels. Phosphorous application more than crop removal can be used to obtain maximum crop production when soil tests indicate very low or low phosphorous levels.

c. Manure application on frozen or snow-covered cropland. Manure application on frozen or snow-covered cropland should be avoided where possible. If manure is spread on frozen or snow-covered cropland, application should be limited to areas on which:

(1) Land slopes are 4 percent or less, or

(2) Adequate erosion control practices exist. Adequate erosion control practices may include such practices as terraces, conservation tillage, cover crops, contour farming or similar practices.

d. Manure application on cropland subject to flooding. Manure application on cropland subject to flooding more than once every ten years should be injected during application or incorporated into the soil after application. Manure should not be spread on such areas during frozen or snow-covered conditions.

e. Manure application on land adjacent to water bodies. Unless adequate erosion controls exist on the land and manure is injected or incorporated into the soil, manure application should not be done on land areas located within 200 feet of and draining into a stream or surface intake for a tile line or other buried conduit. No manure should be spread on waterways except for the purpose of establishing seedings.

f. Manure application on steeply sloping cropland. Manure application on tilled cropland with greater than 10 percent slopes should be limited to areas where adequate soil erosion control practices exist. Injection or soil incorporation of manure is recommended where consistent with the established soil erosion control practices.

567—65.4(455B) Operation permit required. An animal feeding operation shall apply for and obtain an operation permit if any of the following conditions exist:

65.4(1) The capacity of an open feedlot exceeds any of the following:

a. 1,000 beef cattle
b. 700 dairy cattle
c. 2,500 butcher and breeding swine (over 55 lbs.)
d. 10,000 sheep or lambs
e. 55,000 turkeys
f. 500 horses
g. 1,000 animal units

65.4(2) Manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged directly into a water of the state which originates outside of and traverses the operation, and the capacity of the operation exceeds:

a. 300 beef cattle
b. 200 dairy cattle
c. 750 butcher and breeding swine (over 55 lbs.)
d. 3,000 sheep or lambs
e. 16,500 turkeys
f. 30,000 broiler or layer chickens
g. 150 horses
h. 300 animal units

65.4(3) The department notifies the operation in writing that, in accordance with the departmental evaluation provisions of 65.5(2)*"a,"* application for an operation permit is required.

567—65.5(455B) Departmental evaluation.

65.5(1) The department may evaluate any animal feeding operation to determine if any of the following conditions exist:

a. Manure from the operation is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in subrule 65.2(1), 65.2(2), or 65.2(3);

b. Manure from the operation is causing or may reasonably be expected to cause pollution of a water of the state; or

c. Manure from the operation is causing or may reasonably be expected to cause a violation of state water quality standards.

65.5(2) If departmental evaluation determines that any of the conditions listed in subrule 65.5(1) exist, the operation shall:

a. Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in subrule 65.4(2) shall be required to apply for a permit unless manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged into a water of the state which traverses the operation.

b. Institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This paragraph shall apply to all permitted and unpermitted animal feeding operations, regardless of animal capacity.

567—65.6(455B) Operation permits.

65.6(1) *Existing animal feeding operations holding an operation permit.* Animal feeding operations which hold a valid operation permit issued prior to July 22, 1987, are not required to reapply for an operation permit. However, the operations are required to apply for permit renewal in accordance with subrule 65.6(10).

65.6(2) *Existing animal feeding operations not holding an operation permit.* Animal feeding operations in existence on July 22, 1987, which are covered by the operation-permit provisions of subrule 65.4(1) or 65.4(2) but have not obtained a permit, shall apply for an operation permit prior to January 22, 1988. Once application has been made, the animal feeding operation is authorized to continue to operate without an operation permit until the application has either been approved or disapproved by the department.

65.6(3) *Expansion of existing animal feeding operations.* A person intending to expand an existing animal feeding operation which, upon completion of the expansion, will be covered by the operation-permit provisions of subrule 65.4(1) or 65.4(2) shall apply for an operation permit at least 180 days prior to the date operation of the expanded facility is scheduled. Operation of the expanded portion of the facility shall not begin until an operation permit has been obtained.

65.6(4) *New animal feeding operations.* A person intending to begin a new animal feeding operation which, upon completion, will be covered by the operation-permit provisions of subrule 65.4(1) or 65.4(2) shall apply for an operation permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled. Operation of the new facility shall not begin until an operation permit has been obtained.

65.6(5) *Permits required as a result of departmental evaluation.* An animal feeding operation which is required to apply for an operation permit as a result of departmental evaluation (in accordance with the provisions of 65.5(2)*"a"*) shall apply for an operation permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the animal feeding operation is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department.

65.6(6) *Voluntary operation permit applications.* Applications for operation permits received from animal feeding operations not meeting the operation-permit requirements of subrules 65.4(1) to 65.4(3) will be acknowledged by the department and returned to the applicant. Operation permits will not be issued for facilities not meeting the permit requirements of subrules 65.4(1) to 65.4(3).

65.6(7) *Application forms.* An application for an operation permit shall be made on a form provided by the department. The application shall be complete and shall contain detailed information as deemed necessary by the department. The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure control system.

65.6(8) *Compliance schedule.* When necessary to comply with a present standard or a standard which must be met at a future date, an operation permit shall include a schedule for modification of the permitted facility to meet the standard. The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to subrule 65.7(1).

65.6(9) *Permit conditions.* Operation permits shall contain conditions considered necessary by the department to ensure compliance with all applicable rules of the department, to ensure that the manure-control system is properly operated and maintained, to protect the public health and beneficial uses of state waters, and to prevent water pollution from manure storage or application operations. Self-monitoring and reporting requirements which may be imposed on animal feeding operations are specified in 567—subrule 63.5(1).

65.6(10) *Permit renewal.* An operation permit may be issued for any period of time not to exceed five years. An application for renewal of an operation permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the provisions of those rules of the department which apply to the facility at the time of renewal.

A permitted animal feeding operation which does not meet the operation-permit requirements of subrules 65.4(1) to 65.4(3) will be exempted from the need to retain that permit at the time of permit renewal, and the existing operation permit will not be renewed.

65.6(11) *Permit modification, suspension or revocation.* The department may modify, suspend, refuse to renew or revoke in whole or part any operation permit for cause. Cause for modification, suspension or revocation of a permit may include the following:

a. Violation of any term or condition of the permit.

b. Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

d. Failure to submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.

e. A determination by the department that the continued operation of a confinement feeding operation constitutes a clear, present and impending danger to public health or the environment.

567—65.7(455B) Construction permits.

65.7(1) *Animal feeding operations required to obtain a construction permit.*

a. An animal feeding operation covered by the operation permit provisions of subrules 65.4(1) to 65.4(3) shall obtain a construction permit prior to constructing, installing, or modifying a manure control system for that operation or reopening the operation if it was discontinued for 24 months or more.

b. Except as provided in subrule 65.7(2), a confinement feeding operation beginning construction, installation or modifications after March 20, 1996, shall obtain a construction permit prior to beginning construction, installation of an animal feeding operation structure used in that operation or prior to beginning significant modifications in the volume or manner in which the manure is stored or reopening the operation if it was discontinued for 24 months or more if any of the following conditions exist:

(1) The confinement feeding operation uses an aerobic structure, anaerobic lagoon or earthen manure storage basin.

(2) The confinement feeding operation uses a formed manure storage structure and has an animal weight capacity of 625,000 pounds or more for animals other than bovine or 1,600,000 pounds or more for bovine.

(3) The confinement feeding operation structure provides for the storage of manure exclusively in a dry form and has an animal weight capacity of 1,250,000 pounds or more for animals other than bovine or 4,000,000 pounds or more for bovine.

(4) The confinement feeding operation uses an egg washwater storage structure.

(5) The confinement feeding operation contains more than one species and the sum of the total animal weight capacity for each species divided by the permit threshold for that species is greater than 1.0(100%).

(6) The confinement feeding operation is proposed for an increase in animal weight capacity which would otherwise require a construction permit, even though no physical changes or construction is necessary.

65.7(2) *Animal feeding operations not required to obtain a construction permit.*

a. A construction permit shall not be required for an animal feeding operation structure used in conjunction with a small animal feeding operation.

b. A construction permit shall not be required for an animal feeding operation structure related to research activities and experiments performed under the authority and regulations of a research college.

65.7(3) *Operations that shall not be issued construction permits.*

a. The department shall not issue a construction permit to a person if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending.

b. The department shall not issue a construction permit to a person for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code section 455B.191.

c. The department shall not issue a construction permit to expand or modify a confinement feeding operation for one year after completion of the last construction or modification at the operation, if a permit was not required for the last construction or modification. The department, upon good cause demonstrated by the applicant, shall grant a waiver to this rule.

65.7(4) *Plan review criteria.* Review of plans and specifications shall be conducted to determine the potential of the proposed manure control system to achieve the level of manure control being required of the animal feeding operation. In conducting this review, applicable criteria contained in federal law, state law, these rules, natural resource conservation service design standards and specifications unless inconsistent with federal or state law or these rules, and department of commerce precipitation data shall be used. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

65.7(5) *Expiration of construction permits.* The construction permit shall expire if construction, as defined in rule 65.8(455B), is not begun within one year of the date of issuance. The director may grant an extension of time to begin construction if it is necessary or justified, upon showing of such necessity or justification to the director, unless a person who has an interest in the proposed operation is the subject of a pending enforcement action, or a person who has a controlling interest in the proposed operation has been classified as a habitual violator.

65.7(6) *Revocation of construction permits.* The department may revoke a construction permit or refuse to renew a permit expiring according to subrule 65.7(5) if it determines that the operation of the confinement feeding operation constitutes a clear, present and impending danger to public health or the environment.

65.7(7) *Permit prior to construction.* An applicant for a construction permit shall not begin construction at the location of a site planned for the construction of an animal feeding operation structure, including an aerobic structure, until the person has been granted a permit for the construction of the structure by the department.

567—65.8(455B) Construction. For purposes of these rules:

65.8(1) Construction of an animal feeding operation structure begins or an animal feeding operation structure is constructed when any of the following occurs:

a. Excavation for a proposed animal feeding operation structure, or excavation for footings for a proposed animal feeding operation structure.

b. Installation of forms for concrete for an animal feeding operation structure.

c. Installation of piping for movement of manure within or between animal feeding operation structures.

65.8(2) Construction does not begin upon occurrence of any of the following:

a. Removal of trees, brush, or other vegetative growth.

b. Construction of driveways or roads.

c. General earth moving for leveling or compacting at the site.

d. Installation of temporary utility services.

65.8(3) Prohibition on construction.

a. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation, if the person is either of the following:

(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general

(2) A habitual violator.

b. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation for five years after the date of the last violation committed by a person or a confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code section 455B.191.

c. This rule shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if either of the following applies:

(1) The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.

(2) The person is not required to obtain a permit for the construction or expansion of the animal feeding operation structure.

567—65.9(455B) Construction permit application.

65.9(1) *Confinement feeding operations.* Application for a construction permit for a confinement feeding operation shall be made on a form provided by the department. The application shall include all of the information required. At the time the department receives a complete application, the department shall make a determination regarding the approval or denial of the permit within 60 days. However, the 60-day requirement shall not apply to an application if the applicant is not required to obtain a permit. A construction permit application for a confinement feeding operation shall include at least the following information:

a. The owner and the name of the confinement feeding operation, including mailing address and telephone number.

b. The contact person for the confinement feeding operation, including mailing address and telephone number.

c. The location of the confinement feeding operation.

d. Whether the application is for the expansion of an existing or the construction of a proposed confinement feeding operation.

e. The animal weight capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation.

f. For a manure storage structure in which manure is stored in a liquid or semiliquid form or for an egg washwater storage structure, an engineering report, construction plans and specifications, prepared by a licensed professional engineer or by Natural Resources Conservation Service personnel, that detail the proposed structures.

g. A report on soil corings in the area of the aerobic structure, anaerobic lagoon, egg washwater storage structure, or manure storage basin, as described in subrule 65.17(6), if an earthen lagoon, structure or basin is being constructed.

h. Payment to the department of the indemnity fund fee as required in Iowa Code section 455J.3.

i. If the confinement feeding operation contains three or more animal feeding operation structures, a licensed professional engineer shall certify that either the construction of the structure will not impede the drainage through established drainage tile lines which cross property boundary lines or that if the drainage is impeded during construction, the drainage tile will be rerouted to reestablish the drainage prior to operation of the structure.

j. Information (e.g., maps, drawings, aerial photos) that clearly shows the proposed location of the animal feeding operation structures, any locations or objects from which a separation distance is required by Iowa Code sections 455B.162 and 455B.204 and that the structures will meet all applicable separation distances.

k. The names of all parties with an interest or controlling interest in the confinement feeding operation who also have an interest or controlling interest in at least one other confinement feeding operation in Iowa, and the names and locations of such other operations.

l. Documentation that a copy of the permit application and manure management plan has been provided to the county board of supervisors or county auditor in the county where the operation or structure subject to the permit is to be located, and documentation of the date received by the county.

65.9(2) *Open feedlots.* An open feedlot required to obtain a construction permit in accordance with the provisions of 65.7(1)*"a"* shall apply for a construction permit at least 90 days before the date that construction, installation, or modification of the manure control system is scheduled to start.

a. Application forms. Application for a construction permit for an open feedlot shall be made on a form provided by the department. The application shall be complete and shall include detailed engineering plans as determined necessary by the department.

b. Plan requirements. Manure control system plans for an open feedlot shall be designed and submitted in conformance with Iowa Code chapter 542B.

567—65.10(455B) County participation in site inspections and the construction permit application review process.

65.10(1) *Delivery of application to county.* The applicant for a construction permit for a confinement feeding operation or related animal feeding operation structure shall deliver in person or by certified mail a copy of the permit application and manure management plan to the county board of supervisors of the county where the confinement feeding operation or related animal feeding operation structure is proposed to be constructed. Receipt of the application and manure management plan by the county auditor is deemed receipt of the application and manure management plan by the county board of supervisors. Documentation of the delivery or mailing of the permit application and manure management plan shall be forwarded to the department.

65.10(2) *County comment.* The county board of supervisors may submit comments by the board and the public regarding compliance of the construction permit application and manure management plan with the requirements in this chapter and Iowa Code chapter 455B for obtaining a construction permit.

a. The department shall consider and respond to comments submitted by the county board of supervisors regarding compliance by the applicant with the legal requirements for approving a construction permit as provided in this chapter, including rules adopted by the department pursuant to Iowa Code section 455B.200. The comments shall be delivered to the department within 30 days after receipt of the application by the county board of supervisors in order to be considered in the permit review process.

b. Comments may include, but are not limited to, the following:

(1) The existence of an object or location not included in the construction permit application which benefits from a separation distance requirement as provided in Iowa Code section 455B.162 or 455B.204.

(2) The suitability of soils and the hydrology of the site where construction or expansion of a confinement feeding operation or related animal feeding operation structure is proposed.

(3) The availability of land for the application of manure originating from the confinement feeding operation.

(4) Whether the construction or expansion of a proposed animal feeding operation structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage of land not owned by the person applying for the construction permit.

65.10(3) *Inspection of proposed construction site.* The department shall notify the county board of supervisors at least three days prior to conducting an inspection of the site where construction is proposed in the permit application. The county board of supervisors may designate a county employee to accompany a departmental official during the site inspection. The county designee shall have the same right to access to the site's real estate as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official.

65.10(4) *Waiting period.* The department shall not approve or disapprove the application until 30 days following delivery of the application to the county board of supervisors.

65.10(5) *Departmental notification of permit application decision.* Within three days following the department's decision to approve or disapprove the application, the department shall deliver a notice of the decision to the county board of supervisors. For an approved application, the notice shall consist of a copy of the construction permit as issued. For a disapproved application, the notice shall consist of a copy of the department's letter of denial.

65.10(6) *County demand for hearing.* The county board of supervisors may contest the department's decision to approve or disapprove an application by filing a written demand for a hearing before the commission. Due to the need for expedited scheduling, the county board of supervisors shall, as soon as possible but not later than 14 days following receipt of the department's notice of decision, notify the chief of the department's water quality bureau by facsimile transmission to (515)281-8895 that it intends to file a demand for hearing. The demand for hearing shall be mailed to Director, Department, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, and must be postmarked within 14 days following receipt of the department's notice of decision. The demand shall include a statement providing all reasons the application should be approved or disapproved according to legal requirements in this chapter and Iowa Code chapter 455B; legal briefs and any other documents to be considered by the commission or a statement indicating that no other documents will be submitted for consideration by the commission; and a statement indicating whether oral argument before the commission is desired.

65.10(7) *Decision by the commission.* The director shall schedule the matter for consideration at the next regular meeting of the commission and notify the county board of supervisors and the applicant of the time and place. However, if the next regular meeting of the commission will take place more than 35 days after receipt of the demand for hearing, the director shall schedule an electronic meeting of the commission pursuant to Iowa Code section 21.8. The director shall provide the applicant with copies of all documents submitted by the county board of supervisors and a copy of the department's file on the permit application within three days after receipt of the county board of supervisors' comments. The applicant may submit responses or other documents for consideration by the commission postmarked or hand-delivered at least 14 days prior to the date of consideration by the commission. Consideration by the commission is not a contested case and, unless otherwise determined by the commission, oral participation before the commission will be limited to argument by one representative each from the county board of supervisors, the applicant and the department. The decision by the commission shall be stated on the record and shall be final agency action pursuant to Iowa Code chapter 17A. If the commission reverses or modifies the department's decision, the department shall issue the appropriate superseding permit or letter of denial to the applicant. The letter of decision shall contain the reasons for the action regarding the permit.

65.10(8) *Complaint investigations.* Complaints of violations of Iowa Code chapter 455B and this rule, which are received by the department or are forwarded to the department by a county, following a county board of supervisor's determination that a complainant's allegation constitutes a violation, shall be investigated by the department if it is determined that the complaint is legally sufficient and an investigation is justified.

a. If after evaluating a complaint to determine whether the allegation may constitute a violation, without investigating whether the facts supporting the allegation are true or untrue, the county board of supervisors shall forward its finding to the department director.

b. A complaint is legally sufficient if it contains adequate information to investigate the complaint and if the allegation constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue, of rules adopted by the department, Iowa Code chapter 455B or environmental standards in regulations subject to federal law and enforced by the department.

c. The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of the threat to the quality of surface water or groundwater.

d. The department shall notify the complainant and the alleged violator if an investigation is not conducted specifying the reason for the decision not to conduct an investigation.

e. The department will notify the county board of supervisors where the violation is alleged to have occurred before doing a site investigation unless the department determines that a clear, present and impending danger to the public health or environment requires immediate action.

f. The county board of supervisors may designate a county employee to accompany the department on the investigation of any site as a result of a complaint.

g. A county employee accompanying the department on a site investigation has the same right of access to the site as the department official conducting the investigation during the period that the county designee accompanies the department official. The county shall not have access to records required in subrule 65.17(12) or the current manure management plan maintained at the facility.

h. Upon completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending or complete enforcement action arising from the investigation. The department shall deliver a copy of the notice to the animal feeding operation that is the subject of the complaint, any alleged violators if different from the animal feeding operation and the county board of supervisors of the county where the violation is alleged to have occurred.

i. When entering the premises of an animal feeding operation, both of the following shall apply to a person who is a departmental official, an agent of the department, or a person accompanying the departmental official or agent:

(1) The person may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter or the rules or standards adopted under this chapter. However, the owner or person in charge shall be notified.

1. If the owner or occupant of any property refuses admittance to the operation, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

2. In the application the director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the director, it shall be identified in the application.

3. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

4. In making inspections and searches pursuant to the authority of this rule, the director must execute the warrant:

- Within ten days after its date.
- In a reasonable manner, and any property seized shall be treated in accordance with the provisions of Iowa Code chapters 808, 809, and 809A.
- Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

(2) The person shall comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

567—65.11(455B) Confinement feeding operation separation distance requirements. All animal feeding operation structures shall be separated from locations and objects as specified in this rule regardless of whether a construction permit is required. Exceptions are allowed to the extent provided in 567—65.12(455B).

65.11(1) Separation from residences, businesses, churches, schools, public use areas, and thoroughfares shall be as specified in Iowa Code section 455B.162 and summarized in Table 6 and Table 7 at the end of this chapter. The residence, business, church, school, public use area or thoroughfare must exist at the time an applicant submits an application for a construction permit to the department or at the time construction of the animal feeding operation structure begins if a construction permit is not required.

65.11(2) Separation from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, major water sources and watercourses shall be as specified in Iowa Code section 455B.204 and summarized in Table 6 and Table 7 at the end of this chapter.

65.11(3) For structures constructed after March 20, 1996, the separation to wells shall be as specified in Table 6 and Table 7 at the end of this chapter.

65.11(4) Unformed manure storage structures shall not be constructed or expanded in an agricultural drainage well area as specified in Iowa Code section 455I.5.

65.11(5) The distance between animal feeding operation structures and locations or objects from which separation is required shall be measured horizontally by standard survey methods between the closest point of the location or object (not a property line) and the closest point of the animal feeding operation structure.

a. Measurement to an anaerobic lagoon or earthen manure storage basin shall be to the point of maximum allowable level of manure pursuant to paragraph 65.2(3)*"b."*

b. Measurement to a public use area shall be to the facilities which attract the public to congregate and remain in the area for significant periods of time, not to the property line.

c. Measurement to a major water source or watercourse shall be to the top of the bank of the stream channel of a river or stream or the ordinary high water mark of a lake or reservoir.

d. Measurement to a thoroughfare shall be to the closest point of the right-of-way.

e. The separation distance for an animal feeding operation structure qualifying for the exemption to separation distances under 65.12(3)*"b"*(1) shall be measured from the closest point of the animal feeding operation structure which is constructed or expanded after December 31, 1998.

567—65.12(455B) Exemptions to confinement feeding operation separation distance requirements.

65.12(1) As specified in Iowa Code section 455B.165, the separation required from residences, businesses, churches, schools, public use areas and thoroughfares specified in Iowa Code section 455B.162 and summarized in Table 6 and Table 7 at the end of this chapter shall not apply to the following:

a. A confinement feeding operation structure which stores manure exclusively in a dry form.

b. A confinement feeding operation structure, other than an unformed manure storage structure, if the structure is part of a small animal feeding operation.

c. An animal feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure is located, under such terms and conditions that the parties negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The benefited land is the land upon which is located the residence, business, church, school or public use area from which separation is required. The filed waiver shall preclude enforcement by the department of the separation distance requirements of Iowa Code section 455B.162.

d. An animal feeding operation structure closer than the distances in Table 6 and Table 7 at the end of this chapter from a residence, business, church, school or public use area, if the residence, business, church, school or public use area was constructed or expanded after the date that the animal feeding operation commenced operating. An animal feeding operation commences operating when it is first occupied by animals. A change in ownership or expansion of the animal feeding operation does not change the date the operation commenced operating.

65.12(2) As specified in Iowa Code section 455B.165(4), the separation required from thoroughfares specified in Iowa Code section 455B.162(5) and summarized in Table 6 and Table 7 at the end of this chapter shall not apply if permanent vegetation stands between the animal feeding operation structure and that part of the right-of-way from which separation is required. The permanent vegetation must be at least seedlings of plants with mature height of at least 20 feet and stand along the full length of the structure. The minimum vegetation requirement shall be a single row of conifers or columnar deciduous trees on 12- to 16-foot spacing. It is recommended that the advice of a professional forester or nursery stock expert, a department district forester or the Natural Resource Conservation Service be sought to identify tree species for a specific site.

65.12(3) As specified in Iowa Code section 455B.163, the separation required from residences, businesses, churches, schools, public use areas and thoroughfares specified in Iowa Code section 455B.162 and summarized in Table 6 and Table 7 at the end of this chapter shall not apply to confinement feeding operations constructed before the effective date of the separation distance in the following cases:

a. The confinement feeding operation continues to operate, but does not expand.

b. The animal feeding operation structure as constructed or expanded prior to January 1, 1999, complies with the distance requirements applying to that structure at the time of construction or expansion.

c. The confinement feeding operation expands on or after January 1, 1999, and any of the following apply:

(1) The animal feeding operation structure as constructed or expanded complies with the separation requirements. The separation required shall be based on the animal weight capacity of the entire confinement feeding operation, including existing and proposed structures.

(2) All of the following apply to the expansion:

1. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required.

2. The animal weight capacity of the confinement feeding operation which did not comply with a separation requirement that went into effect on May 31, 1995, after expansion is not more than the lesser double its capacity on May 31, 1995, or of 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine.

3. The animal weight capacity of a confinement feeding operation which complied with the separation requirements that went into effect on May 1, 1995, but did not comply with a separation requirement that went into effect on January 1, 1999, after expansion is not more than the lesser of double its capacity on January 1, 1999, or 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine.

(3) The confinement feeding operation is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures and all of the following apply:

1. The animal weight capacity of the portion of the operation that changes from unformed to formed manure storage does not increase.

2. Use of the replaced unformed manure storage structures is discontinued within one year after construction of the replacement formed manure storage structures.

3. The replacement formed manure storage structures do not provide more than 14 months of manure storage.

4. No portion of the operation after expansion is closer than before expansion to a location or object for which separation is required.

(NOTE: A construction permit is not required to construct the replacement formed manure storage structures if a permit would not be required for the construction if the unformed manure storage structures did not exist.)

65.12(4) As specified in Iowa Code section 455B.165(7), the separation required from a cemetery shall not apply to animal feeding operations structures on which construction or expansion began before January 1, 1999.

65.12(5) As specified in Iowa Code section 455B.204(3), the separation required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, major water sources and watercourses specified in Iowa Code section 455B.204 and summarized in Table 6 and Table 7 at the end of this chapter shall not apply to a farm pond, privately owned lake or a manure storage structure constructed with a secondary containment barrier according to subrule 65.15(17).

65.12(6) Variances to the well separation requirements may be granted by the director if the applicant provides an alternative that is substantially equivalent to the required separation or provides improved or greater protection for the well. Requests for a variance shall be made in writing at the time an application is submitted. The denial of a variance request may be appealed to the environmental protection commission.

567—65.13(455B) Separation distances from certain lakes, rivers and streams. Rescinded IAB 4/7/99, effective 5/12/99.

567—65.14(455B) Well separation distances for open feedlots. Open feedlots, open feedlot runoff control basins and open feedlot solids settling facilities shall be separated from wells as specified in Table 6 and Table 7 at the end of this chapter.

65.14(1) Rescinded IAB 4/7/99, effective 5/12/99.

65.14(2) Variances to this rule may be granted by the director if the applicant provides an alternative that is substantially equivalent to the rule or provides improved effectiveness or protection as required by the rule. Variance shall be made in writing at the time the application is submitted. The denial of a variance may be appealed to the commission.

567—65.15(455B) Manure storage structure design requirements. The requirements in this rule apply to all animal feeding operation structures unless specifically stated otherwise.

65.15(1) Drainage tile removal for new construction of a manure storage structure. Prior to constructing a manure storage structure, other than storage of manure in an exclusively dry form, the site for the animal feeding operation structure shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

a. Prior to excavation for the berm of an unformed manure storage structure, the owner of the unformed manure storage structure shall follow any one of the following procedures:

(1) An inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet from the original grade and at least 50 feet from the projected outside edge of the berm.

(2) A core trench shall be dug to a depth of at least 6 feet from grade at the projected center of the berm. After investigation for tile lines and any discovered tile lines are removed, an additional containment barrier shall be constructed underneath the center of the berm. The secondary containment shall meet the same percolation standards as the lagoon or basin with the lateral flow potential restricted to one-sixteenth of an inch per day.

b. The drainage tile lines discovered near an unformed manure storage structure shall be removed within 50 feet of the projected outside edge of the berm and within the projected site of the structure including under the berm. Drainage tile lines discovered upgrade from the structure shall be rerouted outside of 50 feet from the berm to continue the flow of drainage. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the unformed manure storage structure is located. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines.

c. The applicant for a construction permit for a formed manure storage structure shall investigate for tile lines during excavation for the structure. Drainage tile lines discovered upgrade from the structure shall be rerouted around the formed manure storage structure to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgrade tile lines. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located.

d. An owner of a confinement feeding operation may utilize other proven methods approved by the department to discover drainage tile lines.

e. Variances to this subrule may be granted by the director if the owner of the confinement feeding operation provides an alternative that is substantially equivalent to the subrule or provides improved effectiveness or protection as required by the subrule. A request for a variance shall be made in writing at the time the application is submitted or prior to investigating for drainage tile, whichever is earlier. The denial of a variance may be appealed to the commission.

f. A waiver to this subrule may be granted by the director if sufficient information is provided that the location does not have a history of drainage tile.

65.15(2) Drainage tile removal around an existing manure storage structure. The owner of an aerobic structure, anaerobic lagoon or earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, that is part of a confinement feeding operation with a construction permit granted before March 20, 1996, but after December 31, 1992, shall inspect by March 20, 1997, for drainage tile lines as provided in this subrule, and all applicable records of known drainage tiles shall be examined. The owner of an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, that is part of a confinement feeding operation with a construction permit granted before January 1, 1993, but after May 31, 1985, shall have an inspection conducted by July 1, 2000, for drainage tiles as provided in this subrule, and all applicable records of known drainage tiles shall be examined.

a. Inspection shall be by digging an inspection trench of at least ten inches wide around the structure to a depth of at least 6 feet from the original grade and at least 50 feet from the outside edge of the berm. The owner first shall inspect the area where trenching is to occur and manure management records to determine if there is any evidence of leakage and, if so, shall contact the department for further instructions as to proper inspection procedures. The owner of a confinement feeding operation shall either obtain permission from an adjoining property owner or trench up to the boundary line of the property if the distance of 50 feet would require the inspection trench to go onto the adjoining property.

b. The owner of the confinement feeding operation may utilize other proven methods approved by the department to discover drainage tile lines.

c. The drainage tile lines discovered near an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, shall be removed within 50 feet of the outside edge of the berm. Drainage tile lines discovered upgrade from the aerobic structure, anaerobic lagoon or earthen manure storage basin shall be rerouted outside of 50 feet from the berm to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines. Drainage tile lines that were installed at the time of construction to lower a groundwater table may either be avoided if the location is known or may remain at the location if discovered.

d. The owner of an aerobic structure, anaerobic lagoon, earthen manure storage structure or an earthen waste slurry storage basin with a tile drainage system to artificially lower the groundwater table shall have a device to allow monitoring of the water in the drainage tile lines that lower the groundwater table and to allow shutoff of the drainage tile lines if the drainage tile lines do not have a surface outlet accessible on the property where the aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin is located.

e. If the owner of the confinement feeding operation discovers drainage tile that projects underneath the berm, it shall follow one of the following options:

(1) Contact the department to obtain permission to remove the drainage tile under the berm. The manure in the structure must be lowered to a point below the depth of the tile prior to removing the drainage tile from under the berm. Prior to using the structure, a new percolation test must be submitted to the department and approval received from the department.

(2) Grout the length of the tile under the berm to the extent possible. The material used to grout shall include concrete, Portland cement concrete grout or similar materials.

f. Variances to this subrule may be granted by the director if the applicant provides an alternative that is substantially equivalent to the subrule or provides improved effectiveness or protection as required by the subrule. A request for a variance shall be made in writing. The denial of a variance may be appealed to the commission.

g. A waiver to this subrule may be granted by the director if sufficient information is provided that the location does not have a history of drainage tile.

h. A written record describing the actions taken to determine the existence of tile lines, the findings, and actions taken to comply with this subrule shall be prepared and maintained as part of the manure management plan records.

65.15(3) Guidelines for drainage tile removal around an existing manure storage structure.

a. It is recommended that a manure storage structure, other than the storage of manure in an exclusively dry form, that is part of a confinement feeding operation with a construction permit granted before May 31, 1985, be inspected for drainage tile lines as provided in this subrule, and all applicable records of known drainage tiles may be examined. For an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, inspection may be by digging an inspection trench of at least ten inches wide around the structure at a depth of at least 6 feet from the original grade and at least 50 feet from the projected outside edge of the berm. The owner first should inspect the area where trenching is to occur and manure management records to determine if there is any evidence of leakage and, if so, shall contact the department for further instructions as to proper inspection procedures.

b. The drainage tile lines discovered may be removed within 50 feet of the outside edge of the berm. Drainage tile lines discovered upgrade from the structure may be rerouted outside of 50 feet from the berm to continue the flow of drainage. Drainage tile lines that were installed at the time of construction to lower a groundwater table may either be avoided if the location is known or may remain at the location if discovered. All other drainage tile lines discovered may be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgrade tile lines. The owner of a confinement feeding operation should either obtain permission from an adjoining property owner or trench up to the boundary line of the property if the distance of 50 feet would require the inspection trench to go onto the adjoining property.

c. If the owner of a confinement feeding operation discovers drainage tile that projects underneath the berm, it may follow one of the following options:

(1) Contact the department to obtain permission to remove the drainage tile under the berm. The manure in the structure must be lowered to a point below the depth of the tile prior to removing the drainage tile from under the berm. Prior to using the structure, a new percolation test must be submitted to the department and approval received from the department.

(2) Grout the length of the tile under the berm to the extent possible. The material used to grout may include concrete, Portland cement concrete grout or similar materials.

d. The owner of a confinement feeding operation with a formed manure storage structure other than dry manure storage may inspect for tile lines. Drainage tile lines discovered upgrade from the structure may be rerouted around the formed manure storage structure to continue the flow of drainage. Drainage tile lines put in place during or after construction of the formed manure storage structure to relieve hydrologic pressure may remain where located. All other drainage tile lines discovered may be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgrade tile line.

65.15(4) Earthen waste slurry storage basins. An earthen waste slurry storage basin shall have accumulated manure removed at least twice each year unless there is sufficient basin capacity to allow removal of manure once each year and maintain freeboard as determined pursuant to 65.2(3)*"b."*

65.15(5) Earthen manure storage basins. An earthen manure storage basin shall have accumulated manure removed at least once each year. An earthen manure storage basin may have enough manure storage capacity to contain the manure from the confinement feeding operation for up to 14 months and maintain freeboard as determined pursuant to 65.2(3)*"b."*

65.15(6) Soil testing for earthen structures. Applicants for construction permits for earthen manure storage structures shall submit soils information according to this subrule for the site of the proposed structure. All subsurface soil classification shall be based on American Society for Testing and Materials Designations D 2487-92 or D 2488-90. Soil corings shall be taken to determine subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Soil corings shall be conducted by a qualified person normally engaged in soil testing activities. Data from the soil corings shall be submitted with a construction permit application and shall include a description of the geologic units encountered, and a discussion of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. All soil corings shall be taken by a method that identifies the continuous soil profile and does not result in the mixing of soil layers. The number and location of the soil corings will vary on a case-by-case basis as determined by the designing engineer and accepted by the department. The following are minimum requirements:

a. A minimum of four soil corings reflecting the continuous soil profile is required for each anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Corings which are intended to represent soil conditions at the corner of the structure must be located within 50 feet of the bottom edge of the structure and spaced so that one coring is as close as possible to each corner. Should there be no bottom corners, corings shall be equally spaced around the structure to obtain representative soil information for the site. An additional coring will be required if necessary to ensure that one coring is at the deepest point of excavation. For an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin larger than 4 acres water surface area, one additional coring per acre is required for each acre above 4 acres surface area.

b. All corings shall be taken to a minimum depth of ten feet below the bottom elevation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin.

c. At least one coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin or into bedrock, whichever is shallower.

d. Upon abandonment of the soil core holes, all soil core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

65.15(7) Hydrology.

a. Groundwater table. A minimum separation of four feet between the top of the liner on any earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor and the groundwater table is recommended; however, in no case shall the top of the liner on an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor be below the groundwater table. If the groundwater table is less than two feet below the top of the liner on an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor, the aerobic structure, anaerobic lagoon, or earthen manure storage basin shall be provided with a synthetic liner as described in 65.15(12)*"f."*

b. Permanent artificial lowering of groundwater table. The groundwater table around an anaerobic lagoon, aerobic structure, or earthen manure storage basin may be artificially lowered to levels required in paragraph *"a"* by using a gravity flow tile drainage system or other permanent nonmechanical system for artificial lowering of the groundwater table. For a permitted animal feeding operation, detailed engineering and soil drainage information shall be provided with a construction permit application for an earthen aerobic structure, anaerobic lagoon or earthen manure storage basin to confirm the adequacy of the proposed permanent system to provide the required drainage without materially increasing the seepage potential of the site. (See 65.15(1)*"b"* for monitoring and shutoff requirements for drainage tile lines installed to lower the groundwater table.) For formed manure storage structures partially or completely constructed below the normal soil surface, a tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure.

c. Determination of groundwater table. For purposes of this rule, groundwater table means the average annual high water table determined by a licensed professional engineer, and where a construction permit is required, approved by the department. Current groundwater levels shall be measured using three temporary monitoring wells by measuring the water level seven days after installation. The corings required in subrule 65.15(6) may be completed as temporary monitoring wells for this purpose. The monitoring well measurements, along with evaluation of site soils for indicative features such as color and mottling, other existing water table data, and other pertinent information shall be used to determine the average annual high water table. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.15(7)*"b,"* the level to which the groundwater table will be lowered will be considered to represent the average annual high water table.

65.15(8) Karst features. The anaerobic lagoon or earthen manure storage basin shall not be located on a site that exhibits Karst features such as sinkholes, or solution channeling generally occurring in areas underlain by limestone or dolomite.

65.15(9) Bedrock separation. A minimum of four feet of separation between an unformed manure storage structure bottom and any bedrock formation is required. A ten-foot separation is recommended. A synthetic liner shall be required if the unformed structure is to be located less than ten feet above a carbonate or limestone formation.

65.15(10) Flooding protection. The top of a manure storage structure shall be constructed at least one foot above the elevation of the 100-year flood.

65.15(11) Seals for anaerobic lagoons, aerobic structures, and earthen manure storage basins. A lagoon or basin shall be sealed such that seepage loss through the seal is as low as practically possible. The percolation rate shall not exceed 1/16 inch per day at the design depth of the lagoon or basin. Following construction of the lagoon or basin, the results of a testing program which indicates the adequacy of the seal shall be provided to this department in writing prior to start-up of a permitted operation. The owner of a confinement feeding operation not required to obtain a construction permit shall keep a record of the construction methods and materials used to provide the seal and any test results available on the adequacy of the seal.

65.15(12) Aerobic structure, anaerobic lagoon, or earthen manure storage basin liner design and construction standards. An aerobic structure, anaerobic lagoon or earthen manure storage basin which receives a construction permit after January 21, 1998, shall comply with the following minimum standards in addition to subrule 65.15(11).

a. If the location of the proposed aerobic structure, anaerobic lagoon or earthen manure storage basin contains suitable materials as determined by the soil corings taken pursuant to subrule 65.15(6), those materials shall be compacted to establish a minimum of a 12-inch liner. A minimum initial overexcavation of 6 inches of material shall be required. The underlying material shall be scarified, reworked and compacted to a depth of 6 inches. The overexcavated materials shall be replaced and compacted.

b. If the location of the proposed aerobic structure, anaerobic lagoon or earthen manure storage basin does not contain suitable materials as determined by the soil corings taken in subrule 65.15(6), suitable materials shall be compacted to establish a minimum of a 24-inch liner.

c. Where sand seams, gravel seams, organic soils or other materials that are not suitable are encountered during excavation, the area where they are discovered shall be overexcavated a minimum of 24 inches and replaced with suitable materials and compacted.

d. All loose lift material must be placed in lifts of nine inches or less and compacted. The material shall be compacted at or above optimum moisture content and meet a minimum of 95 percent of the maximum density as determined by the Standard Proctor test after compaction.

e. For purposes of this rule, suitable materials means soil, soil combinations or other similar material that is capable of meeting the permeability and compaction requirements. Sand seams, gravel seams, organic soils or other materials generally not suitable for anaerobic lagoon, aerobic structure, or earthen manure storage basin construction are not considered suitable materials.

f. As an alternative to the above standards, a synthetic liner may be used. If the use of a synthetic liner is planned for an earthen aerobic structure, an anaerobic lagoon, or earthen manure storage basin, the permit application shall outline how the site will be prepared for placement of the liner, the physical, chemical, and other pertinent properties of the proposed liner, and information on the procedures to be used in liner installation and maintenance. In reviewing permit applications which involve use of synthetic liners, DNR will consider relevant synthetic liner standards adopted by industry, governmental agencies, and professional organizations as well as technical information provided by liner manufacturers and others.

65.15(13) Anaerobic lagoon design standards. An anaerobic lagoon shall meet the requirements of this subrule.

a. General.

(1) Depth. Liquid depth shall be at least 8 feet but 15 to 20 feet is preferred if soil and other site conditions allow.

(2) Inlet. One subsurface inlet at the center of the lagoon or dual (subsurface and surface) inlets are preferred to increase dispersion. If a center inlet is not provided, the inlet structure shall be located at the center of the longest side of the anaerobic lagoon.

(3) Shape. Long, narrow anaerobic lagoon shapes decrease manure dispersion and should be avoided. Anaerobic lagoons with a length-to-width ratio of greater than 3:1 shall not be allowed.

(4) Aeration. Aeration shall be treatment as an "add-on process" and shall not eliminate the need for compliance with all anaerobic lagoon criteria contained in these rules.

(5) Manure loading frequency. The anaerobic lagoon shall be loaded with manure and dilution water at least once per week.

(6) Design procedure. Total anaerobic lagoon volume shall be determined by summation of minimum stabilization volume; minimum dilution volume (not less than 50 percent of minimum stabilization volume); manure storage between periods of disposal; and storage for 8 inches of precipitation.

(7) Manure storage period. Annual or more frequent manure removal from the anaerobic lagoon, preferably prior to May 1 or after September 15 of the given year, shall be practiced to minimize odor production. Design manure storage volume between disposal periods shall not exceed the volume required to store 14 months' manure production. Manure storage volume shall be calculated based on the manure production values found in Table 5 at the end of this chapter.

b. Minimum stabilization volume and loading rate.

(1) For all animal species other than beef cattle, there shall be 1000 cubic feet minimum design volume for each 5 pounds of volatile solids produced per day if the volatile solids produced per day are 6000 pounds or fewer and for each 4 pounds if the volatile solids produced per day are more than 6000 pounds. For beef cattle, there shall be 1000 cubic feet minimum design volume for each 10 pounds of volatile solids produced per day.

(2) In Lyon, Sioux, Plymouth, Woodbury, Osceola, Dickinson, Emmet, Kossuth, O'Brien, Clay, Palo Alto, Cherokee, Buena Vista, Pocahontas, Humboldt, Ida, Sac, Calhoun, and Webster counties for all animal species other than beef there shall be 1000 cubic feet minimum design volume for each 4.5 pounds of volatile solids per day if the volatile solids produced per day are 6000 pounds or fewer. However, if a water analysis as required in 65.15(3)*"c"*(2) below indicates that the sulfate level is below 500 milligrams per liter, then the rate is 1000 cubic feet for each 5.0 pounds of volatile solids per day.

(3) Credit shall be given for removal of volatile solids from the manure stream prior to discharge to the lagoon. The credit shall be in the form of an adjustment to the volatile solids produced per day. The adjustments shall be at the rate of 0.50 pound for each pound of volatile solids removed. For example, if a swine facility produces 7000 pounds of volatile solids per day, and if 2000 pounds of volatile solids per day are removed, the volatile solids produced per day would be reduced by 1000 pounds, leaving an adjusted pounds of volatile solids produced per day of 6000 pounds (for which the loading rate would be 5 pounds according to subparagraph (1) above).

(4) Credit shall be given for mechanical aeration if the upper one-third of the lagoon volume is mixed by the aeration equipment and if at least 50 percent of the oxygen requirement of the manure is supplied by the aeration equipment. The credit shall be in the form of an increase in the maximum loading rate (which is the equivalent of a decrease in the minimum design volume) in accordance with Table 8.

(5) If a credit for solids removal is given in accordance with subparagraph (3) above, the credit for qualified aeration shall still be given. The applicant shall submit evidence of the five-day biochemical oxygen demand (BOD5) of the manure after the solids removal so that the aeration credit can be calculated based on an adjustment rate of 0.50 pound for each pound of solids removed.

(6) American Society of Agricultural Engineers (ASAE) standards, "Manure Production and Characteristics," D384.1, or Midwest Plan Service-18 (MWPS-18), Table 2-1, shall be used in determining the BOD5 production and volatile solid production of various animal species.

c. Water supply.

(1) The source of the dilution water discharged to the anaerobic lagoon shall be identified.

(2) The sulfate concentration of the dilution water to be discharged to the anaerobic lagoon shall be identified. The sulfate concentration shall be determined by standard methods as defined in 567—60.2(455B).

(3) A description of available water supplies shall be provided to prove that adequate water is available for dilution. It is recommended that, if the sulfate concentration exceeds 250 mg/l, then an alternate supply of water for dilution should be sought.

d. Initial lagoon loading. Prior to the discharge of any manure to the anaerobic lagoon, the lagoon shall be filled to a minimum of 50 percent of its minimum design volume with fresh water.

e. Lagoon manure and water management during operation. Following initial loading, the manure and water content of the anaerobic lagoon shall be managed according to either of the following:

(1) For single cell lagoons or multicell lagoons without a site-specific lagoon operation plan. The total volume of fresh water for dilution added to the lagoon annually shall equal one-half the minimum design volume. At all times, the amount of fresh water added to the lagoon shall equal or exceed the amount of manure discharged to the lagoon.

(2) For a two or three cell anaerobic lagoon. The manure and water content of the anaerobic lagoon may be managed in accordance with a site-specific lagoon operation plan approved by the department. The lagoon operation plan must describe in detail the operational procedures and monitoring program to be followed to ensure proper operation of the lagoon. Operational procedures shall include identifying the amounts and frequencies of planned additions of manure, fresh water and recycle water, and amount and frequencies of planned removal of solids and liquids. Monitoring information shall include locations and intervals of sampling, specific tests to be performed, and test parameter values used to indicate proper lagoon operation. As a minimum, annual sampling and testing of the first lagoon cell for electrical conductivity (EC) and either chemical oxygen demand (COD) or ammonia (NH4-N) shall be required.

f. Manure removal. If the anaerobic lagoon is to be dewatered once a year, manure should be removed to approximate the annual manure volume generated plus the dilution water used. If the anaerobic lagoon is to be dewatered more frequently, the anaerobic lagoon liquid level should be managed to maintain adequate freeboard.

65.15(14) Concrete standards. A concrete formed manure storage structure, other than for the storage of manure in an exclusively dry form in a roofed structure, that is part of a confinement feeding operation which receives a construction permit after January 21, 1998, shall meet the minimum design and construction standards as described in this rule.

a. All concrete used in the construction of the formed manure storage structure shall have a minimum compressive strength of 4000 pounds per square inch (psi) as batched and delivered for use and meet the engineering design standards as placed. However, the minimum compressive strength for concrete used in footings shall be 3000 psi as batched and delivered for use and meet the engineering design standards as placed. All rebar used in the construction of the concrete formed manure storage structure shall be made of a minimum of grade 40 steel.

b. The floor of a concrete formed manure storage structure shall be a minimum of 5 inches thick. The floor of any concrete formed manure storage structure with a designed manure storage depth of 48 inches or more shall be reinforced with a minimum of either 6 × 6-W1.4 × W1.4 welded wire fabric (formed by 0.014 square inch cross-sectional area steel wires at right angles spaced 6 inches apart in each direction) or #4 rebar placed a maximum of 18 inches on center in each direction, or the steel equivalent.

c. The load-bearing walls of any concrete formed manure storage structure with a designed manure storage depth of less than 120 inches shall be a minimum of 6 inches thick. The load-bearing walls of any concrete formed manure storage structure with a designed manure storage depth of 120 inches or greater shall be a minimum of 8 inches thick. The walls shall be reinforced with a minimum of either #4 rebar placed a maximum of 18 inches on center in each direction or the steel equivalent.

d. All load-bearing walls shall be formed with rigid forming systems and shall not be ground formed.

e. All construction joints of the formed manure storage structure shall be poured to prevent discontinuity of steel and concrete and have rebar placed through the joint that is properly spliced and overlaid.

65.15(15) Berm erosion control.

a. The following requirements shall apply to any anaerobic lagoons, earthen aerobic structures, or earthen manure storage basins constructed after May 12, 1999.

(1) Concrete, riprap, synthetic liners or similar erosion control materials or measures shall be used on the berm surface below pipes where manure will enter the anaerobic lagoon, aerobic structure, or earthen manure storage basin.

(2) Concrete, riprap, synthetic liners or similar erosion control materials or measures of sufficient thickness and area to accommodate manure removal equipment and to protect the integrity of the liner shall be placed at all locations on the berm, side slopes, and base of the anaerobic lagoon, aerobic structure, or earthen manure storage basin where agitation or pumping may cause damage to the liner.

(3) Erosion control materials or measures shall be used at the corners of the anaerobic lagoon, aerobic structure, or earthen manure storage basin.

b. The owner of a confinement feeding operation with an anaerobic lagoon, earthen aerobic structure, earthen manure storage basin, earthen waste slurry storage basin, or earthen egg washwater storage structure shall inspect the structure berms at least semiannually for evidence of erosion. Erosion problems found which may impact either structural stability or liner integrity shall be corrected in a timely manner.

65.15(16) Agricultural drainage wells. After May 29, 1997, a person shall not construct a new or expand an existing earthen aerobic structure, earthen anaerobic lagoon, earthen manure storage basin, earthen waste slurry storage basin, or earthen egg washwater storage structure within an agricultural drainage well area.

65.15(17) Secondary containment barriers for manure storage structures. Secondary containment barriers used to qualify any operation for the exemption provision in subrule 65.12(5) shall meet the following:

a. A secondary containment barrier shall consist of a structure surrounding or downslope of a manure storage structure that is designed to contain 120 percent of the volume of manure stored above the manure storage structure's final grade. If the containment barrier does not surround the manure storage structure, upland drainage must be diverted.

b. The barrier may be constructed of earth, concrete, or a combination of both and shall not have a relief outlet or valve.

c. The base shall slope to a collecting area where storm water can be pumped out. If storm water is contaminated with manure, it shall be land-applied at normal fertilizer application rates in compliance with rule 65.3(455B).

d. Secondary containment barriers constructed entirely or partially of earth shall comply with the following requirements:

(1) The soil surface, including dike, shall be constructed to prevent downward water movement at rates greater than 1×10^{-6} cm/sec and shall be maintained to prevent downward water movement at rates greater than 1×10^{-5} cm/sec.

(2) Dikes shall not be steeper than 45 degrees and shall be protected against erosion. If the slope is 19 degrees or less, grass can be sufficient protection, provided it does not interfere with the required soil seal.

(3) The top width of the dike shall be no less than 3 feet.

e. Secondary containment barriers constructed of concrete shall be watertight and comply with the following requirements:

(1) The base of the containment structure shall be designed to support the manure storage structure and its contents.

(2) The concrete shall be routinely inspected for cracks, which shall be repaired with a suitable sealant.

65.15(18) Human sanitary waste shall not be directed to a manure storage structure or egg washwater storage structure.

65.15(19) Requirements for qualified operations. A confinement feeding operation that meets the definition of a qualified operation shall only use an aerobic structure for manure storage and treatment. This requirement does not apply to a confinement feeding operation that only handles manure in a dry form or to an egg washwater storage structure or to a confinement feeding operation which was constructed before May 31, 1995, and does not expand.

567—65.16(455B) Manure management plan requirements.

65.16(1) In accordance with Iowa Code section 455B.202, the following persons are required to submit manure management plans to the department:

a. An applicant for a construction permit for a confinement feeding operation. However, a manure management plan shall not be required of an applicant for an egg washwater storage structure.

b. The owners of confinement feeding operations, other than a small animal feeding operation, if the operation was constructed or expanded after May 31, 1985, and regardless of whether the operation was required to have a construction permit. Owners of confinement feeding operations which submitted a manure management plan are not required to submit a new plan if the plan meets the requirements of Iowa Code section 455B.200 which are summarized in 65.17(455B). Persons who have previously submitted manure management plans which do not meet the current plan requirements, and persons who have not previously submitted a manure management plan but are now required to do so, have until July 1, 1999, to submit a manure management plan which meets the requirements.

c. A person who applies manure in Iowa that was produced in a confinement feeding operation, other than a small operation, located outside of Iowa.

d. A research college is exempt from this subrule and the manure management plan requirements of rule 65.17(455B) for research activities and experiments performed under the authority of the research college and related to animal feeding operations.

65.16(2) The department shall review and approve or disapprove all complete manure management plans within 60 days of the date they are received.

65.16(3) Manure shall not be removed from a manure storage structure, which is part of a confinement feeding operation required to submit a manure management plan, until the department has approved the plan. As an exception to this requirement, during calendar year 1999, the owner of a confinement feeding operation may remove and apply manure from a storage structure in accordance with a manure management plan which has been submitted to the department, but which has not been approved within the required 60-day period. Manure shall be applied in compliance with rule 65.2(455B).

65.16(4) All persons required to submit a manure management plan to the department shall also pay to the department an indemnity fee as required in Iowa Code section 455J.3 except those operations constructed prior to May 31, 1995, which were not required to obtain a construction permit.

567—65.17(455B) Manure management plan content requirements. All manure management plans submitted after January 1, 1999, or when forms are available, whichever is later, are to be submitted on forms prescribed by the department. The plans shall include all of the information specified in Iowa Code section 455B.203 and described below.

65.17(1) *General.*

a. A confinement feeding operation that is required to submit a manure management plan to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. Nitrogen application rates shall be based on total nitrogen content of the manure unless the calculations are submitted to show that crop usage rates based on plant available nitrogen have not been exceeded for the crop schedule submitted. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources including, but not limited to, Iowa State University, the United States Department of Agriculture, a licensed professional engineer, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) program, the Certified Crop Advisors (CCA) program, or the Registry of Environmental and Agricultural Professionals (REAP) program.

b. Manure management plans shall comply with the minimum manure control requirements of 65.2(455B) and the requirements for land application of manure in 65.3(455B).

c. All manure management plans shall include:

(1) The owner and the name of the confinement feeding operation, including mailing address and telephone number.

(2) The contact person for the confinement feeding operation, including mailing address and telephone number.

(3) The location of the confinement feeding operation and the animal weight capacity of the operation.

65.17(2) *Manure management plans for sales of manure.* Selling manure means the transfer of ownership of the manure for monetary or other valuable consideration. Selling manure does not include a transaction where the consideration is the value of the manure, or where an easement, lease or other agreement granting the right to use the land only for manure application is executed.

a. Confinement feeding operations that will sell dry manure as a commercial fertilizer or soil conditioner regulated by the department of agriculture and land stewardship under Iowa Code chapter 200 or 200A shall submit documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A.

b. A confinement feeding operation not fully covered by paragraph *"a"* above and has an established practice of selling manure, or the confinement feeding operation that contains an animal species for which selling manure is a common practice shall submit a manure management plan that includes the following:

(1) An estimate of the number of acres required for manure application calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the crop usage rate. Crop usage rate may be estimated by using a corn crop usage rate factor and an estimate of the optimum crop yield for the property in the vicinity of the confinement feeding operation.

(2) The total nitrogen available to be applied from the confinement feeding operation.

(3) An estimate of the annual animal production and manure volume or weight produced.

(4) A manure sales form, if manure will be sold, shall include the following information:

1. A place for the name and address of the buyer of the manure.
2. A place for the quantity of manure purchased.
3. The optimum crop yield usage rate for the crops indicated in the crop schedule.
4. A place for manure application methods and the timing of manure application.

5. A place for the location of field where the manure will be applied including the number of acres where the manure will be applied.

6. A place for the manure application rate.

(5) Statements of intent if the manure will be sold. The number of acres indicated in the statements of intent shall be sufficient according to the manure management plan to apply the manure from the confinement feeding operation. The permit holder for an existing confinement feeding operation with a construction permit may submit past records of manure sales instead of statements of intent. The statements of intent shall include the following information:

1. The name and address of the person signing the statement.

2. A statement indicating the intent of the person to purchase the confinement feeding operation's manure.

3. The location of the farm where the manure can be applied including the total number of acres available for manure application.

4. The signature of the person who may purchase the confinement feeding operation's manure.

(6) The owner shall maintain in the owner's records a current manure management plan and copies of all of the manure sales forms completed and signed by each buyer of the manure and the applicant for three years. An owner of a confinement feeding operation shall not be required to maintain current statements of intent as part of the manure management plan.

65.17(3) *Manure management plan for nonsales of manure.* Confinement feeding operations that will not sell all of their manure shall submit the following for that portion of the manure which will not be sold:

a. Calculations to determine the land area required for manure application.

b. The total nitrogen available to be applied from the confinement feeding operation.

c. The optimum crop yield and crop usage rate for the crops indicated in the crop schedule.

d. Manure application methods and timing of the application.

e. The location of manure application.

f. An estimate of the annual animal production and manure volume or weight produced.

g. Methods, structures or practices that will be used to reduce soil loss and prevent surface water pollution.

h. Methods or practices that will be utilized to reduce odor if spray irrigation equipment is used to apply manure.

65.17(4) *Manure management plan calculations to determine land area required for manure application.*

a. The number of acres of cropland needed for manure application shall be calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the crop usage rate.

b. Manure from a confinement feeding operation may be applied in excess of the annual crop usage rate if soil testing determines that phosphorus or potassium levels are below recommended levels. However, maximum manure application rates shall not exceed 1.5 times the annual crop nitrogen usage rate; or, that rate which provides the recommended amount of phosphorus or potassium, whichever is more limiting, to obtain the optimum crop yield.

c. Nitrogen in addition to that allowed in the manure management plan may be applied up to the amounts, indicated by soil or crop nitrogen test results, necessary to obtain the optimum crop yield.

65.17(5) *Total nitrogen available from the confinement feeding operation.*

a. To determine the nitrogen content of the manure per year, use the factors in Table 3, "Annual Pounds of Nitrogen Per Space of Capacity," at the end of this chapter multiplied by the number of spaces. If the table is not used to determine the nitrogen content of the manure per year, other credible sources for standard table values or the actual nitrogen content of the manure may be used. The actual nitrogen content shall be determined by a laboratory analysis of the manure from the manure storage structure or from a manure storage structure with similar design and management as the confinement feeding operation's manure storage structure.

b. Credit for nitrogen from legume production in the year prior to growing corn or other grass crops shall be deducted from the total nitrogen to be applied according to the crop schedule submitted. Any planned commercial fertilizer nitrogen shall also be deducted from the total nitrogen that can be applied from manure sources.

c. The correction factor for nitrogen losses shall be determined for the method of application by the following, or from other credible sources for standard nitrogen loss values.

Surface-apply dry with no incorporation	0.70
Surface-apply liquids with no incorporation	0.75
Surface-apply liquid or dry with incorporation within 24 hours	0.95
Surface-apply liquid or dry with incorporation after 24 hours	0.80
Knifed in or soil injection of liquids	0.98
Irrigated liquids with no incorporation	0.60

65.17(6) *Calculating the crop usage rate.*

a. The optimum crop yield shall be determined for the cropland where the manure is to be applied. Any of the following methods for calculating the optimum crop yield may be used. To determine the optimum crop yield, the applicant may either exclude the lowest crop yield for the period of the crop schedule in the determination or allow for a crop yield increase of 10 percent. In using these methods, adjustment to update yield averages to current yield levels may be made if it can be shown that the available yield data is not representative of current yields.

(1) Soil survey interpretation record. The plan shall include a soil type map showing soil types for the fields where manure will be applied. The optimum crop yield for each field shall be determined by using the weighted average of the soil interpretation record yields for the soils on the cropland where the manure is to be applied. Soil interpretation records from the Natural Resources Conservation Service shall be used to determine yields based on soil type.

(2) Consolidated farm service agency yields. The plan shall include a copy of the consolidated farm service agency's determined crop yield or verified yield data for the cropland where the manure is to be applied.

(3) Countywide crop insurance yields. The plan shall include a copy of the county average yields established for crops covered by the catastrophic crop insurance program administered by the consolidated farm service agency.

(4) Multiperil crop insurance proven yields. Yields established for the purpose of purchasing multiperil crop insurance shall be used as proven yield data. A copy of the yield information on the multiperil crop insurance form shall be submitted as proven yield verification. The optimum yield determined for each crop shall be the average of at least three years' yield data.

(5) Proven yields. The plan shall include the proven yield for the cropland that will be used for manure application and indicate the method used in determining the proven yield. Proven yields can only be used if a minimum of the most recent three years of yield data is submitted. The proven yields may exclude years in which a crop disaster occurred on the field or farm. These yields can be proven on a field-by-field or farm-by-farm basis.

(6) USDA county crop yields. The plan shall include the county yield data from the USDA Iowa Agricultural Statistics Service.

b. Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map can be used to indicate crop plans by field or farm. These plans shall name the crop that is planned to be grown in each successive growing season beginning with the crop planned or actually grown during the year this plan is submitted. Records shall be maintained of a multiyear planned crop schedule, including the crop grown, or planned to be grown for the current year and the planned crops for successive years. The confinement feeding operation owner shall not be penalized for exceeding the nitrogen application rate for an unplanned crop, if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances.

c. Crop usage rates. Crop nitrogen requirements may be based on the values in Table 4 at the end of this chapter or other credible sources. The corn crop usage rate and the optimum corn crop yield instead of the table value for a legume crop for those years in the crop schedule that are part of a corn/legume rotation may be used.

65.17(7) *Manure application methods and timing.*

a. The manure management plan shall identify the methods that will be used to land-apply the confinement feeding operation's manure. Methods to land-apply the manure may include, but are not limited to, surface-apply dry with no incorporation, surface-apply liquids with no incorporation, surface-apply liquid or dry with incorporation within 24 hours, surface-apply liquid or dry with incorporation after 24 hours, knifed in or soil injection of liquids, or irrigated liquids with no incorporation.

b. The manure management plan shall identify the approximate time of year that land application of manure is planned. The time of year may be identified by season or month.

65.17(8) *Location of manure application.*

a. The manure management plan shall identify each farm where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.

b. The manure management plan shall include a copy of each written agreement executed with the owner of the land where manure will be applied. The written agreement shall indicate the acres on which manure from the confinement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation.

c. The current manure management plan must also include a copy of each written agreement executed with the landowner when the location where the manure will be applied to land not owned or rented for crop production by the owner of the confinement feeding operation is changed. If a present location becomes unavailable for manure application, additional land for manure application shall be identified in the current manure management plan prior to the next manure application period.

65.17(9) *Estimate of annual animal production and manure volume or weight produced.* Volumes or weights of manure produced shall be estimated based on the numbers of animals, species, and type of manure storage used. The plan shall list the annually expected number of production animals by species. The volume of manure may be estimated based on the values in Table 5 at the end of this chapter and submitted as a part of the plan. If the plan does not use the table to determine the manure volume, other credible sources for standard table values or the actual manure volume from the confinement feeding operation may be used.

65.17(10) *Methods to reduce soil loss and potential surface water pollution.* The manure management plan shall include an identification of the methods, structures or practices that will be used to prevent or diminish soil loss and potential surface water pollution during the application of manure. The plan shall include a summary or copy of the conservation plan for the cropland where manure from the animal feeding operation will be applied if the manure will be applied on highly erodible cropland. The conservation plan shall be the conservation plan approved by the local soil and water conservation district or its equivalent. The summary of the conservation plan shall identify the methods, structures or practices that are contained in the conservation plan. The manure management plan may include additional information such as whether the manure will be injected or incorporated or the type of manure storage structure.

65.17(11) *Spray irrigation.* Requirements contained in subrules 65.3(2) and 65.3(3) regarding the use of spray irrigation equipment to apply manure shall be followed. A plan which has identified spray irrigation equipment as the method of manure application shall identify any additional methods or practices to reduce potential odor, if any other methods or practices will be utilized.

65.17(12) *Current manure management plan.* The owner of a confinement feeding operation which is required to submit a manure management plan shall maintain a current manure management plan at the site of the confinement feeding operation unless other arrangements acceptable to the department are made so that a copy of the current plan can be made available to the department within two working days after being requested. The plan shall include completed manure sales forms for a confinement feeding operation from which manure is sold. If manure management practices change, a person required to submit a manure management plan shall make appropriate changes consistent with this rule. If values other than the standard table values are used for manure management plan calculations, the source of the values used shall be identified.

65.17(13) *Record keeping.* Records shall be maintained by the owner of a confinement feeding operation which is required to submit a manure management plan. This recorded information shall be maintained for three years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the confinement feeding operation unless other arrangements acceptable to the department are made so that a copy can be made available to the department within two working days after being requested by the department for inspection pursuant to Iowa Code section 455B.203. Records to demonstrate compliance with the manure management plan shall include:

a. Methods of application when manure from the confinement feeding operation was applied.

b. Date(s) when the manure from the confinement feeding operation was applied or sold.

c. Location of the field where the manure from the confinement feeding operation was applied, including the number of acres.

d. The manure application rate.

65.17(14) *Record inspection.* The department may inspect a confinement feeding operation at any time during normal working hours and may inspect the manure management plan and any records required to be maintained. As required in Iowa Code section 455B.203(5), Iowa Code chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

a. Upon waiver by the owner of the confinement feeding operation.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

65.17(15) *Enforcement action.* An owner required to provide the department a manure management plan pursuant to this rule who fails to provide the department a plan or who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than assessment of a civil penalty pursuant to Iowa Code section 455B.191.

567—65.18(455B) Construction certification. A confinement feeding operation which obtains a construction permit after March 20, 1996, shall submit to the department a certification from a licensed professional engineer that the manure storage structure in which manure is stored in a liquid or semiliquid form or the egg washwater storage structure was:

1. Constructed in accordance with the design plan. If actual construction deviates from the approved plans, identify all changes and certify that the changes were consistent with the standards of these rules or statute;

2. Supervised by the licensed professional engineer or a designee of the engineer during critical points of the construction. A designee shall not be the permittee, owner of the confinement feeding operation, a direct employee of the permittee or owner, or the contractor or an employee of the contractor;

3. Inspected by the licensed professional engineer after completion of construction and before commencement of operation; and

4. Constructed in accordance with the drainage tile removal standards of subrule 65.15(1), and including a report of the findings and actions taken to comply with this subrule.

567—65.19(455B) Manure applicators certification.

65.19(1) After March 2, 1999, a commercial manure applicator and a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. Certification of a commercial manure applicator under this rule will also satisfy the commercial license requirement under 567—Chapter 68 only as it applies to manure removal and application. Each person who operates a manure applicating vehicle or equipment must be certified individually except as allowed in subrule 65.19(6).

65.19(2) Certification requirements. To be certified as a commercial or a confinement site manure applicator by the department, a person must do all of the following:

a. Apply for certification on a form provided by the department.

b. Pay the required certification fee of $50.

c. Pass the examination given by the department or in lieu of the examination attend continuing instruction courses as described in subrule 65.19(5).

65.19(3) Certification term.

a. Certification for a confinement site applicator shall be for a period of three years.

b. Certification for a commercial manure applicator shall be for a period of one year.

65.19(4) Examinations.

a. Persons wishing to take the examination required to become certified commercial manure applicators or certified confinement site manure applicators may request a listing of dates and locations of examinations. The applicant must have a photo identification card at the time of taking the examination.

b. If a person fails the examination, the person may reapply.

c. Upon written request by an applicant, the director will consider the presentation of an oral examination on an individual basis when the applicant has failed the written examination at least twice; and the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning.

65.19(5) Continuing instruction courses in lieu of examination.

a. To establish or maintain certification and license, a commercial manure applicator must each year either pass an examination or attend three hours of continuing instructional courses.

b. To establish or maintain certification, a confinement site manure applicator must either pass an examination every three years or attend two hours of continuing instructional courses each year.

c. Application for renewal of a certification must be received by the department or postmarked by the expiration date of the certification. Application shall be on forms provided by the department and shall include:

(1) Certification renewal fee.

(2) A passing grade on the certification examination or proof of attending the required hours of continuing instructional courses.

d. A commercial manure applicator or a confinement site manure applicator may not continue to apply manure after expiration of a certificate.

65.19(6) Exemption from certification.

a. Certification as a commercial manure applicator is not required of a person who is any of the following:

(1) Actively engaged in farming who trades work with another such person.

(2) Employed by a person actively engaged in farming not solely as a manure applicator who applies manure as an incidental part of the person's general duties.

(3) Engaged in applying manure as an incidental part of a custom farming operation.

(4) Engaged in applying manure as an incidental part of a person's duties.

(5) Applying manure within a period of 30 days from the date of initial employment as a commercial manure applicator if the person applying the manure is acting under direct instructions and control of a certified commercial manure applicator who is physically present at the manure application site by being in sight or hearing distance of the supervised person where the certified commercial applicator can physically observe and communicate with the supervised person at all times.

(6) Employed by a research college to apply manure from animal feeding operations that are part of the research activities or experiments of the research college.

b. Certification as a confinement site manure applicator is not required of a person who is either of the following:

(1) A part-time employee of a confinement site manure applicator and is acting under direct instruction and control of a certified commercial manure applicator who is physically present at the manure application site by being in sight or hearing distance of the supervised person where the certified commercial manure applicator can physically observe and communicate with the supervised person at all times.

(2) Employed by a research college to apply manure from an animal feeding operation that is part of the research activities or experiments of the research college.

65.19(7) Certified commercial manure applicators have the following obligations:

a. Maintain the following records of manure disposal operations for a period of three years:

(1) A copy of instructions for manure application provided by the owner of the animal feeding operation.

(2) Dates that manure was applied or sold.

(3) The manure application rate.

(4) Location of fields where manure was applied.

b. Comply with the provisions of the manure management plan (MMP) prepared for the animal feeding operation and the requirements of 65.2(455B). If a manure management plan does not exist, the requirements of 65.2(455B) must still be met.

c. Any tanks or equipment used for hauling manure shall not be used for hauling hazardous or toxic wastes, as defined in 567—Chapter 131, or other wastes detrimental to land application and shall not be used in a manner that would contaminate a potable water supply or endanger the food chain or public health.

d. Pumps and associated piping on manure handling equipment shall be installed with watertight connections to prevent leakage.

e. Any vehicle used by a certified commercial manure applicator to transport manure on a public road shall display the certification/license number(s) of the certified applicator with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure applicator shall also be prominently displayed on the side of the tank or vehicle.

f. Direct connection shall not be made between a potable water source and the tank or equipment on the vehicle.

65.19(8) Discipline of certified applicators.

a. Disciplinary action may be taken against a certified commercial manure applicator or confinement site manure applicator on any of the following grounds:

(1) Violation of state law or rules applicable to certified manure applicators or the handling or application of manure.

(2) Failure to maintain required records of manure application or other reports required by this rule.

(3) Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

b. Disciplinary sanctions allowable are:

(1) Revocation of a certificate.

(2) Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional training or reexamination may be required as a condition of probation.

c. The procedure for discipline is as follows:

(1) The director shall initiate disciplinary action.

(2) Written notice shall be given to an applicator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The applicator shall be given 20 days to present any relevant facts and indicate the person's position in the matter and to indicate whether informal resolution of the matter may be reached.

(3) An applicator who receives notice shall communicate verbally or in writing or in person with the director, and efforts shall be made to clarify the respective positions of the applicator and director.

(4) Failure to communicate facts and position relevant to the matter by the required date may be considered when determining appropriate disciplinary action.

(5) If agreement as to appropriate disciplinary sanction, if any, can be reached with the applicator and the director, a written stipulation and settlement between the department and the applicator shall be entered. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the applicator, and the reasons for the particular sanctions imposed.

(6) If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 561—Chapter 7 related to contested and certain other cases pertaining to license discipline.

65.19(9) Revocation of certificates. Upon revocation of a certificate, application for certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

65.19(10) Record inspection. The department may inspect, with reasonable notice, the records maintained by a commercial applicator. If the records are for an operation required to maintain records to demonstrate compliance with a manure management plan, the confidentiality provisions of subrule 65.17(14) and Iowa Code section 455B.203 shall extend to the records maintained by the applicator.

567—65.20(455B) Manure storage indemnity fund. The manure storage indemnity fund created in Iowa Code chapter 455J will be administered by the department. Moneys in the fund shall be used for the exclusive purpose of administration of the fund and the cleanup of eligible facilities at confinement feeding operation sites.

65.20(1) *Eligible facility site.* The site of a confinement feeding operation which contains one or more animal feeding operation structures is an eligible site for reimbursement of cleanup costs if one of the following conditions exists:

a. A county has acquired title to real estate containing the confinement feeding operation following nonpayment of taxes and the site includes a manure storage structure which contains stored manure or site contamination originating from the confinement feeding operation.

b. A county or the department determines that the confinement feeding operation has caused a clear, present and impending danger to the public health or environment.

65.20(2) *Site cleanup.* Site cleanup includes the removal and land application or disposal of manure from an eligible facility site according to manure management procedures approved by the department. Cleanup may include remediation of documented contamination which originates from the confinement feeding operation. Cleanup may also include demolishing and disposing of animal feeding operation structures if their existence or further use would contribute to further environmental contamination and their removal is included in a cleanup plan approved by the department. Buildings and equipment must be demolished or disposed of according to rules adopted by the department in 567—Chapter 101 which apply to the disposal of farm buildings or equipment by an individual or business organization.

65.20(3) *Claims against the fund.* Claims for cleanup costs may be made by a county which has acquired real estate containing an eligible facility site pursuant to a tax deed. A county claim shall be signed by the chairperson of the county board of supervisors. Cleanup may be initiated by the department or may be authorized by the department based on a claim by a county.

a. Advance notice of claim. Prior to or after acquiring a tax deed to an eligible facility site, a county shall notify the department in writing of the existence of the facility and the title acquisition. The county shall request in this notice that the department evaluate the site to determine whether the department will order or initiate cleanup pursuant to its authority under Iowa Code chapter 455B.

b. Emergency cleanup condition. If a county determines that there exists at a confinement feeding operation site a clear, present and impending danger to the public health or environment, the county shall notify the department of the condition. The danger should be documented as to its presence and the necessity to avoid delay due to its increasing threat. If no cleanup action is initiated by the department within 24 hours after being notified of an emergency condition requiring cleanup, the county may provide cleanup and submit a claim against the fund.

65.20(4) *Contents of a claim against the fund.*

a. A county claim against the fund for an eligible site acquired by a county following nonpayment of taxes shall be submitted to the department for approval prior to the cleanup action and shall contain the following information:

(1) A copy of the advance notice of claim as described in paragraph 65.20(3)*"a."*

(2) A copy of a bid by a qualified person, other than a governmental entity, to perform a site cleanup. The bid shall include a summary of the qualifications of the bidder including but not limited to prior experience in removal of hazardous substances or manure, experience in construction of confinement feeding operation facilities or manure storage structures, equipment available for conducting the cleanup, or any other qualifications bearing on the ability of the bidder to remove manure from a site. The bid must reference complying with a cleanup plan. The bid shall include a certification that the bidder has liability insurance in an amount not less than $1 million.

(3) A copy of the tax deed to the real estate containing the eligible facility site.

(4) Name and address, if known, of the former owner(s) of the site. The claim shall also include a description of any efforts to contact the former owner regarding the removal of manure and any other necessary cleanup at the site.

(5) A response to the request in the advance notice described in paragraph 65.20(3)*"a"* that the department will not initiate cleanup action at the site, or that 60 days have passed from the advance notice and request.

(6) A proposed cleanup plan describing all necessary activity including manure to be removed, application rates and sites, any planned remediation of site contamination, and any structure demolition and justification.

b. A county claim against the fund for an emergency cleanup condition may be submitted following the cleanup and shall contain the following information:

(1) A copy of a bid as described in subparagraph 65.20(4)*"a"*(2).

(2) Name and address of the owner(s), or former owner(s), of the site or any other person who may be liable for causing the condition.

(3) Information on the response from the department to the notice given as described in paragraph 65.20(3)*"b,"* or if none was received, documentation of the time notice was given to the department.

(4) A cleanup plan or description of the cleanup activities performed.

65.20(5) *Department processing of claims against the fund.*

a. Processing of claims. The department will process claims in the order they are received.

b. The cleanup plan will be reviewed for acceptability to accomplish necessary actions according to subrule 65.20(2).

c. Review of bid. Upon receipt of a claim, the department will review the bid accompanying the claim. The department may consult with any person in reviewing the bid. Consideration will be given to the experience of the bidder, the bid amount, and the work required to perform the cleanup plan. If the department is satisfied that the bidder is qualified to perform the cleanup and costs are reasonable, the department will provide written approval to the county within 60 days from the date of receipt of the claim.

d. Obtaining a lower bid. If the department determines that it should seek a lower bid to perform the cleanup, it may obtain the names of qualified persons who may be eligible to perform the cleanup. One or more of those persons will be contacted and invited to view the site and submit a bid for the cleanup. If a lower bid is not received, the original bid may be accepted. If a bid is lower than the original bid submitted by the county, the department will notify the county that it should proceed to contract with that bidder to perform the cleanup.

65.20(6) *Certificate of completion.* Upon completion of the cleanup, the county shall submit a certificate of completion to the department. The certificate of completion shall indicate that the manure has been properly land-applied according to the cleanup plan and that any site contamination identified in the approved cleanup plan has been remediated and any approved structure demolition has been performed.

65.20(7) *Payment of claims.* Upon receipt of the certificate of completion, the department shall promptly authorize payment of the claim as previously approved. Payments will be made for claims in the order of receipt of certificates of completion.

65.20(8) *Subrogation.* The fund is subrogated to all county rights regarding any claim submitted or paid as provided in Iowa Code section 455J.5(5).

567—65.21(455B) Transfer of legal responsibilities or title. If title or legal responsibility for a permitted animal feeding operation and its animal feeding operation storage structure is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the permit and these rules. The person to whom the permit was issued and the person to whom title or legal responsibility is transferred shall notify the department of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the permit to reflect the transfer of legal responsibility. A person who has been classified as a habitual violator under Iowa Code section 455B.191 shall not acquire legal responsibility or a controlling interest to any additional permitted confinement feeding operations for the period that the person is classified as a habitual violator. A person who has an interest in a confinement feeding operation that is the subject of a pending enforcement action shall not acquire legal responsibility or an interest to any additional permitted confinement feeding operations for the period that the enforcement action is pending.

567—65.22(455B) Validity of rules. If any part of these rules is declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect, and to that end, these rules are declared to be severable.

These rules are intended to implement Iowa Code chapter 455J; Iowa Code sections 455B.104, 455B.110, 455B.134(3)"*e*," 455B.161 to 455B.165, 455B.171 to 455B.188, 455B.191, and 455B.200 to 455B.206; and 1998 Iowa Acts, chapter 1209, sections 41 and 44 to 47.

[Filed 6/28/76, Notice 3/22/76—published 7/12/76, effective 8/16/76*]
[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed 8/24/84, Notice 5/9/84—published 9/12/84, effective 10/18/84]
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
[Filed 5/29/87, Notice 12/3/86—published 6/17/87, effective 7/22/87]
[Filed without Notice 8/26/94—published 9/14/94, effective 10/19/94]
[Filed emergency 7/19/95—published 8/16/95, effective 7/19/95]
[Filed emergency 9/22/95—published 10/11/95, effective 9/22/95]
[Filed 1/26/96, Notice 11/8/95—published 2/14/96, effective 3/20/96]
[Filed 9/20/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]
[Filed 11/26/97, Notice 8/13/97—published 12/17/97, effective 1/21/98]
[Filed 3/19/99, Notice 12/30/98—published 4/7/99, effective 5/12/99]

*Effective date of Chapter 65 [DEQ, ch 20] delayed by the Administrative Rules Review Committee until October 25, 1976, pursuant to Iowa Code section 17A.4 amended by S.F. 1288, §8.

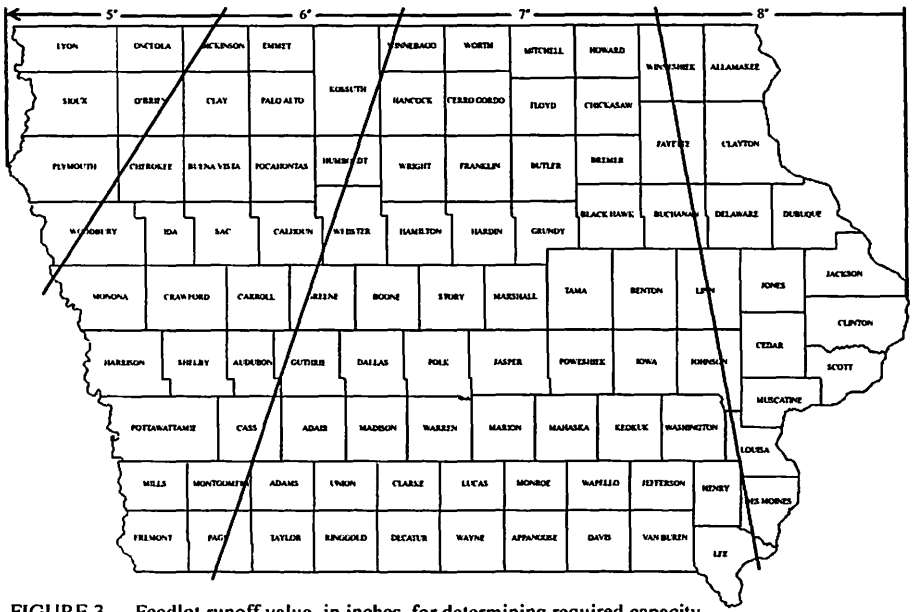


FIGURE 3. -- Feedlot runoff value, in inches, for determining required capacity of the "April, July, and November Manure Application" manure control system.

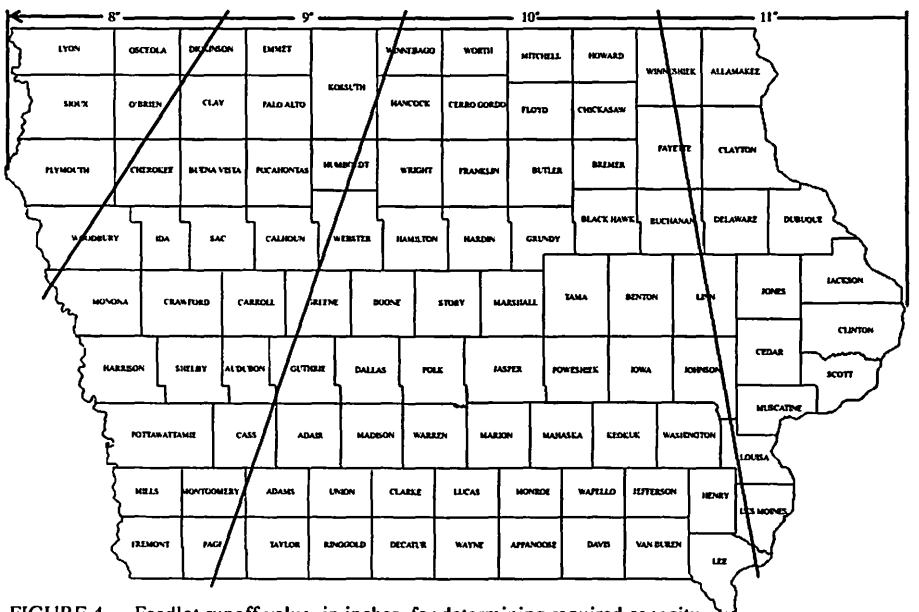


FIGURE 4. -- Feedlot runoff value, in inches, for determining required capacity of the "April/May and October/November Manure Application" manure control system.

APPENDIX B
LAND DISPOSAL OF ANIMAL MANURE
Rescinded IAB 2/14/96, effective 3/20/96

TABLE 1
Major Water Sources—Rivers and Streams

County	River/Stream	Location
Adair	Middle Nodaway River	Adams/Adair Line to Hwy. 92
	Middle River	All
	West Fork-Middle Nodaway	Mouth to County Road N51
Adams	East Nodaway River	Adams/Taylor Line to County Road H24
	Middle Nodaway River	All
Allamakee	Bear Creek	Mouth, S1, T99N, R6W to West Line S30, T100N, R6W
	Mississippi River	All
	Paint Creek	Mouth to road crossing in S18, T97N, R4W
	Upper Iowa River	Mouth, S36, T100N, R4W to West Line S31, T100N, R6W
	Village Creek	Mouth, S33, T99N, R3W, upstream to Confluence with Unnamed Creek in S23, T98N, R4W
	Waterloo Creek	Mouth, S35, T100N, R6W to North Line S8, T100N, R6W
	Yellow River	Mouth, S34, T96N, R3W to Confluence with Upper Branch Yellow River, S4, T96N, R6W
Appanoose	Chariton River	Missouri Line to Rathbun Dam
	South Chariton River	Appanoose/Wayne Line to Rathbun Lake
Benton	Bear Creek	North County Line to Mouth at Cedar River, S21, T86N, R10W
	Cedar River	All
	Iowa River	All
	Opossum Creek	SE ¼ S5, T84N, R9W to East County Line
	Prairie Creek 2	Road Crossing N ½ S24, T83N, R12W to Benton/Linn Line
	Wolf Creek	All

TABLE 2
Major Water Sources—Lakes

County	Lake	Location
Adair	Greenfield Lake	1 mile Southwest of Greenfield
	Orient Lake	1 mile Southwest of Orient
	Meadow	6 miles Northeast of Greenfield
	Mormon Trail Lake	1½ miles Southeast of Bridgewater
	Nodaway Lake	2 miles Southwest of Greenfield
Adams	Binder Lake	1 mile Northeast of Corning
	Corning Reservoir	North edge of Corning
	Lake Icaria	4 miles North of Corning
Appanoose	Centerville Reservoir (Upper)	Southwest edge of Centerville
	Centerville Reservoir (Lower)	Southwest edge of Centerville
	Rathbun Reservoir	8 miles Northwest of Centerville
Audubon	Littlefield	4 miles East of Exira
Benton	Hannen Lake	4 miles Southwest of Blairstown
	Rodgers Park Lake	3½ miles Northwest of Vinton
Black Hawk	Alice Wyth Lake	North edge of Waterloo
	Big Woods Lake	Northwest edge of Cedar Falls
	Cedar Falls Reservoir	North edge of Cedar Falls
	East Lake (Quarry Lake)	North edge of Waterloo
	Fisher Lake	North edge of Waterloo
	George Wyth Lake	North edge of Waterloo
	Green Belt Lake	West edge of Waterloo
	Meyer Lake	Evansdale
	Mitchell Lake	Waterloo
	North Prairie Lake	Southwest edge of Cedar Falls
	South Prairie Lake	Southwest edge of Cedar Falls
Boone	Don Williams Lake	5 miles North of Ogden
	Sturtz	3 miles West of Boone
Bremer	Sweet Marsh (Martens Lake)	1 mile East of Tripoli
	Sweet Marsh (A)	2 miles East of Tripoli
	Waverly Impoundment	Waverly
Buchanan	Fontana Mill	½ mile South of Hazelton
	Independence Impoundment	Independence
	Kounty Pond	2½ miles Southeast of Brandon

Buena Vista	Gustafson Lake	1 mile South of Sioux Rapids
	Newell Pit	1½ miles Northwest of Newell
	Pickerel Lake	7 miles Northwest of Marathon
	Storm Lake	South edge of Storm Lake
Calhoun	Calhoun Wildlife Area	4 miles East of Manson
	Hwy. 4 Recreation Area	1 mile South of Rockwell City
	North Twin Lake	6 miles North of Rockwell City
	South Twin Lake	5 miles North of Rockwell City
Carroll	Swan Lake	3 miles Southeast of Carroll
Cass	Cold Springs Lake	1 mile South of Lewis
	Lake Anita	½ mile South of Anita
Cerro Gordo	Blue Pit	Southwest edge of Mason City
	Clear Lake	South edge of Clear Lake
	Fin and Feather Lake	3 miles South, 1 mile East of Mason City
Cherokee	Larson Lake	2½ miles East, 2 miles North of Aurelia
	Spring Lake	South edge of Cherokee
Chickasaw	Airport Park Lake	S35, T96N, R13W
	Nashua Impoundment	Nashua
	Split Rock Park Lake	5 miles Southwest of Fredericksburg
Clarke	East Lake	½ mile East of Osceola
	West Lake	2 miles West of Osceola
Clay	Elk Lake	3 miles South, 1 mile West of Ruthven
	Trumbull Lake	4 miles West, 5 miles North of Ruthven
Clinton	Kildeer and Malone	4 miles East of DeWitt
Crawford	Ahart/Rudd Natural Resource Area	2 miles South of Dow City, S21, T82N, R40W
	Nelson Park Lake	3 miles West, 3 miles North of Dow City
	Yellow Smoke Park	2 miles East, 2 miles North of Denison
Dallas	Beaver	1½ miles North of Dexter
Davis	Lake Fisher	2 miles Northwest of Bloomfield
	Lake Wapello	7 miles West of Drakesville

Winnebago	Ambrosson Pits	3½ miles North of Forest City
	Lake Catherine	6 miles West of Forest City
	Rice Lake	1 mile South, 1 mile East of Lake Mills
Winneshiek	Lake Meyers	3 miles Southwest of Calmar
Woodbury	Bacon Creek	East edge of Sioux City
	Browns Lake	2 miles West of Salix
	Little Sioux Park Lake	2 miles South of Correctionville
	Snyder Bend Lake	1½ miles West of Salix
	Southwood	½ mile West, ½ mile South of Smithland
Worth	Kuennen's Pit	2 miles South, ½ mile East of Northwood
	Silver Lake	10 miles West, 3½ miles North of Northwood
Wright	Lake Cornelia	3½ miles North, 2 miles East of Clarion
	Morse Lake	3½ miles West of Belmond
	Wall Lake	10 miles Southeast of Clarion

TABLE 3
Annual Pounds of Nitrogen Per Space of Capacity

Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Nursery, 25 lb.	1 head	2	1	5
Grow-finish, 150 lb.				
Formed storage*				
Dry feed	1 head	21		29
Wet/dry feed	1 head	23		29
Earthen storage**	1 head	14		29
Lagoon***	1 head		6	29
Gestation, 400 lb.	1 head	14	5	39
Sow & Litter, 450 lb.	1 crate	32	11	86
Farrow-nursery	Per sow in breeding herd	22	8	85
Farrow-finish	Per sow in breeding herd	150	44	172

Dairy, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Cows, 1200 & up lb.	1 head	129	59	239
Heifers, 900 lb.	1 head	97	44	179
Calves, 500 lb.	1 head	54	24	100
Veal calves, 250 lb.	1 head	27	12	50
Dairy herd	Per productive cow in herd	203	87	393

Beef, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Mature cows, 1000 lb.	1 head	105	23	147
Finishing, 900 lb.	1 head	95	19	132
Feeder calves, 500 lb.	1 head	53	11	73

Poultry	Space	Dry Manure
Layer, cages	1000 head	367
Broiler, litter	1000 head	585
Turkeys, litter	1000 head	1400

* Formed manure storage structure
** Earthen manure storage basin
*** Anaerobic lagoon

TABLE 4
Crop Nitrogen Usage Rate Factors

Corn	Zone 1	0.9 lbs/bu	Orchard grass	38.0 lbs/ton
	Zone 2	1.1 lbs/bu	Tall fescue	38.0 lbs/ton
	Zone 3	1.2 lbs/bu	Switch grass	21.0 lbs/ton
Corn silage		7.5 lbs/ton	Vetch	56.0 lbs/ton
Soybeans		3.8 lbs/bu	Red clover	43.0 lbs/ton
Oats		0.75 lbs/bu	Perennial rye grass	24.0 lbs/ton
Alfalfa		50.0 lbs/ton	Timothy	25.0 lbs/ton
Wheat		1.3 lbs/bu	Wheat straw	13.0 lbs/ton
Smooth brome		40.0 lbs/ton	Oat straw	12.0 lbs/ton
Sorghum or Sudan grass		40.0 lbs/ton		

The following map outlines the three zones for the corn nitrogen usage rates indicated in the Table 4. Zone 1 corresponds to the Moody soil association. Zone 2 corresponds to the Marshall, Monona-Ida-Hamburg, and Galva-Primghar-Sac soil associations. Zone 3 corresponds to the remaining soil associations.

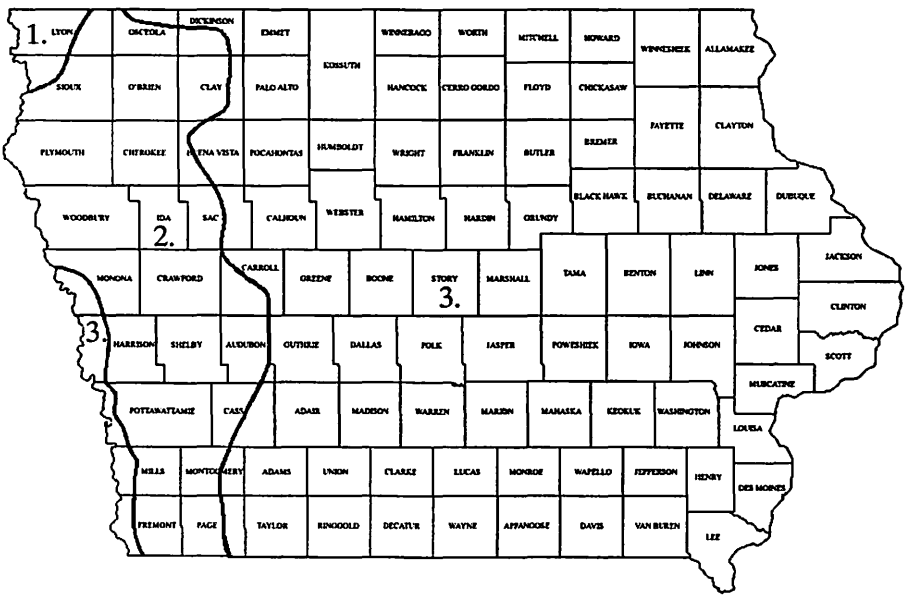


TABLE 5
Manure Production Per Space of Capacity

		Daily		Yearly
Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Nursery, 25 lb.	1 head	0.2 gal	0.7 gal	0.34 tons
Grow-finish, 150 lb.				
Formed storage*				
Dry feed	1 head	1.2 gal		2.05 tons
Wet/dry feed	1 head	0.84 gal		2.05 tons
Earthen storage**	1 head	1.2 gal		2.05 tons
Lagoon***	1 head		4.1 gal	2.05 tons
Gestation, 400 lb.	1 head	1.6 gal	3.7 gal	2.77 tons
Sow & Litter, 450 lb.	1 crate	3.5 gal	7.5 gal	6.16 tons
Farrow-nursery	Per sow in breeding herd	2.2 gal	5.4 gal	6.09 tons
Farrow-finish	Per sow in breeding herd	9.4 gal	30 gal	12.25 tons

Dairy, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Cows, 1200 & up lb.	1 head	11.8 gal	40.1 gal	19.93 tons
Heifers, 900 lb.	1 head	8.8 gal	29.9 gal	14.95 tons
Calves, 500 lb.	1 head	4.9 gal	16.5 gal	8.30 tons
Veal calves, 250 lb.	1 head	2.5 gal	8.2 gal	4.15 tons
Dairy herd	Per productive cow in herd	18.5 gal	59.8 gal	32.77 tons

Beef, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Mature cows, 1000 lb.	1 head	7.2 gal	15.7 gal	12.23 tons
Finishing, 900 lb.	1 head	6.5 gal	13.1 gal	11.00 tons
Feeder calves, 500 lb.	1 head	3.6 gal	7.3 gal	6.11 tons

Poultry	Space	Dry Manure
Layer, cages	1000 head	10.5 tons
Broiler, litter	1000 head	9.00 tons
Turkeys, litter	1000 head	35.00 tons

* Formed manure storage structure
** Earthen manure storage basin
*** Anaerobic lagoon

TABLE 6
Required Separation Distances—Swine, Sheep, Horses and Poultry

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS				
Type of Structure	Animal Weight Capacity (lbs.)	Residences, Businesses, Churches, Schools		Public Use Areas
		Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons and uncovered earthen manure storage basins	<200,000	1,250 feet	1,250 feet	1,250 feet
	200,000 to <625,000	1,250 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,875 feet	1,875 feet	1,875 feet
	1,250,000 or more	2,500 feet	2,500 feet	2,500 feet
Covered earthen manure storage basins	<200,000	1,000 feet	1,250 feet	1,250 feet
	200,000 to <625,000	1,000 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,250 feet	1,875 feet	1,875 feet
	1,250,000 or more	1,875 feet	2,500 feet	2,500 feet
Uncovered formed manure storage structures	<200,000	None	None	None
	200,000 to <625,000	1,250 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,500 feet	1,875 feet	1,875 feet
	1,250,000 or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings and covered formed manure storage structures	<200,000	None	None	None
	200,000 to <625,000	1,000 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,250 feet	1,875 feet	1,875 feet
	1,250,000 or more	1,875 feet	2,500 feet	2,500 feet
Egg washwater storage structures	<200,000	None	None	None
	200,000 to <625,000	750 feet	1,250 feet	1,250 feet
	625,000 to <1,250,000	1,000 feet	1,875 feet	1,875 feet
	1,250,000 or more	1,500 feet	2,500 feet	2,500 feet

DISTANCES TO WELLS				
Type of Structure	Public Well		Private Well	
	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin, egg washwater storage structure and open feedlot runoff control basin	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure, confinement building, open feedlot solids settling facility and open feedlot	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR ANIMAL FEEDING OPERATION STRUCTURES regardless of animal weight capacity	
Surface intake, wellhead or cistern of agricultural drainage wells, known sinkholes or major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Watercourses other than major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	200 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Excluding small feeding operations, dry manure storage or when permanent vegetation is provided)	100 feet

See rule 567 IAC 65.12(455B) for exemptions available from the above distances

TABLE 7

Required Separation Distances—Beef and Dairy Cattle

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS				
		Residences, Businesses, Churches, Schools		Public Use Areas
Type of Structure	Animal Weight Capacity (lbs.)	Unincorporated Areas	Incorporated Areas	
Anaerobic lagoons	<400,000	1,250 feet	1,250 feet	1,250 feet
and uncovered	400,000 to <1,600,000	1,250 feet	1,250 feet	1,250 feet
earthen manure	1,600,000 to <4,000,000	1,875 feet	1,875 feet	1,875 feet
storage basins	4,000,000 or more	2,500 feet	2,500 feet	2,500 feet
	<400,000	1,000 feet	1,250 feet	1,250 feet
Covered earthen	400,000 to <1,600,000	1,000 feet	1,250 feet	1,250 feet
manure storage	1,600,000 to <4,000,000	1,250 feet	1,875 feet	1,875 feet
basins	4,000,000 or more	1,875 feet	2,500 feet	2,500 feet
	<400,000	None	None	None
Uncovered formed	400,000 to <1,600,000	1,250 feet	1,250 feet	1,250 feet
manure storage	1,600,000 to <4,000,000	1,500 feet	1,875 feet	1,875 feet
structures	4,000,000 or more	2,000 feet	2,500 feet	2,500 feet
Confinement buildings	<400,000	None	None	None
and covered formed	400,000 to <1,600,000	1,000 feet	1,250 feet	1,250 feet
manure storage	1,600,000 to <4,000,000	1,250 feet	1,875 feet	1,875 feet
structures	4,000,000 or more	1,875 feet	2,500 feet	2,500 feet

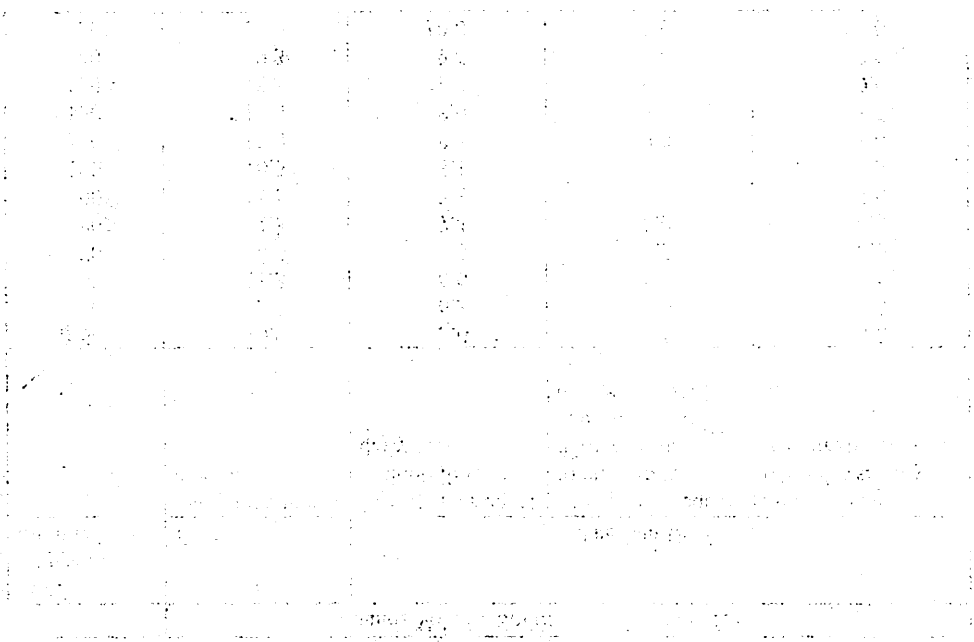
DISTANCES TO WELLS				
	Public Well		Private Well	
Type of Structure	Shallow	Deep	Shallow	Deep
Aerobic structure, anaerobic lagoon, earthen manure storage basin, and open feedlot runoff control basin	1,000 feet	400 feet	400 feet	400 feet
Formed manure storage structure, confinement building, open feedlot solids settling facility and open feedlot	200 feet	100 feet	200 feet	100 feet

OTHER DISTANCES FOR ANIMAL FEEDING OPERATION STRUCTURES regardless of animal weight capacity	
Surface intake, wellhead or cistern of agricultural drainage wells, known sinkholes or major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Watercourses other than major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	200 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Excluding small feeding operations, dry manure storage or when permanent vegetation is provided)	100 feet

See rule 567 IAC 65.12(455B) for exemptions available from the above distances

TABLE 8
Summary of Credit for Mechanical Aeration

	Pounds Volatile Solids per 1000 cubic feet			
% of Oxygen Supplied	Beef	Other than Beef		
	Daily max in all counties	Less than or equal to 6000 lb vs. daily max	Less than or equal to 6000 lb vs. daily max in counties listed in 65.15(13)"*b*"(2) above	Greater than 6000 lb vs. daily max in all counties
0-50	10.0	5.0	4.5	4.0
50	12.5	6.3	5.6	5.0
60	13.3	6.6	6.1	5.5
70	14.0	7.0	6.5	6.0
80	14.8	7.4	6.9	6.5
90	15.5	7.8	7.4	7.0
100	16.3	8.1	7.8	7.5
110	17.0	8.5	8.3	8.0
120	17.8	8.9	8.7	8.5
130	18.5	9.3	9.1	9.0
140	19.3	9.6	9.6	9.5
150	20.0	10.0	10.0	10.0



CHAPTER 68
COMMERCIAL SEPTIC TANK CLEANERS

567—68.1(455B) Purpose and applicability. The purpose of this chapter is to implement Iowa Code subsection 455B.172(5) by providing standards for the commercial cleaning of and the disposal of waste from private waste facilities, and licensing requirements and procedures. These rules govern the commercial cleaning of and the disposal of wastes from private waste facilities. Certification of commercial manure applicators under 567—Chapter 65 will be deemed to satisfy the license requirements of Iowa Code section 455B.172 and this rule as it applies to commercial manure applicators only.

567—68.2(455B) Definitions. Definitions used in this chapter are listed in alphabetical order as follows:

"Cleaning" means removal of waste from private waste facilities and other actions incidental to that removal.

"Commercial septic tank cleaner" means a person or firm engaged in the business of cleaning and disposing of waste from private waste facilities, including a person or firm that owns and rents or leases portable toilets.

"Holding tank for wastes" means any receptacle for the retention or storage of wastes pending removal for further treatment or disposal.

"Private waste facilities" includes, but is not limited to, septic tanks as defined in 567—subrule 69.3(1); holding tanks for wastes; impervious vault toilets, portable toilets, and chemical toilets as described in 567—Chapter 69; and all manure control systems identified in 567—Chapter 65 for animal confinement feeding operations.

"Tank" means any container which is placed on a vehicle to transport waste removed from a private waste facility.

"Vehicle" means a device used to transport a tank.

"Waste" means human or animal excreta, water, scum, sludge, septage, and grease solids from private sewage disposal systems; impervious vault, portable, or chemical toilets; and manure control systems for animal confinement feeding operations.

567—68.3(455B) Licensing requirements. Effective March 1, 1991, commercial septic tank cleaners must apply for and obtain a license from the department before engaging in the commercial cleaning of and disposing of waste from any private waste facility unless, prior to March 1, 1991, a county board of health issued a license authorizing this activity. In that event the commercial septic tank cleaner is not required to obtain a license from the department until the license expires or until March 1, 1992, whichever occurs first.

567—68.4(455B) Licensing procedures.

68.4(1) *Application for license.* Commercial septic tank cleaners must apply for a license by completing a form provided by the department and submitting it with the license fee to the Department of Natural Resources, License Bureau, Wallace Building, 900 East Grand, Des Moines, Iowa 50319. In the case of a commercial septic tank cleaner which is a corporation, partnership, association or any other business entity, the entity itself must apply as provided in this rule. The entity shall designate one person: a partner, officer, manager, supervisor, or other full-time employee to act as its representative for the purpose of applying for a license. Individuals employed by a commercial septic tank cleaner business are not required to be licensed but each cleaning unit (vehicle or tank) must have the license number (except for the year) displayed and a copy of the current license with the cleaning unit.

68.4(2) *License fee.* The initial license application and each renewal application must be accompanied by a nonrefundable fee in the form of a check or money order made payable to the Department of Natural Resources. The application fee is $25 per year.

68.4(3) *License renewal.* In order to remain valid, a commercial septic tank cleaner license must be renewed by the expiration date specified on the license. Renewal application must be made on a form provided by the department, and must be received by the department or postmarked at least 30 days prior to the expiration date. The renewal application form must be accompanied by the license fee specified in subrule 68.4(2).

68.4(4) *Change in ownership.* Within 30 days of the change in ownership of any commercial septic tank cleaner, the new owner shall furnish the department with the following information: (1) name of business and license number; (2) name, address, and telephone number of new owner; and (3) date the change in ownership took place. The license will transfer with the ownership with no additional fee due until the next renewal date.

567—68.5(455B) Suspension, revocation and denial of license.

68.5(1) *Basis for suspension, revocation, and denial.* The department may suspend, revoke, or deny a commercial septic tank cleaner license for any of the following reasons:

a. A material misstatement of facts in a license application.

b. A failure to provide the adequate license fee.

c. A failure to satisfy the obligations of a commercial septic tank cleaner and the standards as provided in rules 68.6(455B), 68.8(455B), and 68.9(455B).

d. Violation of disposal standards in 567—Chapters 65, 69, and 121.

68.5(2) *Appeal.* A commercial septic tank cleaner may appeal the suspension, revocation, or denial of a license under the provisions of 567—Chapter 7.

68.5(3) *Reinstatement.* In the case of a denial, revocation, or suspension pursuant to paragraph 68.5(1)*"b"* or *"c,"* the department may immediately reinstate or issue a license after receipt of the requisite fee or confirmation that the commercial septic tank cleaner is fulfilling the requirements of rules 68.6(455B) and 68.8(455B). In case of a denial, revocation or suspension pursuant to paragraph 68.5(1)*"a"* or *"d,"* the department may reinstate or issue a license no sooner than 60 days after the denial, revocation, or suspension, if the department is satisfied that the commercial septic tank cleaner has corrected the deficiency and will comply with departmental rules in the future.

567—68.6(455B) Licensee's obligations.

68.6(1) *Supervision.* To provide supervision to the removal and disposal of waste from private waste facilities.

68.6(2) *Standards.* To meet the standards established for the cleaning of and disposal of waste from private waste facilities.

68.6(3) *Records.* To maintain records of private waste facilities cleaned and the location and method of waste disposal. Such records shall be maintained for a period of three years, and shall be made readily available upon request to county board of health or department officials.

567—68.7(455B) County obligations. The county boards of health shall enforce the standards and licensing requirements contained in this chapter and other referenced rules relating to the cleaning of private waste facilities and disposal of waste from such facilities.

567—68.8(455B) Standards for commercial cleaning of private waste facilities.

68.8(1) *Vehicles, tanks and equipment.* For all vehicles, tanks, and equipment used in the commercial cleaning of private waste facilities the licensee shall:

a. Prevent the dripping, falling, spilling, leaking, or discharging of waste onto roads or rights-of-way.

b. Provide the equipment necessary for proper cleaning of private waste facilities.

c. Ensure proper construction and repair of cleaning equipment to allow easy cleaning and maintaining in an essentially rust-free and sanitary condition and appearance.

68.8(2) *Miscellaneous.*

a. Any tanks or equipment used for hauling waste from private waste facilities shall not be used for hauling hazardous or toxic wastes as defined in 567—Chapter 131, or other wastes detrimental to land application or wastewater treatment plants; and shall not be used in a manner that would contaminate a potable water supply or endanger the food chain or public health.

b. Pumps and associated piping shall be installed with watertight connections to prevent leakage.

c. Agitation capability for use in cleaning private waste facilities to disperse sludge and scum into the liquid for proper cleaning shall be provided.

d. All vehicles shall display the license number (except for the year) assigned to the commercial septic tank cleaner with 3-inch or larger letters and numbers on the side of the tank or vehicle.

e. The name and address of the license holder shall be prominently displayed on the side of the tank or vehicle.

f. A direct connection shall not be made between a potable water source and the tank or equipment on the vehicle.

567—68.9(455B) Standards for disposal. Disposal of wastes from private waste facilities shall be carried out in accordance with the rules established by the department.

68.9(1) Waste from private sewage disposal systems, holding tanks for wastes, impervious vault, portable, or chemical toilets or other similar types of private waste facilities shall be disposed of according to the following requirements.

a. Discharge (with owner approval) to a municipal or other permitted wastewater treatment system.

b. Discharge (with owner approval) to permitted septage lagoons or septage drying beds.

c. Land application in accordance with the following requirements:

(1) The maximum application rate is 30,000 gallons of septage per 365-day period per acre of cropland.

(2) The following site restrictions shall be met when septage is applied to land.

1. Septage shall not be applied to a lawn or a home garden.

2. The septage shall be applied only to soils classified as acceptable throughout the top 5 feet of soil profile. The septage shall not be applied to soils classified as sand, loamy sand and silt. The acceptability of a soil shall be determined using the U.S.D.A. soil classifications.

3. Land application sites shall have soil pH maintained above 6.0, unless crops prefer soils with lower pH conditions. If the soil pH is below 6.0, it is acceptable to use agricultural lime to increase the pH to an acceptable level.

4. If the septage is applied to land on which the soil loss exceeds the soil loss limits established by the county soil conservation district, the septage shall be injected on the contour or shall be applied to the surface and mechanically incorporated into soil within 48 hours of application. The septage shall not be applied to ground having greater than 9 percent slope.

5. Septage application on frozen or snow-covered ground should be avoided, unless special precautions are taken to avoid runoff. If application on frozen or snow-covered ground is necessary, it shall be limited to land areas of less than 5 percent slope.

6. Septage shall not be applied to land that is 35 feet or less from an open waterway. If septage is applied within 200 feet of a stream, lake, sinkhole or tile line surface intake located downgradient of the land application site, it shall be injected or applied to the surface and mechanically incorporated into the soil within 48 hours of application.

7. If the septage is applied to land subject to flooding more frequently than once in ten years, the septage shall be injected or shall be applied to the surface and mechanically incorporated into the soil within 48 hours. Information on which land is subject to flooding more frequently than once in ten years is available from the department.

8. Septage shall not be applied within 200 feet of an occupied residence nor within 500 feet of a well.

9. Food crops shall not be harvested for 38 months after application of septage.

10. Animals shall not be allowed to graze on the land for 30 days after application of septage.

(3) One of the following vector attraction reduction requirements shall be met when septage is applied to land.

1. Septage shall be injected below the surface of the land. No significant amount of the septage shall be present on the land surface within one hour after the septage is injected.

2. Septage applied to the land surface shall be incorporated into the soil within six hours after application to or placement on the land.

3. The septage shall be stabilized by adding and thoroughly mixing sufficient lime to produce a mixture with a pH of 12. Provide a minimum of two hours of contact time after mixing the lime with the septage prior to applying to land. Each container of septage shall be monitored for compliance.

4. The septage shall be stabilized by adding and thoroughly mixing 50 pounds of lime with each 1,000 gallons of septage.

(4) When septage is applied to land, the person who applies the septage shall develop the following information and shall retain the information for five years:

1. The location, by either street address or latitude and longitude, of each site on which septage is applied.

2. The number of acres in each site on which septage is applied.

3. The date and time septage is applied to each site.

4. The rate, in gallons per acre per 365-day period, at which septage is applied to each site.

5. A description of how the vector attraction reduction requirements are met.

6. The following certification statement shall be provided with the records when the records are requested by the department:

"I certify, under penalty of law, that the pathogen requirements and the vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(5) Other methods of stabilization may be acceptable if shown to be equivalent to 567—69.14(1)*"c"*(3)"3."

d. Discharge (with owner approval) to a permitted sanitary landfill in accordance with 567—Chapters 102 and 103 and the following requirements:

(1) Stabilize the septage by adding and thoroughly mixing sufficient lime to produce a mixture with a pH of 12.

(2) Provide a minimum of two hours of contact time after mixing the lime with the septage prior to applying to the landfill.

(3) Dewater the septage.

68.9(2) Disposal of manure from animal confinement feeding operations shall be consistent with the provisions of 567—Chapter 65 for land disposal of animal wastes. Commercial manure applicators must be individuals certified in accordance with provisions of that chapter and compliance with those provisions will be deemed to satisfy the requirements of Iowa Code subsection 455B.172(5).

These rules are intended to implement Iowa Code section 455B.172(5).

[Filed emergency 2/1/91—published 2/20/91, effective 3/1/91]
[Filed 5/24/91, Notice 2/20/91—published 6/12/91, effective 7/17/91]
[Filed 7/29/94, Notice 3/16/94—published 8/17/94, effective 9/21/94]
[Filed9/20/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]
[Filed 3/19/99, Notice 12/30/98—published 4/7/99, effective 5/12/99]

TITLE V
FLOOD PLAIN DEVELOPMENT

CHAPTER 70
SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

[Prior to 7/1/83, see INRC, Chs 2 and 5]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—70.1(455B,481A) Scope of title. The department has jurisdiction over all flood plains and floodways in the state for the purpose of establishing and implementing a program to promote the protection of life and property from floods and to promote the orderly development and wise use of the flood plains of the state. As part of the program, the department regulates flood plain development by three alternative methods: establishment of regulations for specific stream reaches by issuance of flood plain management orders (see Chapter 75); approval of flood plain management regulations adopted by local governments (see Chapter 75); and approval of flood plain development on a case-by-case basis where areas or projects are not covered by the first two methods (see Chapter 71). Any person who desires to construct or maintain a structure, dam, obstruction, deposit or excavation, or allow the same in any flood plain or floodway has a responsibility to contact the department to determine whether approval is required from the department or a local government authorized to act for the department.

Minimum statewide criteria for most types of flood plain development are listed in Chapter 72. Special requirements for dams are listed in Chapter 73.

567—70.2(455B,481A) Definitions. Definitions used in this title are listed in alphabetical order as follows:

"Agricultural levees or dikes" means levees or dikes constructed to provide limited flood protection to land used primarily for agricultural purposes.

"Animal feeding operation structure" means an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.

"Backwater" means the increase in water surface level immediately upstream from any structure, dam, obstruction or deposit, erected, used, or maintained in the floodway or on the flood plains caused by the resulting reduction in conveyance area.

"Building" means all residential housing including mobile homes as defined herein, cabins, factories, warehouses, storage sheds, and other walled, roofed structures constructed for occupation by people or animals or for storage of materials.

"Channel" means a natural or artificial flow path of a stream with definite bed and banks to collect and conduct the normal flow of water.

"Channel change" means either (a) the alteration of the location of a channel of a stream or (b) a substantial modification of the size, slope, or flow characteristics of a channel of a stream for a purpose related to the use of the stream's flood plain surface rather than for the purpose of actually using the water itself, or putting the water to a new use. (NOTE: Diversions of water subject to the permit requirements of Iowa Code sections 455B.268 and 455B.269 usually are not channel changes.) Increasing the cross-sectional area of a channel by less than 10 percent is not considered a substantial modification of the size, slope, or flow characteristics of a channel of a stream.

"Dam" means a barrier which impounds or stores water.

"Development" means a structure, dam, obstruction, deposit, excavation or flood control work in a floodway or flood plain.

"Drainage district ditch" means a channel located within the boundaries of a drainage district and excavated to establish a design channel-bottom profile for efficient conveyance of water discharged from agricultural tile systems and open drains.

"Elevating" means raising buildings by fill or other means to or above a minimum level of flood protection.

"Encroachment limits" means the boundaries of the floodway established in the flood plains and designating the width of the channel and minimum width of the overbank areas needed for the conveyance of the 100-year flood.

"Equal and opposite conveyance" means the location of development offsets from stream banks so that flood plain lands on each side of a stream convey a share of the flood flows proportionate to the total conveyance available on each respective side of the stream.

"Experienced Iowa flood chart" means a plot on logarithmic graph paper of points representing floods which have been observed and measured in Iowa and subsequently published by the U.S. geological survey or other agency. Each point on the plot is located with the drainage area in square miles as the abscissa and discharge in cubic feet per second as the ordinate.

"Flood control works" means physical works such as dams, levees, floodwalls, and channel improvements or relocations undertaken to provide moderate to high degree of flood protection to existing or proposed structures or land uses.

"Flood hazard area" means the area including the flood plains and the river or stream channel.

"Flood plain" means the land adjacent to a stream which has been or may be inundated by a flood having the magnitude of the regional flood as defined in these rules.

"Flood proofing" means a combination of structural provisions, changes, or adjustments in construction to buildings, structures, or properties subject to flooding primarily for the reduction or elimination of flood damages.

"Floodway fringe" means those portions of the flood plains located landward of the encroachment limits.

"Height of dam" means the vertical distance from the top of the dam to the natural bed of the stream or watercourse measured at the downstream toe of the dam or to the lowest elevation of the outside limit of the dam if it is not across a watercourse.

"High damage potential" means the flood damage potential associated with habitable residential buildings or industrial, commercial, or public buildings or building complexes of which flooding would result in high public damages as determined by the department.

"Low damage potential" means all buildings, building complexes or flood plain use not defined as maximum, high, or moderate damage potential.

"Low head dam" means any dam essentially contained within the channel of a river or stream and which is overtopped by normal stream flows.

"Major dam structure" means a dam meeting any of the following criteria:

1. Any high hazard dam.
2. Any moderate hazard dam with a permanent storage exceeding 100 acre-feet or a total of permanent and temporary storage exceeding 250 acre-feet at the top of the dam elevation.
3. Any dam, including low hazard dams, where the height of the emergency spillway crest measured above the elevation of the channel bottom at the centerline of the dam (in feet) multiplied by the total storage volume (in acre-feet) to the emergency spillway crest elevation exceeds 30,000. For dams without emergency spillways, these measurements shall be taken to the top of dam elevation.

"Maximum damage potential" means the flood damage potential associated with hospitals and like institutions; buildings or building complexes containing documents, data, or instruments of great public value; buildings or building complexes containing materials dangerous to the public or fuel storage facilities; power installations needed in emergency or buildings or building complexes similar in nature or use to those listed above.

"Minimum level of flood protection" means the elevation corresponding to the water surface profile of the regulatory flood associated with a damage potential classification listed in these rules plus any freeboard specified in these rules.

"Mobile home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

"Moderate damage potential" means flood damage potential associated with industrial and commercial buildings or building complexes containing readily movable goods, equipment, or vehicles and seasonal residential buildings or building complexes which flooding would not result in high public damages as determined by the department.

"Nominated stream" means the stream or watercourse named in the petition described in 567—Chapter 72 that seeks designation of a stream as a protected stream.

"Permanent storage" means the volume of water expressed in acre-feet which is stored upstream from a dam or in an impoundment up the level of the principal outlet works of the structure.

"Probable maximum flood" means the flood that may be expected from the most severe combination of critical meterological and hydrologic conditions that are reasonably possible in the region, and is derived from probable maximum precipitation, the theoretical greatest depth of precipitation for a given duration that is physically possible over a particular drainage area at a certain time of year. The probable maximum precipitation within designated zones in Iowa has been determined by the National Weather Service. The probable maximum flood for any location within Iowa is determined by the department.

"Protected stream" means a stream designated by the department as a "protected stream" in 567—Chapter 72.

"Public damages" means costs resulting from damage to roads and streets, sewers, water mains, other public utilities and public buildings; expenditures for emergency flood protection, evacuation and relief, rehabilitation and cleanup; losses due to interruption of utilities and transportation routes, and interruption of commerce and employment.

"Q100, Q50, Q25, Q15, Q10, et cetera" means a flood having a 1, 2, 4, 6, 7, 10, et cetera percent chance of being equalled or exceeded in any one year (100, 50, 25, 15, 10, et cetera year flood) as determined by the department.

"Regional flood" means a flood representative of the largest floods which have been observed on streams in Iowa.

"Repair and maintenance of a drainage district ditch" means the restoration of the original grade line, cross-sectional area, or other design specifications of a drainage district ditch lawfully established as part of a drainage district formed and operating under the provisions of Iowa Code chapter 468.

"Road projects" means the construction and maintenance of any bridges, culverts, road embankments, and temporary stream crossings.

"Rural areas" means any area not defined or designated as an urban area.

"Seasonal homes" means residential buildings or building complexes which are not used for permanent or year-round human habitation.

"Stream" means a watercourse that either drains an area of at least two square miles or has been designated as a protected stream in 567—Chapter 72.

"Temporary storage" means the volume of water expressed in acre-feet which may be stored upstream from a dam or in an impoundment above the level of the principal outlet works.

"Urban areas" means incorporated municipalities.

"Watercourse" means any lake, river, creek, ditch or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes or ponds without outlet to which only one landowner is riparian.

567—70.3(17A,455B,481A) Forms. The following forms are currently in use for flood plain projects.

Form 36: Application for Approval of Construction in or on any Floodway or Flood Plain. 4/87. 542-3234

Form 37: Notification of Completion of Construction. 1/87. 542-3017

567—70.4(17A,455B,481A) Requesting approval of flood plain development.

70.4(1) *Development needing approval.* Any development in a floodway or flood plain which exceeds the thresholds in 567—Chapter 71 and is not otherwise regulated by a department flood plain management order or a department-approved, locally adopted flood plain management ordinance requires a department flood plain development permit.

70.4(2) *Applying for a flood plain development permit.* Application for a flood plain development permit shall be made on DNR Form 36 or a reasonable facsimile thereof. The application shall be submitted by or on behalf of the person or persons who have or will have responsibility by reason of ownership, lease, or easement for the property on which the project site is located. The application must be signed by the applicant or a duly authorized agent. Completed applications along with supporting information shall be mailed or otherwise delivered to the Flood Plain Management Section, Environmental Protection Division, Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319.

70.4(3) *Engineering plans.*

a. General requirement of certified plans. An application shall not be considered complete until sufficient engineering plans have been submitted to enable the department to determine whether the project as proposed satisfies applicable criteria. The engineering plans shall contain information specified by the department, including specifications, operation procedures and other information relating to environmental impacts. The engineering plans and other engineering information shall be certified by a registered professional engineer or, if applicable, a registered land surveyor, as required by Iowa Code chapter 542B. Duplicate copies of certified plans are required so that one copy can be returned to the applicant upon approval or disapproval of the application. An additional copy of the certified plans shall be required if the plans are incorporated as part of an approval or disapproval order which is filed with a county recorder.

b. Waiver of submission of certified plans. The department may waive the requirement in paragraph *"a"* of this subrule that the application for approval of a flood plain project be supported by certified engineering plans by making one of the following determinations:

(1) Engineering data are not required to determine that the project conforms to all applicable administrative and statutory criteria; or

(2) Adequate engineering data used to evaluate the dimensions and effects of the project were already available to the engineering staff.

70.4(4) *Application fee.* Reserved. No fee is charged at this time.

70.4(5) *Modification of application or plans.* Applicants and prospective applicants are encouraged to communicate with the department's staff before submitting plans to identify the data required for review of a project and to discuss project modifications reasonably required to make the project conform to applicable criteria. When staff review of submitted plans discloses need for plan modification to conform to one or more criteria, the applicant is encouraged to submit revised plans.

567—70.5(17A,455B,481A) Procedures for review of applications.

70.5(1) *Initial screening of applications.* Each application upon receipt shall be promptly evaluated by the department to determine whether adequate information is available to review the project. The department shall advise the applicant of any additional information required to review the project. If the requested information is not submitted within 60 days of the date the request is made, the department may consider the application withdrawn.

70.5(2) *Order of processing.* In general, complete applications including sufficient plans and specifications shall be reviewed in the order that complete information is received. However, when there are a large number of pending applications, which preclude the department from promptly processing all applications, the department may expedite review of a particular application out of order if the completed application and supporting documents were submitted at the earliest practicable time and any of the following conditions exist:

a. Relatively little staff review time (generally less than four hours) is required and delay will cause the applicant hardship;

b. The applicant can demonstrate that a delay in the permit will result in a substantial cost increase of a large project;

c. Prompt review of the permit would result in earlier completion of a project that conveys a significant public benefit;

d. The need for a permit is the result of an unforeseen emergency or catastrophic event; or

e. A permit is needed to complete a project that will abate or prevent an imminent threat to the public health and welfare.

70.5(3) *Project investigation.* The department shall make an investigation of a project for which an application is submitted. The following are standard procedures for an investigation of an application.

a. Inspection. Agency personnel may make one or more field inspections of the project site when necessary to obtain information about the project. Submission of the application is deemed to constitute consent by the applicant for the agency staff and its agents to enter upon the land on which the proposed activity or project will be located for the sole purpose of collecting the data necessary to process the application, unless the applicant indicates to the contrary on the application.

b. Technical review. The department staff shall conduct a technical review using appropriate analytical techniques such as application of hydrologic and hydraulic models to determine the effects and impacts of a proposed project.

c. Solicitation of expert comments on environmental effects. For channel changes or other development which may cause significant adverse effects on the wise use and protection of water resources, water quality, fish, wildlife and recreational facilities or uses, the department shall request comments from the fish and wildlife division of the department or other knowledgeable sources.

d. Summary report of project review. The department staff may, if indicated, prepare a project summary report which summarizes the results of the review with respect to relevant criteria, the analytical methods used in the review and other project information. Typical indications of when project summary reports will be prepared are for those projects for which negative comments have been received from potentially affected landowners, those projects which are not approvable, and those projects which are complex in nature. Project summary reports will not normally be prepared for routine, noncontroversial projects.

e. Notice to landowners who might be affected. Before an application for approval of a levee or channel change is approved the department shall require the applicant to provide the names of the owners and occupants of land located immediately upstream, downstream, and across from the project site, and owners of any other land which the agency staff determines may be adversely affected by the project. The department shall then notify the landowners that the project is under consideration and provide a reasonable opportunity for submission of comments. The requirements of this paragraph also apply to other types of flood plain development when the project review discloses that lands not controlled by the applicant may be adversely affected by the project.

f. Notice to the applicant that project does not conform to criteria. If the project review discloses that the project violates one or more criteria and that the project should be disapproved, or approved only subject to special conditions to which the applicant has not agreed, the department shall notify the applicant and, when practical, suggest appropriate project modifications. The department shall offer the applicant an opportunity to submit comments before an initial decision is made.

70.5(4) *Initial decision by the department.* The initial decision by the department on an application for a flood plain development permit shall be either approval or disapproval. The initial decision shall include a determination whether the project satisfied all relevant criteria and may incorporate by reference and attachment the summary report described in 70.5(3)*"d."*

a. Approval. Issuance of a flood plain development permit shall constitute approval of a project. The permit shall include applicable general conditions listed in 567—Chapter 72 and may include one or more special conditions when reasonably necessary to implement relevant criteria.

b. Disapproval. A letter to the applicant denying the application shall constitute disapproval of a project.

c. Notice of initial decision. Copies of the initial decision shall be mailed to the applicant, any person who commented pursuant to 70.5(3)*"e,"* and any other person who has requested a copy of the decision. The decision may be sent by ordinary mail, first class, and shall be accompanied by a certification of the date of mailing. An initial decision becomes the final decision of the department unless a timely notice of appeal is filed in accordance with 70.6(17A,455B,481A). The final decision may be filed with the appropriate county recorder to give constructive notice to future landowners of any conditions or requirements imposed by the final decision.

567—70.6(17A,455B,481A) Appeal of initial decision. Any person aggrieved by an initial decision issued under 70.5(17A,455B,481A) of these rules may file a notice of appeal with the director. The notice of appeal must be filed within 30 days following the certified date of mailing of the decision unless the appellant shows good cause for failure to receive actual notice and file within the allowed time. The form of the notice of appeal and appeal procedures are governed by 567—Chapter 7.

The department shall mail a copy of the notice of appeal to each person who was sent a copy of the initial decision. The department shall attach an explanation of the opportunity to seek intervention in the contested case.

These rules are intended to implement Iowa Code sections 17A.3, 455B.105, chapter 455B, division III, part 4, and 481A.15.

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed 12/2/83, Notices 6/22/83, 7/20/83—published 12/21/83, effective 1/25/84]
[Filed emergency 9/20/85—published 10/9/85, effective 9/20/85]
[Filed 11/1/85, Notice 6/19/85—published 11/20/85, effective 12/25/85*]
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
[Filed 7/22/88, Notice 5/18/88—published 8/10/88, effective 9/14/88]
[Filed 2/1/91, Notice 11/14/90—published 2/20/91, effective 3/27/91]
[Filed 10/22/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]
[Filed 3/19/99, Notice 12/30/98—published 4/7/99, effective 5/12/99]

*Effective date of definitions (channel change, drainage district ditch, repair and maintenance of a drainage district ditch) in rule 70.2 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 71
FLOOD PLAIN OR FLOODWAY DEVELOPMENT— WHEN APPROVAL IS REQUIRED

[Prior to 7/1/83, INRC, Ch 5, Div. I]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

PREAMBLE: This chapter of these rules contains administrative thresholds which implement the statutory requirement that approval from the department be obtained for any development including construction, maintenance and use of a structure, dam, obstruction, deposit, excavation or "flood control work" on a flood plain or floodway. These administrative thresholds are organized into categories such as "channel changes," "levees or dikes," "buildings," etc. Any doubt concerning whether a project or activity requires approval under these thresholds should be resolved by requesting advice from the department.

The department may delegate regulatory authority to a local government by approving local flood plain regulations (see 567—Chapter 75). To determine whether the department has delegated regulatory authority over a specific category of project at a specific location, an inquiry should be made to:

State Coordinator
National Flood Insurance Program
Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50319
Telephone: (515)281-8690

567—71.1(455B) Bridges, culverts, temporary stream crossings, and road embankments. Approval by the department for the construction, operation, and maintenance of bridges, culverts, temporary stream crossings, and road embankments shall be required in the following instances.

71.1(1) *Rural area—floodway.* In rural areas, bridges, culverts, road embankments, and temporary stream crossings in or on the floodway of any river or stream draining more than 100 square miles. (NOTE: Channel modifications associated with bridge, culvert or roadway projects may need approval; see 567—71.2(455B).)

71.1(2) *Rural area—floodway and flood plain.* Road embankments located in the floodway or flood plains, but not crossing the channel of a river or stream draining more than 10 square miles, where such works occupy more than 3 percent of the cross-sectional area of the channel at bankfull stage or where such works obstruct more than 15 percent of the total cross-sectional area of the flood plain at any stage. In determining a 15 percent occupancy of the flood plain, the concept of equal and opposite conveyance as defined in 567—Chapter 70 shall apply.

71.1(3) *Urban areas.* In urban areas, bridges, culverts, road embankments and temporary stream crossings in or on the floodway or flood plains of any river or stream draining more than 2 square miles.

567—71.2(455B) Channel changes. Approval by the department for the construction, operation, and maintenance of channel changes shall be required in the following instances.

71.2(1) *Rural areas.* In rural areas:

a. Channel changes not otherwise associated with road projects in or on the floodway of any stream draining more than 10 square miles at the location of the channel change.

b. Channel changes associated with road projects in or on the floodway of any stream draining more than 10 square miles at the location of the channel change whereby either (i) more than a 500-foot length of the existing channel is being altered or (ii) the length of existing channel being altered is reduced by more than 25 percent.

71.2(2) *Urban areas.* In urban areas channel changes on any river or stream draining more than 2 square miles at the location of the channel change.

71.2(3) *Protected streams.* Channel changes at any location on any river or stream designated as a protected stream pursuant to division III of 567—Chapter 72.

71.2(4) *Channel change by drainage district.* Rule 72.2(455B) applies to channel changes sponsored by a drainage district. However, approval is not required for repair and maintenance of a drainage district ditch as defined in 70.2(455B) if the drainage area of the ditch at the location of the proposed work is less than 100 square miles.

This rule is intended to implement Iowa Code section 455B.275.

567—71.3(455B) Dams. Approval by the department for construction, operation, or maintenance of a dam in the floodway or flood plain of any watercourse shall be required when the dimensions and effects of such dam exceed the thresholds established by this rule. EXCEPTION: Public road embankments with culverts which impound water only in temporary storage are exempt from the requirements of this rule and shall be reviewed under rules 71.1(455B) and 72.1(455B). Approval required by this rule shall be coordinated with approval for storage of water required by 567—Chapter 51. Approval by the department shall be required in the following instances:

71.3(1) *Rural areas.* In rural areas:

a. Any dam designed to provide a sum of permanent and temporary storage exceeding 50 acre-feet at the top of dam elevation, or 25 acre-feet if the dam does not have an emergency spillway, and which has a height of 5 feet or more.

b. Any dam designed to provide permanent storage in excess of 18 acre-feet and which has a height of 5 feet or more.

c. Any dam across a stream draining more than 10 square miles.

d. Any dam located within 1 mile of an incorporated municipality, if the dam has a height of 10 feet or more, stores 10 acre-feet or more at the top of dam elevation, and is situated such that the discharge from the dam will flow through the incorporated area.

71.3(2) *Urban areas.* Any dam which exceeds the thresholds in 71.3(1) *"a," "b"* or *"d."*

71.3(3) *Low head dams.* Any low head dam on a stream draining 2 or more square miles in an urban area, or 10 or more square miles in a rural area.

71.3(4) *Modifications to existing dams.* Modification or alteration of any dam or appurtenant structure beyond the scope of ordinary maintenance or repair, or any change in operating procedures, if the dimensions or effects of the dam exceed the applicable thresholds in this rule. Changes in the spillway height or dimensions of the dam or spillway are examples of modifications for which approval is required.

71.3(5) *Mill dams.* Rescinded IAB 2/20/91, effective 3/27/91.

71.3(6) *Maintenance of preexisting dams.* Approval shall be required to maintain a preexisting dam as described in 567—Chapter 73 only if the department determines that the dam poses a significant threat to the well-being of the public or environment and should therefore be removed or repaired and safely maintained. Preexisting dams are subject to the water, air and waste management dam safety inspection program as set forth in 567—Chapter 73.

This rule is intended to implement Iowa Code sections 455B.262, 455B.264, 455B.267, 455B.275 and 455B.277.

567—71.4(455B) Levees or dikes. Approval by the department for construction, operation, and maintenance of levees or dikes shall be required in the following instances.

71.4(1) *Rural areas.* In rural areas, any levees or dikes located on the flood plain or floodway of any stream or river draining more than 10 square miles.

71.4(2) *Urban areas.* In urban areas, any levee or dike along any river or stream draining more than 2 square miles.

567—71.5(455B) Waste or water treatment facilities. Approval by the department for construction, operation, and maintenance of waste or water treatment facilities shall be required in the following instances.

71.5(1) *Rural areas.* In rural areas, any such facilities on the flood plains or floodway of any river or stream draining more than 10 square miles.

71.5(2) *Urban areas.* In urban areas, any such facilities on the flood plain or floodway of any river or stream draining more than 2 square miles.

567—71.6(455B) Sanitary landfills. Approval by the department for construction, operation, and maintenance of any sanitary landfill shall be required in the following instances.

71.6(1) *Rural areas.* In rural areas, any such landfill located on the flood plain or floodway of any stream draining more than 10 square miles at the landfill site.

71.6(2) *Urban areas.* In urban areas, any such facilities located on the flood plain or floodway of any stream draining more than 2 square miles at the landfill site.

567—71.7(455B) Buildings and associated fill. Approval by the department for construction, use and maintenance of "buildings" as defined in 567—Chapter 70 and for placement of fill is required as described in the following thresholds.

71.7(1) *Building and placement of associated fill in urban areas.* In urban areas as defined in these rules approval is required for construction, use and maintenance of buildings in the floodway or flood plain of any stream draining more than 2 square miles at the location of the structure as follows:

a. New construction including fill for development purposes. Approval is required for construction of any new building. New construction includes replacement or relocation of an existing building. New construction also includes placement and grading of fill materials in a manner that would create an elevated building site.

b. Additions to existing buildings. Approval is required for any addition which increases the original floor area of a building by 25 percent or more. All additions constructed after July 4, 1965, shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

c. Lowering or elevating. Approval is required for lowering a floor of a building. Approval is not required for elevating an existing building. However, when a building is elevated the lowest floor should be elevated to the appropriate minimum protection level stated in 567—subrule 72.5(1). The department, upon request, will cooperate in determining the minimum protection level for a person who proposes to elevate a building.

d. Reconstruction. Approval is required for reconstruction of any portion of a building if the cost of reconstruction exceeds 50 percent of the market value of the existing building or if reconstruction will increase the market value by more than 50 percent.

71.7(2) *Buildings and associated fill located within 2 miles of an urban area.* The thresholds for buildings and associated fill in subrule 71.7(1) shall apply to rural areas within 2 miles of municipal corporate limits.

71.7(3) *Buildings and associated fill in all other rural areas.* In rural areas not covered by 71.7(1) the thresholds for approval of buildings and associated fill are the same as in 71.7(1) except that approval is required only when the drainage area at the location of the structure is more than 10 square miles.

71.7(4) *Buildings and associated fill adjacent to or downstream from impoundments.* Approval is required for new construction, additions, lowering, or reconstruction and associated fill as described in 71.7(1) without regard to the drainage area if the proximity of the building to a dam regulated by the department is as follows:

a. Adjacent to impoundment. Approval is required for a building and associated fill adjacent to an impoundment if the lowest floor level including any basement is lower than the top of the dam.

b. Downstream from dam. Approval is required for a building and associated fill downstream from a dam at any location where flooding can be reasonably anticipated from principal or emergency spillway discharges. If the dam does not substantially comply with high hazard criteria in these rules, approval is required for a building and associated fill at any location where flooding can be reasonably anticipated from overtopping and failure of the dam.

567—71.8(455B) Pipeline crossings. Approval by the department for the construction, operation and maintenance of buried pipeline crossings is not required if the natural contours of the channel and flood plain are maintained. (NOTE: Approval of stream bank protection measures associated with pipeline crossings may need approval under 567—71.9(455B).) Approval by the department for the construction, operation, and maintenance of all other pipeline crossings shall be required in the following instances:

71.8(1) *Rural areas.* In rural areas, pipeline crossings on any river or stream draining more than 100 square miles.

71.8(2) *Urban areas.* In urban areas, pipeline crossings on any river or stream draining more than 2 square miles.

567—71.9(455B) Stream bank protective devices. Approval by the department for construction, operation, and maintenance of stream bank protective devices (including wing dikes, jetties, et cetera) shall be required in the following instances:

71.9(1) *Rural areas.* In rural areas:

a. All stream bank protective devices along any river or stream draining more than 100 square miles.

b. Stream bank protective devices along any river or stream draining between 10 and 100 square miles where the cross-sectional area of the river or stream channel is reduced more than 3 percent.

71.9(2) *Urban areas.* In urban areas:

a. Stream bank protective devices along any river or stream draining more than 100 square miles.

b. Stream bank protective devices along any river or stream draining between 2 and 100 square miles where the cross-sectional area of the river or stream channel is reduced more than 3 percent.

567—71.10(455B) Boat docks.

71.10(1) *In general.* Except as provided in subrule 71.10(2), department approval is required for all boat docks that are located in any stream other than a lake and do not float on the surface of the water.

71.10(2) *Exempted nonfloating boat docks.* Recreational nonfloating type boat docks located on the Mississippi and Missouri rivers, and the conservation pools of the Coralville, Rathbun, Red Rock, and Saylorville reservoirs shall not require department approval, other than a permit obtained from the parks, recreation and preserves division of the department.

567—71.11(455B) Excavations. Approval by the department for excavations shall be required in the following instances:

71.11(1) *Rural areas.* In rural areas:

a. Excavation in the channel on any river or stream draining more than 10 square miles where said excavation increases the cross-sectional area of said channel below bankfull stage by more than 10 percent. The cross-sectional area of the channel shall be determined based on current engineering plans, or original engineering plans, if being performed by a drainage district. If an original plan is not available, the current engineering plan will be used to determine the original cross-sectional area of the channel. The drainage district shall submit a copy of the engineering plan for increasing the cross-sectional area of a channel to the department prior to approval by the board of supervisors or trustees regardless of size of the increase. The department shall submit its decision to the drainage district within 60 days.

b. Excavation on any flood plain of any river or stream draining more than 10 square miles where said excavation is within 100 feet of the normal stream or riverbank.

c. Excavations in relation to highway projects are exempt except as otherwise provided for in 71.1(1), 71.1(2) and 71.1(3).

d. Excavation for the repair and maintenance of a drainage district ditch as defined in 567—70.2(455B) is not considered an excavation within the intent of this rule if the drainage area of the ditch at the location of the proposed work is less than 100 square miles.

71.11(2) *Urban areas.* In urban areas excavations on the floodway of any stream draining more than 2 square miles.

This rule is intended to implement Iowa Code section 455B.275.

567—71.12(455B) Miscellaneous structures, obstructions, or deposits not otherwise provided for in other rules. Approval by the department for construction, operation, and maintenance of miscellaneous structures, obstructions, or deposits, shall be required in the following instances.

71.12(1) *Rural areas.* In rural areas, any miscellaneous structures, obstructions, or deposits on the floodway or flood plain of any river or stream draining more than 10 square miles where such works obstruct more than 3 percent of the cross-sectional area of the stream channel at bankfull stage or where such works obstruct more than 15 percent of the total cross-sectional area of the flood plain at any stage. In determining a 15 percent obstruction of the flood plain, the concept of equal and opposite conveyance as defined in 567—Chapter 70 shall apply.

71.12(2) *Urban areas.* In urban areas, miscellaneous structures, obstructions, or deposits on the floodway or flood plains of any river or stream draining more than 2 square miles.

[Filed 10/9/75, Notice 8/25/75—published 10/20/75, effective 11/24/75]
[Filed 5/5/78, Notice 3/8/78; Amended Notice 4/19/78—published 5/31/78, effective 7/5/78]
[Filed 9/14/78, Notice 7/12/78—published 10/4/78, effective 11/8/78]
[Filed 11/13/78, Notice 9/20/78—published 11/29/78, effective 1/3/79]
[Filed emergency 11/5/80—published 11/26/80, effective 11/5/80]
[Filed 2/23/82, Notice 12/9/81—published 3/17/82, effective 4/21/82]
[Filed 2/24/82, Notice 11/11/81—published 3/17/82, effective 4/21/82]
[Filed 4/23/82, Notice 11/11/81—published 5/12/82, effective 6/16/82]
[Filed 4/6/83, Notice 2/16/83—published 4/27/83, effective 6/30/83]
[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed 12/2/83, Notice 6/22/83—published 12/21/83, effective 1/25/84]
[Filed 11/1/85, Notice 6/19/85—published 11/20/85, effective 12/25/85*]
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
[Filed 2/1/91, Notice 11/14/90—published 2/20/91, effective 3/27/91]

*Effective date(12/25/85) of subrules 71.2(4) and 71.11(1)"*a*" and "*d*" delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 72
CRITERIA FOR APPROVAL

[Prior to 7/1/83, INRC[580] Ch 5, Div. III to V]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

DIVISION I
SPECIAL CRITERIA FOR VARIOUS TYPES OF FLOOD PLAIN DEVELOPMENT

This division of these rules establishes administrative criteria which implement certain statutory criteria, policies, and principles in Iowa Code sections 455B.262, 455B.264, 455B.275 and 455B.277. The specific requirements in these rules must be met for approval of a project or activity in a flood plain or floodway. Additionally, the project or activity must satisfy all of the statutory criteria which sections 455B.262, 455B.264, 455B.275 and 455B.277 require the department to consider. Where a project or activity will result in effects which the department must by statute consider but which are not governed specifically by these rules, the department shall review such effects on a case-by-case basis to determine whether the project or activity meets the statutory criteria.

567—72.1(455B) Bridges and road embankments. The following criteria shall apply to the construction, operation, and maintenance of bridges and road embankments.

72.1(1) *Bridges and road embankments affecting low damage potential areas.* For bridges and road embankments affecting floodway or flood plain areas having a low flood damage potential, the following criteria will apply:

a. Backwater Q50. The maximum allowable backwater for Q50 and lesser floods is limited to 0.75 foot.

b. Backwater Q100. The maximum allowable backwater for Q100 is limited to 1.5 feet.

c. Freeboard. The minimum freeboard for low superstructure horizontal bridge members above Q50 is 3 feet.

72.1(2) *Bridges and road embankments affecting moderate damage potential areas.* For bridges and road embankments affecting floodway or flood plain areas occupied by buildings or building complexes having a moderate flood damage potential, the following criteria will apply:

a. The maximum allowable backwater for Q100 is limited to 1.0 foot.

b. The criteria specified in 72.1(1)*"a"* and *"c."*

72.1(3) *Bridges and road embankments affecting high or maximum damage potential development.* For bridges and road embankments affecting floodway or flood plain areas occupied by buildings or building complexes having a high or maximum flood damage potential, the following criteria will apply:

a. Backwater effects are to be minimized for all stages which affect maximum or high flood damage potential buildings or building complexes or for all stages which would tend to reduce the level of protection of certain flood control works, unless acceptable remedial measures are provided or such buildings are removed or the uses relating to human occupancy are prohibited.

b. In no case shall the criteria specified in 72.1(1)*"a"* and *"c"* and 72.1(2)*"a"* be exceeded.

72.1(4) *Bridge and channel change.* For bridges and culverts involving channel changes on the floodway of any stream draining at the location of the channel change between 10 and 100 square miles whereby either (i) more than a 500-foot length of the existing channel is being altered or (ii) the length of existing channel being altered is reduced by more than 25 percent, the maximum allowable backwater shall correspond to the limits permitted in 72.1(1), 72.1(2), 72.1(3) or 72.1(5) depending upon the associated damage potential.

72.1(5) *Culverts.* The maximum allowable backwater at culvert inlets shall correspond to the limits permitted in 72.1(1), 72.1(2), or 72.1(3) depending upon the damage potential associated with the affected area. In the case of replacement culverts the backwater shall not exceed that created by the culvert or waterway crossing being replaced or that specified in 72.1(1), 72.1(2), or 72.1(3) depending upon the associated damage potential, whichever is greater.

72.1(6) *Road embankments.* The criteria listed in 72.11(455B) for miscellaneous flood plain construction projects shall apply to road embankments located on the flood plain but not crossing any stream or river channel.

72.1(7) *Temporary channel obstructions.* Temporary stream crossings and other temporary obstructions usually constructed, operated, and maintained during the construction phase of another flood plain construction project shall meet the following criteria:

a. Low flow. Said structures will provide for the passage of the prevailing flow in the stream or river.

b. Flood flow. Said structure shall be designed to fail or otherwise operate in the event of flooding so as to prevent premature overbank flow, or meet the backwater criteria indicated in 72.1(1), 72.1(2), or 72.1(3).

72.1(8) *Emergency.* Repairs or temporary construction required to maintain the operation of a bridge, roadgrade or culverts in time of emergency need not be submitted for prior department approval. Plans of such emergency or temporary construction shall be submitted to the department for review after the event causing the emergency has passed.

567—72.2(455B) Channel changes. The following criteria shall apply to channel changes.

72.2(1) *Percent reduction in length.*

a. Streams draining over 100 square miles. For streams (other than protected streams) draining more than 100 square miles, no more than a 10 percent reduction in the original length of the existing channel through any contiguous parcel(s) of the applicant's(s') property will be allowed.

b. Rural streams draining 10 to 100 square miles. For streams (other than protected streams) draining between 10 and 100 square miles in rural areas, no more than a 25 percent reduction in the original length of the existing channel through any contiguous parcel(s) of the applicant's(s') property will be allowed.

c. Urban streams draining 2 to 100 square miles. For streams (other than protected streams) draining between 2 and 100 square miles in urban areas, no more than a 25 percent reduction in the original length of the existing channel through any contiguous parcel(s) of the applicant's(s') property will be allowed.

d. Protected streams. For protected streams no channel changes will be allowed, because of actual or potential significant adverse effects on fisheries, water quality, flood control, flood plain management, wildlife habitat, soil erosion, public recreation, the public health, welfare and safety, compatibility with the state water plan, rights of other landowners, and other factors relevant to the control, development, protection, allocation, and utilization of the stream. Protected stream status does not prohibit bank stabilization measures; tree maintenance or removal; maintenance or installation of tile outlets; machinery crossings, including concrete drive-throughs and bridges; boat or canoe ramps; or other structures permitted by the department; nor restrict riparian access to the protected stream for such uses as livestock watering or grazing. Protected stream status does not affect current cropping practices or require the establishment or maintenance of buffer strips, filter strips or fences along protected streams.

72.2(2) *Capacity.* In the project reach, excavated channels shall have a discharge capacity equal to or greater than the existing channel. Excessive channel excavation will not be permitted.

72.2(3) *Alignments.* The alignments and dimensions of the excavated channel shall be such as to provide a smooth transition between the existing and the excavated channel.

72.2(4) *Velocities.* Velocities in the excavated channel shall not cause excessive erosion of the channel or banks, with the acceptable velocities being determined by the department. Energy dissipation structures, channel and bank protection, or other engineering measures may be required to eliminate excessive erosion of the channel or banks.

72.2(5) *Spoil disposition.* Disposition of spoil material from channel excavation of the flood plain shall be reviewed under miscellaneous flood plain construction.

72.2(6) *Increase in flood peak.* No significant increase in peak flood discharge will be permitted by the department. Floodwater retardance structures may be required to minimize any increase in peak flood discharges.

72.2(7) *Fish and wildlife habitat and public rights.* The channel change shall not have a significant adverse effect on fish and wildlife habitat or public rights to use of the stream. Conservation easements and other conditions may be required to mitigate potential damages to the quality of water, fish and wildlife habitat, recreational facilities, and other public rights.

72.2(8) *Soil erosion.* The tillage of land along the reach of a straightened stream shall be prohibited or modified when necessary to hold soil erosion to reasonable limits. Zones of land in which tillage shall be prohibited along the straightened reach shall be set on a case-by-case basis with consideration given to topography, soil characteristics, current use, and other factors affecting propensity for soil erosion. The tillage prohibition shall be recorded by the department in the office of the appropriate county recorder and shall run with the land against the applicant and all successors in interest to the land subject to the prohibition.

72.2(9) *Encroachment on an animal feeding operation structure.* A major water source, as identified in Appendix B, Tables 1 and 2 of 567—Chapter 65, or a watercourse shall not be constructed, expanded or diverted if the watercourse or major water source as constructed, expanded or diverted is closer than the following distances from an animal feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place. Measurement shall be from the closest point of the animal feeding operation structure to the top of the bank of a stream channel or the ordinary high water mark of a lake, pond or reservoir.

a. Minimum distance from a watercourse to an animal feeding operation structure is 200 feet.

b. Minimum distance from a major water source to an animal feeding operation structure is 500 feet.

567—72.3(455B) Dams. The following criteria shall apply to dams which exceed the thresholds in 567—71.3(455B).

72.3(1) *General criteria for all regulated dams.*

a. Required findings. The department will approve the construction, operation or maintenance of a dam or modification of a dam or appurtenant structure only after finding that the project is designed in accordance with accepted engineering practice and methods and in a manner consistent with the applicable criteria and guidelines in department Bulletin No. 16, "Design Criteria and Guidelines for Iowa Dams," December 1990.

b. Anticipation of changed circumstances. In applying the approval criteria in subrule 72.3(1), paragraph *"a,"* consideration shall be given to both existing conditions and potential future conditions which can reasonably be anticipated at the time the application is reviewed.

c. Landowner notification. The department staff engineering review of the plans and specifications for a dam project shall determine whether there are lands upstream, downstream, or adjacent to the impoundment whose use apparently would be potentially adversely affected by maintenance of the dam and appurtenant structures, spillway discharges, temporary ponding of floodwater behind the dam, or failure of the dam. It is the applicant's responsibility to submit sufficient information with the application and on request to enable the staff to accurately identify the owners and occupants of affected lands. The staff shall notify all known affected owners and occupants that the project may affect use of land in which they have an interest and advise them of their opportunity to be heard on the application. The project shall not be approved unless it appears that notice reasonably calculated to advise all owners and occupants has been given and that they have had an opportunity to be heard.

72.3(2) *Dams other than low head dams.* The following criteria shall apply to all dams other than low head dams:

a. Assignment of hazard class. Dams shall be assigned a hazard class based on the potential consequences of failure. Anticipated future land and impoundment use shall be considered in the determination of hazard class. The criteria in this subrule shall be used to determine hazard class regardless of the methodology used in engineering design of a dam. The hazard class shall determine the design requirements of the structure as outlined in department Bulletin No. 16. The hazard class shall be evaluated using the following criteria:

(1) *Low hazard.* A structure shall be classified as low hazard if located in an area where damages from a failure would be limited to loss of the dam, loss of livestock, damages to farm outbuildings, agricultural lands, and lesser used roads, and where loss of human life is considered unlikely.

(2) *Moderate hazard.* A structure shall be classified as moderate hazard if located in an area where failure may damage isolated homes or cabins, industrial or commercial buildings, moderately traveled roads or railroads, interrupt major utility services, but without substantial risk of loss of human life. In addition, structures where the dam and its impoundment are of themselves of public importance, such as dams associated with public water supply systems, industrial water supply or public recreation, or which are an integral feature of a private development complex, shall be considered moderate hazard for design and regulatory purposes unless a higher hazard class is warranted by downstream conditions.

(3) *High hazard.* A structure shall be classified as high hazard if located in an area where failure may create a serious threat of loss of human life or result in serious damage to residential, industrial or commercial areas, important public utilities, public buildings, or major transportation facilities.

(4) *Multiple dams.* Where failure of a dam could contribute to failure of a downstream dam or dams, the minimum hazard class of the dam shall not be less than that of any such downstream structure.

b. Lands, easements, and rights-of-way. An application for approval of a dam project shall include information showing the nature and extent of lands, easements, and rights-of-way which the applicant has acquired or proposes to acquire to satisfy the following criteria:

(1) Ownership or perpetual easements shall be obtained for the area to be occupied by the dam embankment, spillways, and appurtenant structures, and the permanent or maximum normal pool;

(2) Ownership or easements shall be obtained for temporary flooding of areas which would be inundated by the flood pool up to the top of dam elevation and for spillway discharge areas;

(3) Easements covering areas affected by temporary flooding or spillway discharges shall include provisions prohibiting the erection and usage of structures for human habitation or commercial purposes without prior approval by the agency;

(4) In locating the site of a dam and in obtaining easements and rights-of-way, the applicant shall consider the impacts which anticipated changes in land use downstream of a dam or adjacent to the impoundment could have on the hazard class of the dam, the operation of the dam, and the potential liability of the dam owner;

(5) The applicant may be required to acquire control over lands downstream from the dam as necessary to prevent downstream development which would affect the hazard class of the dam.

c. Other approvals required. The applicant shall comply with all applicable provisions of 567—Chapters 51, 52 and 73 concerning water storage permits, operating permits, and inspections.

d. Additional requirements for major dam structures. Dams which are major dam structures as defined in 567—Chapter 70 must satisfy additional criteria set forth in Chapter VI of department Bulletin No. 16.

72.3(3) *Low head dams.* The following criteria shall apply to low head dams:

a. The location and design of a low head dam shall not adversely affect the fisheries or recreational use of the stream.

b. The pool created by a low head dam shall not adversely affect drainage on lands not owned or under easements by the applicant.

c. The structure shall be hydraulically designed to submerge before bankfull stage is reached in the stream channel in order that increased or premature overbank flooding does not occur. Where this cannot be reasonably accomplished in order for the structure to fulfill its intended purpose, the applicant shall demonstrate that any increased flooding will affect only lands owned or controlled by the applicant.

d. For projects which include significant appurtenant structures or works outside the stream channel, the combined effect of the total project shall not create more than 1 foot of backwater during floods which exceed the flow capacity of the channel, unless the proper lands, easements, or rights-of-way are obtained.

e. The structure shall be capable of withstanding the effects of normal and flood flows across its crest and against the abutments, and adjacent channel or bank areas shall be protected against erosion as needed.

72.3(4) *Operating plan.* For any dam with movable structures which must operate or be operated during times of flood or to provide minimum downstream flow, or where the impoundment level is raised or lowered on a regular basis, an operating plan must be submitted for approval. The plan shall be in accordance with department Bulletin No. 16 and rules in 567—Chapter 73.

72.3(5) *Encroachment on an animal feeding operation structure.* The provisions of subrule 72.2(9) apply to any reservoir or impoundment resulting from the construction or modification of any dam.

This rule is intended to implement Iowa Code sections 455B.262, 455B.264, 455B.270, 455B.275 and 455B.277.

567—72.4(455B) Levees or dikes. The following criteria shall apply to levees or dikes.

72.4(1) *Agricultural levees or dikes.*

a. Level of protection. The permanent height of agricultural levees or dikes normally shall be limited so that overtopping will occur due to discharges from Q10 to Q25 with the more comprehensive levee system being permitted the greater degree of protection.

b. Additional protection. Where it can clearly be shown that loss of valley storage caused by construction of the levee will not increase peak flood stages and discharges, the level of protection provided by the agricultural levee or dike may be increased beyond the Q10 to Q25 range.

c. Alignment. The location and alignment of agricultural levees or dikes shall be compatible with existing encroachment limits so that minimum flood protection levels will not be increased and said levee or dike alignment otherwise shall be consistent with the rules governing the location of encroachment limits set out in 567—75.4(455B).

d. Maximum effect. The maximum increase in the flood profile resulting from the construction, operation, and maintenance of an agricultural levee or dike shall be 1 foot. Equal and opposite conveyance as defined in 567—Chapter 70 shall be used in determining the maximum increase in flood profile resulting from such levees or dikes.

e. Interior drainage. All agricultural levees or dikes shall be provided with adequate interior drainage facilities.

f. Offset. A minimum offset equal to 100 feet or twice the width of a river or stream measured from top of bank to top of bank, whichever distance is less, shall be required for all agricultural levees unless a greater offset is dictated by 72.4(1), paragraph *"c"* or *"d."*

72.4(2) *Flood control levees or dikes.*

a. Design level. The minimum design flood protection level for flood control levees or dikes shall correspond to the flood profile for Q100.

b. Freeboard. The levee or dike height shall provide for at least 3 feet of freeboard above the design flood profile.

c. Alignment. The alignment of a flood control levee or dike shall be consistent with the rules governing the location of encroachment limits set out in 567—75.4(455B).

d. Interior drainage. Flood control levees or dikes shall provide for adequate interior drainage and ponding.

e. Design and specifications. The structural design and construction of flood control levees or dikes must be undertaken in accordance with accepted engineering and construction procedures and practices.

567—72.5(455B) Buildings. The following criteria apply to buildings.

72.5(1) *Minimum protection levels.* The minimum level of flood protection for a building depends on the damage potential of the building and contents. "Maximum," "high" and "moderate" damage potential classifications are defined in 567—Chapter 70. Criteria for determining minimum levels of protection are as follows:

a. Buildings with maximum damage potential shall be protected to the level of a flood equivalent to Q500 plus 1 foot. Determination of the elevation of the department regional flood is recommended as an alternative to establish an appropriate level of protection for a building which has maximum damage potential (see discussion of flood frequencies and magnitudes in 567—subrule 75.2(1)).

b. Buildings with high damage potential shall be protected to the level of a flood equivalent to Q100 plus 1 foot.

c. Buildings with moderate damage potential shall be protected to the level of a flood equivalent to Q50.

d. Buildings adjacent to an impoundment shall be protected to the elevation of the top of the dam unless the dam has adequate spillway capacity to discharge the flood corresponding to the damage potential of the building at an elevation below the top of the dam.

e. Buildings downstream from a dam shall be protected to a level established by the department after due consideration of the hazards posed by the dam for buildings downstream.

72.5(2) *Flood protection methods.* The following flood protection methods are required for buildings to which a minimum flood protection level applies.

a. Structural design and flood proofing. Basement walls and floors below the applicable minimum flood protection level shall be structurally designed and constructed to be flood proof and able to withstand hydrostatic pressure and buoyant forces associated with a water table elevation equivalent to the minimum flood protection level. However, attached garages and storage space may be constructed below the applicable minimum protection level without flood proofing if all electrical circuit boxes, furnaces, and hot-water heaters are located above the applicable minimum protection level.

b. Sanitary sewer drains. Sanitary sewer drains below the applicable minimum flood protection level shall be provided with automatic closure valves to prevent backflow.

72.5(3) *Location.* The criteria for location of a building include consideration of the potential for obstructing flood flows and the potential hazards which may arise when the building is surrounded by floodwater. Criteria for location of buildings in floodways and flood plains are as follows:

a. Obstruction. Buildings shall not be located in the floodway of a stream so as to result, individually or collectively, in any increase in the elevation of the 100-year flood as confined to the floodway. The floodway boundary applicable to an individual application shall be determined as necessary by the department in accordance with the criteria in rule 567—75.4(455B). Analysis of the effect that a building in the floodway would have on flood levels shall be based on the assumption that all similarly situated landowners would be allowed an equal degree of development in the floodway.

b. Public damages. Buildings shall be located to minimize public damages associated with isolation due to flooding of surrounding ground. In identifying the potential for public damages, the department shall determine whether there is a need for access passable by wheeled vehicles during the 100-year flood. The need for such access shall be determined on the basis of the criteria for evaluating flood warning and response time in 567—subrule 75.2(3).

c. Existing buildings—replacement and improvements. In applying the criteria in paragraphs *"a"* and *"b"* of this subrule to projects which improve or replace existing lawful buildings the department shall give consideration to the policies for protection of existing development in rule 567—75.6(455B).

567—72.6(455B) Wastewater treatment facilities. The following criteria shall apply to wastewater treatment facilities.

72.6(1) *Location.* Wastewater treatment facilities shall not be located so as to individually or collectively conflict with 567—75.4(455B) governing the establishment of encroachment limits.

72.6(2) *Flood protection.* Flood protection for wastewater treatment facilities shall be provided to the level necessary for high damage potential buildings or building complexes unless evidence is submitted indicating the facility is of a lesser damage potential.

567—72.7(455B) Sanitary landfills. The following criteria shall apply to sanitary landfills.

72.7(1) *Location.* Sanitary landfills shall not be located so as to individually or collectively conflict with 567—75.4(455B) governing the establishment of encroachment limits.

72.7(2) *Flood protection.* Flood protection for the active working portion of the sanitary landfill shall be provided to the level necessary for high damage potential buildings or building complexes.

567—72.8(455B) Water supply treatment facilities. The following criteria shall apply to water supply treatment facilities.

72.8(1) *Location.* Water supply treatment facilities shall not be located so as to individually or collectively conflict with 567—75.4(455B) governing the establishment of encroachment limits.

72.8(2) *Flood protection.* Flood protection for water supply treatment facilities shall be provided to at least the level necessary for high damage potential buildings or building complexes.

567—72.9(455B) Stream protective devices. The following criteria shall apply to stream protective devices.

72.9(1) *Overflow.* Stream protective devices shall be constructed in a manner which will not cause premature overbank flow.

72.9(2) *Velocity.* Increased velocities resulting from the construction, operation, and maintenance of stream protective devices shall be limited so as not to cause excessive scour in the channel as determined by the department.

72.9(3) *Stability.* Stream protective devices shall be anchored securely to the bank or constructed in a stable manner so as not to become dislodged and result in the scattering of debris in adjacent and downstream reaches.

72.9(4) *Water quality and aesthetics.* Stream protective devices shall not adversely affect the water quality, fish and wildlife habitat or aesthetics of the stream.

567—72.10(455B) Pipeline river or stream crossings. The following criteria shall apply to pipeline river and stream crossings.

72.10(1) *Protection.* Pipeline river or stream crossings shall be sufficiently buried in the stream bed and banks or otherwise sufficiently protected to prevent rupture.

72.10(2) *Overflow and velocities.* Pipeline river or stream crossings shall be constructed, operated, and maintained so as not to create premature overbank flow or excessive scour to the channel or banks.

72.10(3) *Spoil.* Spoil material resulting from the construction of a pipeline crossing shall be disposed of in a manner which will not obstruct low flow or flood flows.

567—72.11(455B) Miscellaneous construction. The following criteria shall apply to miscellaneous construction.

72.11(1) *Structures, obstructions, or deposits.*

a. Location. Miscellaneous structures, obstructions, or deposits shall not be located so as to individually or collectively conflict with 567—75.4(455B) governing the establishment of encroachment limits.

b. Protection. Miscellaneous structures, obstructions, or deposits shall be provided with the minimum level of flood protection associated with the designated damage potential as indicated in 72.5(1) governing buildings and building complexes.

72.11(2) *Excavation.*

a. Spoil. Spoil material resulting from an excavation shall be disposed of in a manner consistent with 72.11(1)*"a"* pertaining to miscellaneous structures, obstructions, or deposits.

b. Levees. Levees protecting excavations shall meet the requirements of 72.11(1)*"a"* pertaining to miscellaneous structures, obstructions, or deposits.

c. Control of surface runoff into rock quarries. When the department investigates an application for approval of excavation of a quarry in carbonate rock on a flood plain or floodway, the department shall consider the potential for pollution of an underground watercourse or basin from drainage of surface water into the quarry. If available information including topographic and geological information support a finding that drainage of surface water into the quarry would constitute a violation of the permit requirement in Iowa Code section 455B.268(3) and might cause pollution of an underground watercourse or basin if not controlled, then the department shall require that the applicant either request a permit under Iowa Code sections 455B.268(3) and 51.5(455B) to authorize drainage of surface water into the quarry, or construct and maintain a means of controlling drainage of surface water which would otherwise drain into the quarry.

These rules are intended to implement Iowa Code sections 455B.262, 455B.264, 455B.270, 455B.275 and 455B.277.

567—72.12 to **72.29** Reserved.

DIVISION II
GENERAL CRITERIA

567—72.30(455B) General conditions. Department orders approving an activity or project shall be subject to the following conditions.

72.30(1) *Maintenance.* The applicant and any successor in interest to the real estate on which the project or activity is located shall be responsible for proper maintenance.

72.30(2) *Responsibility.* No legal or financial responsibility arising from the construction or maintenance of the approved works shall attach to the state of Iowa or the agency due to the issuance of an order or administrative waiver.

72.30(3) *Lands.* The applicant shall be responsible for obtaining such government licenses, permits, and approvals, and lands, easements, and rights-of-way which are required for the construction, operation, and maintenance of the authorized works.

72.30(4) *Change in plans.* No material change from the plans and specifications approved by the department shall be made unless authorized by the department.

72.30(5) *Revocation of order.* A department order may be revoked if construction is not completed within the period of time specified in the department order.

72.30(6) *Performance bond.* A performance bond may be required when necessary to secure the construction, operation, and maintenance of approved projects and activities in a manner that does not create a hazard to the public's health, welfare, and safety. The amount and conditions of such bond shall be specified as special conditions in the department order.

567—72.31(455B) Variance.

72.31(1) *In general.* Where evidence is presented that additional private or significant public damage will not result from flood plain or floodway construction (other than channel changes) subject to regulation under 567—Chapters 70 to 72, the department may permit variance to the criteria stated in Chapter 72.

72.31(2) *Channel change variances.* The department may grant variances to the criteria stated in this chapter for channel changes (other than channel changes on protected streams) only in the following instances: (a) For comprehensive flood control projects in urban areas where channelization is the best alternative available; (b) for public projects such as roads or road grade protection where a channel change is the only reasonable and practicable alternative; (c) in cases whereby natural channel erosion has significant probability of eroding the structural stability of a building or other structure and bank erosion control measures are not feasible or practical under the circumstances; (d) in other cases where the applicant can clearly show that there are no adverse effects on the public interest.

72.31(3) *Protected stream channel change variance.* The department may grant variances to the prohibition of channel changes on protected streams for those cases listed in 72.31(2)*"b," "c,"* and *"d,"* but such variances will be with provisions for mitigation of environmental damage.

567—72.32(455B) Protected stream information. The following describes the variance procedure and the relation of hydrologically connected streams to protected streams:

72.32(1) *Protected streams variance procedure.* The variance shall be requested as part of the permit application and review process provided for in rules 567—70.3(17A,455B,481A) to 70.5(17A,455B,481A) and decisions on the variance request may be appealed in accordance with rule 567—70.6(17A,455B,481A). If the applicant is denied a permit to channelize a protected stream, the applicant may appeal to the environmental protection commission. The appeal will normally be heard by an administrative law judge but the applicant may request that the commission hear the appeal directly. If a proposed decision of an administrative law judge would affirm the denial of the permit, the applicant may appeal the administrative law judge's decision to the commission. If, on appeal, the commission affirms the denial of the permit, the applicant may appeal to the district court.

72.32(2) *Hydrologically connected streams.* Streams or waters that are hydrologically connected to protected streams are not protected streams unless specifically listed as protected streams in 72.50(2). The environmental protection commission considers the streams and waters that are hydrologically connected to streams proposed to become protected streams as one of the factors in the decision-making process to add streams to the list of protected streams in a rule-making procedure. Subrule 72.51(7) lists the other factors that affect the decision.

72.32(3) *Protected stream activities.* Protected stream status does not prohibit bank stabilization measures; tree maintenance or removal; maintenance or installation of tile outlets; machinery crossings, including concrete drive-throughs and bridges; boat or canoe ramps; or other structures permitted by the department; nor restrict riparian access to the protected stream for such uses as livestock watering or grazing. Protected stream status does not affect current cropping practices or require the establishment or maintenance of buffer strips, filter strips, or fences along protected streams except as may be required to mitigate environmental damage associated with a channel change on a protected stream.

567—72.33 to 72.49 Reserved.

DIVISION III
PROTECTED STREAM DESIGNATION PROCEDURE

567—72.50(455B) Protected streams.

72.50(1) *Protected streams defined.* Protected streams shall include streams designated as protected streams pursuant to the procedures of 72.51(455B), which upon designation will be listed in 72.50(2). Streams hydrologically connected to protected streams are not protected streams unless specifically listed as protected streams in 72.50(2).

72.50(2) *List of protected streams.* Streams designated as protected streams are the following:

ADAIR COUNTY

Middle River, east county line to confluence with unnamed creek (NE 1/4, S36, T76N, R30W, Adair Co.);

ALLAMAKEE COUNTY

Bear Creek, mouth (S1, T100N, R5W, Allamakee Co.) to west county line;
Clear Creek, mouth (S29, T99N, R3W, Allamakee Co.) to north line of S15, T100N, R5W;
Clear Creek, mouth (S35, T99N, R3W, Allamakee Co.) to west line of S25, T99N, R4W;
Cota Creek, mouth to west line of S10, T97N, R3W;
Dousman Creek, mouth (S33, T96N, R3W, Allamakee Co.) to south county line;
French Creek, mouth to east line of S23, T99N, R5W;

Hickory Creek, mouth to south line of S28, T96N, R5W;
Irish Hollow Creek, mouth to north line of S17, T100N, R4W;
Little Paint Creek, mouth to north line of S30, T97N, R3W;
Norfolk Creek, mouth to confluence with Teeple Creek (S24, T97N, R6W);
Paint Creek (a.k.a. Pine Creek), mouth (S9, T99N, R6W, Allamakee Co.) to west county line;
Paint Creek, mouth (S15, T96N, R3W, Allamakee Co.) to road crossing S18, T97N, R4W;
Patterson Creek, mouth to east line of S3, T98N, R6W;
Silver Creek, mouth to south line of S31, T99N, R5W;
Suttle Creek, mouth (S17, T96N, R4W, Allamakee Co.) to south county line;
Teeple Creek mouth to north line of S11, T97N, R6W;
Trout Run, mouth in S16, T98N, R4W through one mile reach;
Unnamed tributary to Village Creek (a.k.a. Erickson Spring Branch), mouth to west line of S23, T98N, R4W;
Unnamed tributary to the Yellow River (a.k.a. Bear Creek), mouth to north line of S12, T96N, R5W;
Upper Iowa River, from Lane's Bridge at river mile 6 to west county line;
Village Creek, mouth to west line of S19, T98N, R4W;
Waterloo Creek, mouth (S35, T100N, R6W) to north county line;
Wexford Creek, mouth to west line of S25, T98N, R3W;
Yellow River, mouth to west county line;

APPANOOSE COUNTY

Chariton River, Highway 2 (S27, T69N, R17W, Appanoose Co.) to Rathbun Lake Dam (S35, T70N, R18W, Appanoose Co.);

BENTON COUNTY

Bear Creek, east county line to confluence with Opossum Creek (S 5/8, T84N, R9W, Benton Co.);
Bear Creek, mouth (S21, T86N, R10W, Benton Co.) to confluence with unnamed creek (NE1/4, NE 1/4, S2, T86N, R10W, Benton Co.);
Cedar River, east county line to north county line;
Iowa River, south county line to west county line;
Lime Creek, mouth (S4, T86N, R10W, Benton Co.) to north county line;
Prairie Creek, mouth (S10, T85N, R10W, Benton Co.) to confluence with unnamed creek (S36, T86N, R10W, Benton Co.);
Salt Creek, mouth (S31, T82N, R12W, Benton Co.) to west county line;
Wild Cat Creek, mouth (S8, T84N, R9W, Benton Co.) to confluence with unnamed creek (W1/2, S33, T84N, R10W, Benton Co.);
Wolf Creek, north county line to west county line;

BLACK HAWK COUNTY

Black Hawk Creek, mouth (S22, T89N, R13W, Black Hawk Co.) to west county line;
Cedar River, east county line to north county line;
Crane Creek, mouth (S26, T90N, R11W, Black Hawk Co.) to confluence with unnamed creek (S3, T90N, R12W, Black Hawk Co.);
Shell Rock River, mouth (S4, T90N, R14W, Black Hawk Co.) to north county line;
Wapsipinicon River, east county line to north county line;
West Fork Cedar River, mouth (S10, T90N, R14W, Black Hawk Co.) to west county line;
Wolf Creek, mouth (S19, T87N, R11W, Black Hawk Co.) to south county line;

BOONE COUNTY

Big Creek, south county line to confluence with unnamed creek (NW 1/4, S34, T82N, R25W, Boone Co.);

Bluff Creek, mouth (S22, T84N, R27W, Boone Co.) to Don Williams Lake Outlet (S5, T84N, R27W, Boone Co.);

Des Moines River, south county line to north county line;

BREMER COUNTY

Cedar River, south county line to north county line;

Shell Rock River, south county line to west county line;

Wapsipinicon River, south county line to north county line;

BUCHANAN COUNTY

Cedar River, south county line to west county line;

Lime Creek, south county line to confluence with unnamed creek (S1, T87N, R10W, Buchanan Co.);

South Fork Maquoketa River, east county line to confluence with major unnamed creek (S4, T90N, R7W, Buchanan Co.);

Wapsipinicon River, south county line to west county line;

BUENA VISTA COUNTY

Little Sioux River, north county line to north county line (entire length in county);

North Raccoon River, south county line to the north line of the NW 1/4, SE 1/4, S12, T90N, R36W, Buena Vista Co.;

BUTLER COUNTY

Shell Rock River, east county line to north county line;

West Fork Cedar River, east county line to west county line;

CALHOUN COUNTY

Camp Creek, mouth (S7, T86N, R34W, Calhoun Co.) to confluence with unnamed creek (NE1/4, NE 1/4, S33, T87N, R34W, Calhoun Co.);

Cedar Creek, south county line to confluence with unnamed creek (S 1/2, S34, T86N, R32W, Calhoun Co.);

Lake Creek, mouth (S23, T86N, R34W, Calhoun Co.) to confluence with D.D. 13 (S33, T88N, R32W, Calhoun Co.);

North Raccoon River, south county line to west county line;

CARROLL COUNTY

Middle Raccoon River, south county line to confluence with unnamed creek (SE 1/4, S15, T84N, R35W, Carroll Co.);

North Raccoon River, east county line to north county line;

CEDAR COUNTY

Cedar River, south county line to west county line;

Rock Creek, mouth (S2, T79N, R3W, Cedar Co.) to confluence with West Rock Creek (S11, T81N, R3W, Cedar Co.);

Sugar Creek, south county line to confluence with unnamed creek (S35, T80N, R2W, Cedar Co.);

Wapsipinicon River, east county line to north county line;

CERRO GORDO COUNTY

Beaverdam Creek, south county line to confluence with unnamed creek (S12, T95N, R22W, Cerro Gordo Co.);

Shell Rock River, east county line to north county line;

Spring Creek, mouth (S28, T97N, R20W, Cerro Gordo Co.) to confluence with Blair Creek (S9, T97N, R20W, Cerro Gordo Co.);

Willow Creek, mouth (S3, T96N, R20W, Cerro Gordo Co.) to confluence with Clear Creek (S16, T96N, R21W, Cerro Gordo Co.);

Winnebago River, east county line to west county line (entire length in county);

CHEROKEE COUNTY

Little Sioux River, south county line to north county line;

Maple River, south county line to confluence with unnamed creek (N 1/2, S29, T91N, R39W, Cherokee Co.);

Mill Creek, confluence with Willow Creek (S1, T93N, R41W, Cherokee Co.) to north county line;

CHICKASAW COUNTY

Cedar River, south county line to west county line;

Crane Creek, east county line to confluence with unnamed creek (NE 1/4, S25, T95N, R11W, Chickasaw Co.);

Little Cedar River, mouth (S20, T94N, R14W, Chickasaw Co.) to west county line;

Wapsipinicon River, south county line to north county line;

CLAY COUNTY

Little Sioux River, west county line to north county line (entire length in county);

Lost Island Outlet, mouth (S35, T96N, R36W, Clay Co.) to County Road M 54 (S24, T96N, R36W, Clay Co.);

Muddy Creek, mouth (S15, T96N, R36W, Clay Co.) to County Road B 17 (north line, S23, T97N, R36W, Clay Co.);

Ocheyedan River, mouth (S13, T96N, R37W, Clay Co.) to confluence with Stoney Creek (S7, T96N, R37W, Clay Co.);

Prairie Creek, mouth (S26, T96N, R36W, Clay Co.) to confluence with unnamed creek (SE1/4, S35, T96N, R37W, Clay Co.);

Stoney Creek, mouth (S7, T96N, R37W, Clay Co.) to Highway 18 (S31, T96N, R37W, Clay Co.);

CLAYTON COUNTY

Bear Creek, mouth (S34, T92N, R4W, Clayton Co.) to west line of S23 T91N, R5W, Clayton Co.;

Bloody Run, mouth (S15, T95N, R3W) to source at Spook Cave;

Bloody Run Creek (a.k.a. Grimes Hollow), mouth (S36, T91N, R3W) to south county line;

Brownfield Creek, mouth to spring source (S31, T91N, R3W);

Buck Creek, mouth to west line of S9, T93N, R3W;

Cox Creek, mouth (S21, T92N, R5W, Clayton Co.) to south line S12, T91N, R6W, Clayton Co.;

Dry Mill Creek, mouth to west line of S9, T93N, R4W;

Elk Creek, mouth (S36, T92N, R4W, Clayton Co.) to south county line;

Ensign Creek, mouth (S28, T92N, R6W, Clayton Co.) to spring source (S29, T92N, R6W, Clayton Co.);

Hewett Creek, mouth to south line of S29, T92N, R6W;

Kleinlein Creek (a.k.a. Spring Creek), mouth to spring source (S10, T91N, R6W);

Maquoketa River, south county line to west county line;

Miners Creek, mouth to west line of S1, T92N, R3W;

Mink Creek, mouth (S30, T93N, R6W) to west county line;

Mossey Glen Creek, mouth (S3, T91N, R5W) to south line of S10, T91N, R5W, Clayton Co.;

North Cedar Creek, mouth (S8, T94N, R3W) to source;
Pecks Creek, mouth to south line of S15, T91N, R3W;
Pine Creek, mouth (S26, T91N, R4W) to confluence with Brownfield Creek (S25, T91N, R4W);
Point Hollow Creek (a.k.a. White Pine Creek), mouth (S31, T91N, R2W) to south county line;
Roberts Creek, mouth (S25, T93N, R5W, Clayton Co.) to confluence with unnamed creek (SE 1/4, S15, T95N, R6W, Clayton Co.);
Sny Magill Creek (a.k.a. Magill Creek), mouth to source;
South Cedar Creek (a.k.a. Cedar Creek), mouth (S33, T92N, R3W, Clayton Co.) to north line of S30, T93N, R4W, Clayton Co.;
Steeles Branch, mouth (S26, T91N, R4W) to south line S32, T91N, R4W, Clayton Co. (entire length in county);
Turkey River, confluence with Volga River to west county line;
Unnamed tributary to Sny Magill Creek (a.k.a. West Fork Sny Magill Creek), mouth (S7, T94N, R3W) to west line of S7, T94N, R3W;
Volga River, mouth (S26, T92N, R4W, Clayton Co.) to west county line;

CLINTON COUNTY

Elk River, mouth (S20, T83N, R7E, Clinton Co.) to confluence with North Branch Elk River (S10, T83N, R6E, Clinton Co.);
Wapsipinicon River, mouth (S13, T80N, R5E, Clinton Co.) to west county line (entire length in county);

CRAWFORD COUNTY

Boyer River, south county line to north county line;

DALLAS COUNTY

Des Moines River, east county line to north county line (entire length in county);
Middle Raccoon River, mouth (S9, T78N, R29W, Dallas Co.) to west county line (entire length in county);
North Raccoon River, mouth (S21, T78N, R27W, Dallas Co.) to north county line (S5, T81N, R29W, Dallas Co.) (entire length in county);
Raccoon River, east county line to confluence with North Raccoon River (S21, T78N, R27W, Dallas Co.);

DAVIS COUNTY

Des Moines River, east county line to north county line (entire length in county);

DECATUR COUNTY

Thompson River, Highway 69 (S35, T68N, R26W, Decatur Co.) to west county line;

DELAWARE COUNTY

Bloody Run Creek (a.k.a. Grimes Hollow), north county line to spring source (S3, T90N, R3W);
Coffins Creek, mouth (S19, T89N, R5W, Delaware Co.) to confluence with Prairie Creek (S29, T89N, R6W, Delaware Co.);
Elk Creek, north county line to confluence with unnamed creek (center, S13, T90N, R4W, Delaware Co.);
Fenchel Creek, mouth (S5, T90N, R6W) to Richmond Springs (center of S4, T90N, R6W);
Fountain Spring Creek (a.k.a. Odell Branch), mouth (SE 1/4, S10, T90N, R4W) to confluence with South Branch Fountain Spring Creek (SE 1/4, S16, T90N, R4W);
Little Turkey River, north county line to south line of S11, T90N, R3W;
Maquoketa River, south county line to north county line;

Sand Creek, mouth (S9, T88N, R5W, Delaware Co.) to confluence with major unnamed creek (SW 1/4, S11, T88N, R6W, Delaware Co.);

Schechtman Branch, mouth to south line of S14, T90N, R4W;

South Branch Fountain Spring Creek, mouth (S16, T90N, R4W) to spring source (S16, T90N, R4W);

South Fork Maquoketa River, mouth (S16, T90N, R6W, Delaware Co.) to west county line;

Spring Branch, mouth (S10, T88N, R5W) to major spring source, north of Highway 20 (S35, T89N, R5W, Delaware Co.)

Steeles Branch, north county line to west line of S5, T90N, R4W, Delaware Co. (entire length in county between S4, T90N, R4W and west line of S5, T90N, R4W);

Twin Springs Creek, mouth (S2, T90N, R4W) to spring source (S12, T90N, R4W);

DES MOINES COUNTY

Cedar Creek, mouth (S1, T69N, R5W, Des Moines Co.) to Geode Lake Dam;

Cedar Creek, west county line to confluence with unnamed creek (S18, T70N, R4W, Des Moines Co.);

Flint Creek, mouth (S28, T70N, R2W, Des Moines Co.) to confluence with unnamed creek (NW 1/4, S21, T71N, R4W, Des Moines Co.);

Skunk River, mouth (S8, T68N, R2W, Des Moines Co.) to east county line (entire length in county);

DICKINSON COUNTY

Little Sioux River, south county line to confluence with West Fork Little Sioux River (S7, T99N, R37W, Dickinson Co.);

DUBUQUE COUNTY

Bloody Run, mouth (S34, T90N, R2E) to west line of S21, T90N, R2E;

Catfish Creek, mouth (S5, T88N, R3E, Dubuque Co.) to source;

Cloie Branch, mouth (S5, T89N, R2E) to west line of S5, T89N, R2E;

Hogans Branch, mouth (S35, T89N, R1W) to west line of S9, T88N, R1W;

Little Maquoketa River, mouth (S26, T90N, R2E, Dubuque Co.) to north line of NE 1/4, S5, T88N, R1W, Dubuque Co.;

Middle Fork Little Maquoketa River, west line of S31, T90N, R1E to north line of S33, T90N, R1W;

Point Hollow Creek (a.k.a. White Pine Creek), north county line to spring source (S8, T90N, R2W);

Tete des Morts Creek (a.k.a. Tete des Morts River), mouth (S34, T88N, R4E, Dubuque Co.) to south county line (S34, T88N, R4E, Dubuque Co.);

EMMET COUNTY

Brown Creek, mouth (S24, T99N, R34W, Emmet Co.) to Highway 9 (S13, T99N, R34W, Emmet Co.);

Des Moines River, south county line to north county line;

East Fork Des Moines River, east county line to Tuttle Lake Outlet (S13, T100N, R32W, Emmet Co.);

FAYETTE COUNTY

Bass Creek, mouth (S3, T95N, R9W) to west line of S3, T95N, R9W;

Bear Creek, mouth to west line of S6, T92N, R7W;

Bell Creek, mouth (S10, T94N, R7W) to west line of S8,T94N, R7W;

Brush Creek, mouth (S26, T93N, R7W, Fayette Co.) to east line of S17, T92N, R7W, Fayette Co.;

Crane Creek, mouth (S31, T95N, R9W, Fayette Co.) to west county line;

Grannis Creek, mouth (S30, T93N, R7W), to west line of S36, T93N, R8W, Fayette Co.;

Little Turkey River, mouth (S18, T95N, R8W, Fayette Co.) to north county line;

Maquoketa River, east county line to north line of S24, T91N, R7W;
Mink Creek, east county line to west line of S15, T93N, R7W;
North Branch Volga River, mouth (S33, T93N, R9W, Fayette Co.) to confluence with unnamed creek (S8, T93N, R9W, Fayette Co.);
Otter Creek, mouth to confluence with unnamed tributary (a.k.a. Glovers Creek) in S22, T94N, R8W;
Turkey River, east county line to north county line;
Unnamed tributary to Otter Creek (a.k.a. Glovers Creek), mouth (S22, T94N, R8W) to west line of S15, T94N, R8W;
Volga River, east county line to confluence with unnamed creek (NW 1/4, NE 1/4 of S24, T93N, R10W, Fayette Co.);
FLOYD COUNTY
Cedar River, east county line to north county line;
Little Cedar River, east county line to north county line;
Rock Creek, mouth (S24, T97N, R17W, Floyd Co.) to north county line (entire length in county);
Shell Rock River, south county line to west county line;
Winnebago River, mouth (S14, T95N, R18W, Floyd Co.) to west county line;
FRANKLIN COUNTY
Beaver Creek, east county line to road crossing (S28, T90N, R19W, Franklin Co.);
Beaverdam Creek, mouth (S19, T93N, R19W, Franklin Co.) to north county line;
Iowa River, south county line to west county line (entire length in county);
Maynes Creek, confluence with unnamed creek (S12, T91N, R19W, Franklin Co.) to confluence with unnamed creek (S30, T91N, R20W, Franklin Co.);
Otter Creek, mouth (S28, T92N, R19W, Franklin Co.) to County Road C 23 (north line of S31, T93N, R20W, Franklin Co.);
West Fork Cedar River, east county line to confluence with Beaverdam & Bailey Creeks (S19, T93N, R19W, Franklin Co.);
GREENE COUNTY
Cedar Creek, mouth (S33, T85N, R32W, Greene Co.) to north county line;
North Raccoon River, south county line to west county line (entire length in county);
GRUNDY COUNTY
Black Hawk Creek, east county line to confluence with Minnehaha Creek (S7, T87N, R16W, Grundy Co.);
Wolf Creek, east county line to confluence with unnamed creek (S32, T86N, R17W, Grundy Co.);
GUTHRIE COUNTY
Middle Raccoon River, Lake Panorama (S15, T80N, R31W, Guthrie Co.) to north county line;
Middle Raccoon River, east county line to Lake Panorama Outlet (S31, T80N, R30W, Guthrie Co.);
HAMILTON COUNTY
Boone River, west county line to north county line;
Des Moines River, west county line to west county line (entire length in county);
Eagle Creek, mouth (S6, T89N, R25W, Hamilton Co.) to north county line;
White Fox Creek, mouth (S33, T89N, R25W, Hamilton Co.) to north county line;
HANCOCK COUNTY
East Fork Iowa River, south county line to confluence with Galls Creek (S12, T95N, R24W, Hancock Co.);
West Fork Iowa River, south county line to County Road B 55 (north line of S31, T95N, R24W, Hancock Co.);
Winnebago River, east county line to north county line (entire length in county);

HARDIN COUNTY

Iowa River, south county line to north county line;

School Creek, mouth (S28, T89N, R20W, Hardin Co.) to confluence with unnamed creek (S16, T89N, R20W, Hardin Co.);

South Fork Iowa River, mouth (S4, T86N, R19W, Hardin Co.) to Highway 359 (S11, T88N, R22W, Hardin Co.);

HENRY COUNTY

Cedar Creek, mouth (S9, T71N, R7W, Henry Co.) to west county line (entire length in county);

Cedar Creek, upper extent of Geode Lake (S25, T70N, R5W, Henry Co.) to east county line;

Crooked Creek, west county line to north county line;

Skunk River, south county line to west county line (NW 1/4, S30, T73N, R7W, Henry Co.)(entire length in Henry Co.);

HOWARD COUNTY

Beaver Creek, mouth to south line of S29, T100N, R13W;

Bohemian Creek, east county line to west line of S2, T97N, R11W;

Chialk Creek, mouth (S1, T98N, R11W, Howard Co.) to north line S36, T99N, R11W, Howard Co.;

Nichols Creek (a.k.a. Bigalks Creek), east county line to west line of S23, T100N, R11W;

Staff Creek, mouth to west line of S27, T100N, R14W;

Turkey River, east county line to confluence with South Branch Turkey River (S2, T98N, R12W, Howard Co.);

Upper Iowa River, all of the river located in Howard County;

Wapsipinicon River, south county line to west county line;

HUMBOLDT COUNTY

Des Moines River, south county line to north line S7, T92N, R30W, Humboldt Co.;

East Fork Des Moines River, mouth (S19, T91N, R28W, Humboldt Co.) to north county line;

IDA COUNTY

Little Sioux River, west county line to north county line;

Maple River, west county line to north county line;

IOWA COUNTY

Iowa River, east county line to north county line;

JACKSON COUNTY

Brush Creek, north line of S23, T85N, R3E to north line of S1, T85N, R3E;

Cedar Creek, mouth (S30, T85N, R3E) to east line of S29, T85N, R3E;

Little Mill Creek, mouth to west line of S29, T86N, R4E;

Maquoketa River, mouth (S7, T85N, R6E, Jackson Co.) to west county line (entire length in county);

Mill Creek, mouth (S18, T86N, R5E, Jackson Co.) to confluence with unnamed creek (S1, T86N, R3E, Jackson Co.);

Mineral Creek, mouth (S32, T85N, R1E, Jackson Co.) to west county line;

Ozark Spring Run, mouth (S32, T86N, R1E) to spring source in center of S32, T86N, R1E;

Pleasant Creek (a.k.a. Springbrook), confluence with unnamed creek (E 1/2, S11, T85N, R4E, Jackson Co.) to west line S15, T85N, R4E, Jackson Co.;

South Fork Big Mill Creek, mouth (S8, T86N, R4E, Jackson Co.) to west line S17, T86N, R4E, Jackson Co.;

Storybrook Hollow, mouth (S7, T86N, R4E, Jackson Co.) to south line S12, T86N, R3E, Jackson Co.;

Tete des Morts Creek (a.k.a. Tete des Morts River), north county line (S3, T87N, R4E, Jackson Co.) to confluence with unnamed creek (NW 1/4, S4, T87N, R3E, Jackson Co.);

Unnamed Creek, mouth (S1, T86N, R3E, Jackson Co.) to west line S1, T86N, R3E, Jackson Co.;

Unnamed tributary to Lytle Creek, mouth (S7, T86N, R2E) to west line of S11, T86N, R1E;

JEFFERSON COUNTY

Crooked Creek, mouth (S1, T73N, R8W, Jefferson Co.) to east county line;

Skunk River, east county line (east line, S13, T72N, R8W, Jefferson Co.) to north county line (north line, S1, T73N, R8W, Jefferson Co.) (entire length in Jefferson Co.);

JOHNSON COUNTY

Cedar River, east county line to north county line;

Clear Creek, Interstate 380 (S34, T80N, R7W, Johnson Co.) to confluence with unnamed creek (S29, T80N, R8W, Johnson Co.);

Iowa River, south county line (south line, S32, T77N, R5W, Johnson Co.) to Coralville Dam (S22, T80N, R6W, Johnson Co.);

North Branch Old Mans Creek, mouth (S31, T79N, R7W, Johnson Co.) to north line S23, T79N, R8W, Johnson Co.;

JONES COUNTY

Buffalo Creek, mouth (S10, T84N, R4W, Jones Co.) to west county line;

Maquoketa River, east county line to north county line (entire length in county);

Mineral Creek, east county line to west line S29, T85N, R1W, Jones Co.;

Wapsipinicon River, south county line to west county line;

KEOKUK COUNTY

North Skunk River, mouth (S5, T74N, R10W, Keokuk Co.) to west county line;

Skunk River, east county line to confluence with North & South Skunk Rivers (S5, T74N, R10W, Keokuk Co.);

South English River, east county line to confluence with unnamed creek (S6, T77N, R13W, Keokuk Co.);

South Skunk River, mouth (S5, T74N, R10W, Keokuk Co.) to confluence with Olive Branch Creek (S30, T75N, R13W, Keokuk Co.);

KOSSUTH COUNTY

Buffalo Creek, mouth (S20, T97N, R28W, Kossuth Co.) to confluence with North Buffalo Creek (S4, T97N, R27W, Kossuth Co.);

East Fork Des Moines River, south county line to west county line;

LEE COUNTY

Des Moines River, mouth (S34, T65N, R5W, Lee Co.) to west county line (entire length in county);

Skunk River, mouth (S8, T68N, R2W, Lee Co.) to north county line (entire length in county);

LINN COUNTY

Bear Creek, mouth (S21, T84N, R8W, Linn Co.) to west county line;

Buffalo Creek, east county line to Highway 13 (S10, T86N, R6W, Linn Co.);

Cedar River, south county line to west county line;

East Otter Creek, confluence with Otter Creek (S7, T84N, R7W, Linn Co.) to confluence with unnamed creek (S 1/2, S28, T85N, R7W, Linn Co.);

Wapsipinicon River, east county line to north county line;

LOUISA COUNTY

Cedar River, mouth (S20, T75N, R4W, Louisa Co.) to north county line;

Iowa River, mouth to north county line (NW 1/4, S6, T76N, R5W, Louisa Co.) (entire length in county);

Long Creek, mouth (S1, T74N, R4W, Louisa Co.) to west county line;

LUCAS COUNTY

Chariton River, Rathbun Lake (S34, T71N, R20W, Lucas Co.) to Highway 14 (S31, T72N, R21W, Lucas Co.);

White Breast Creek, north county line to confluence with unnamed creek (W 1/2, NW 1/4, S6, T71N, R23W, Lucas Co.);

Wolf Creek, mouth (S15, T71N, R21W, Lucas Co.) to confluence with unnamed creek (NE 1/4, S36, T71N, R22W, Lucas Co.);

LYON COUNTY

Big Sioux River, south county line to north county line;

Little Rock River, mouth (S35, T98N, R46W, Lyon Co.) to confluence with unnamed creek (S10, T98N, R44W, Lyon Co.);

Otter Creek, mouth (S21, T98N, R44W, Lyon Co.) to south county line;

Rock River, south county line to north county line;

MADISON COUNTY

Middle River, east county line to west county line;

Thompson River, south county line to confluence with unnamed creek (NW 1/4, S7, T74N, R29W, Madison Co.);

MAHASKA COUNTY

Des Moines River, south county line to west county line (entire length in county);

North Skunk River, east county line to north county line;

MARION COUNTY

Des Moines River, east county line to west county line (entire length in county);

White Breast Creek, mouth to west county line;

MARSHALL COUNTY

Iowa River, east county line to Marshalltown Center St. Dam (S26, T84N, R18W, Marshall Co.);

Iowa River, confluence with Dowd Creek (S2, T85N, R19W, Marshall Co.) to north county line;

Minerva Creek, mouth (S2, T84N, R19W, Marshall Co.) to confluence with major unnamed creek (NW 1/4, S9, T85N, R20W, Marshall Co.);

Wolf Creek, north county line to north county line (S2, T85N, R17W, Marshall Co.) (entire length in county);

MITCHELL COUNTY

Beaver Creek, mouth to north line of S19, T99N, R15W;

Burr Oak Creek, mouth (S12, T98N, R16W, Mitchell Co.) to north line of S5, T98N, R16W, Mitchell Co.;

Cedar River, south county line to north county line;

Deer Creek, mouth (S23, T99N, R18W, Mitchell Co.) to west county line;

Little Cedar River, south county line to north county line;

Rock Creek, south county line (S14, T97N, R17W, Mitchell Co.) to north line of S26, T98N, R18W, Mitchell Co. (entire length in county between south line of S14, T97N, R17W and north line of S26, T98N, R18W);

Spring Creek, mouth to north line of S8, T97N, R16W;

Turtle Creek, mouth to east line of S7, T99N, R17W;

Wapsipinicon River, east county line to north line of S20, T100N, R15W;

MONONA COUNTY

Maple River, south line (S34, T85N, R43W, Monona Co.) to north county line;

MONROE COUNTY

Des Moines River, east county line to north county line (entire length in county);

MUSCATINE COUNTY
Cedar River, south county line to north county line;
Pine Creek, mouth (S21, T77N, R1E, Muscatine Co.) to confluence with unnamed creek (S26, T78N, R1W, Muscatine Co.);
Sugar Creek, mouth (S17, T78N, R2W, Muscatine Co.) to north county line;
O'BRIEN COUNTY
Little Sioux River, south county line to east county line;
Mill Creek, south county line to confluence with unnamed creek (NE 1/4, S9, T95N, R41W, O'Brien Co.);
PLYMOUTH COUNTY
Big Sioux River, south county line to north county line;
POLK COUNTY
Big Creek, upper extent of Big Creek Lake (S9, T81N, R25W, Polk Co.) to north county line;
Des Moines River, east county line to west county line (entire length in county);
Raccoon River, mouth (S10, T78N, R24W, Polk Co.) to west county line;
RINGGOLD COUNTY
Thompson River, east county line to north county line;
SAC COUNTY
Boyer River, south county line to confluence with unnamed creek (S6, T89N, R37W, Sac Co.);
Indian Creek, mouth (S24, T87N, R36W, Sac Co.) to north line (S20, T87N, R36W, Sac Co.);
North Raccoon River, east county line to north county line;
SCOTT COUNTY
Lost Creek, mouth (S15, T80N, R5E, Scott Co.) to confluence with unnamed creek (NW 1/4, S7, T79N, R5E, Scott Co.);
Wapsipinicon River, mouth (S13, T80N, R5E, Scott Co.) to north county line (NE 1/4, S1, T80N, R1E, Scott Co.) (entire length in county);
SIOUX COUNTY
Big Sioux River, south county line to north county line;
Rock River, mouth (S1, T95N, R48W, Sioux Co.) to north county line;
STORY COUNTY
South Skunk River, confluence with Squaw Creek (S12, T83N, R24W, Story Co.) to north county line;
TAMA COUNTY
Iowa River, east county line to west county line;
Raven Creek, mouth (S25, T83N, R16W, Tama Co.) to confluence with unnamed creek (S6, T82N, R16W, Tama Co.);
Salt Creek, east county line to confluence with South Branch Salt Creek (S29, T84N, R13W, Tama Co.);
UNION COUNTY
Thompson River, south county line to north county line;
Twelve Mile Creek, mouth (S36, T71N, R28W, Union Co.) to Twelve Mile Lake Dam (S12, T72N, R30W, Union Co.);
VAN BUREN COUNTY
Cedar Creek, east county line (SE 1/4, S12, T70N, R8W) to east county line (NE 1/4, S12, T70N, R8W);
Des Moines River, south county line to west county line (entire length in county);
WAPELLO COUNTY
Des Moines River, south county line to west county line (entire length in county);
South Avery Creek, mouth (S31, T73N, R14W, Wapello Co.) to west county line;

WARREN COUNTY

Des Moines River, east county line to north county line (entire length in county);

Middle River, confluence with Clanton Creek (S28, T76N, R25W, Warren Co.) to west county line;

White Breast Creek, east county line to south county line;

WASHINGTON COUNTY

Crooked Creek, south county line to confluence with East and West Fork Crooked Creeks (S24, T74N, R7W, Washington Co.);

English River, mouth (S11, T77N, R6W, Washington Co.) to confluence with South English River (S6, T77N, R9W, Washington Co.);

Iowa River, east county line (east line, S36, T77N, R6W, Washington Co.) to north county line (north line, S2, T77N, R6W, Washington Co.) (entire length in Washington Co.);

Long Creek, east county line to confluence with South Fork Long Creek (S26, T75N, R6W, Washington Co.);

Skunk River, south county line (SE 1/4, S36, T74N, R8W, Washington Co.) to west county line (SW 1/4, S6, T74N, R9W, Washington Co.) (entire length in county);

South English River, mouth (S6, T77N, R9W, Washington Co.) to west county line;

WEBSTER COUNTY

Boone River, mouth (S36, T87N, R27W, Webster Co.) to east county line;

Brushy Creek, west line (S16, T88N, R27W, Webster Co.) to confluence with unnamed creek (S8, T88N, R27W, Webster Co.);

Brushy Creek, mouth (S15, T87N, R27W, Webster Co.) to south line S34, T88N, R27W, Webster Co.;

Deer Creek, mouth (S24, T90N, R29W, Webster Co.) to north line S16, T90N, R29W, Webster Co.;

Des Moines River, south county line to north county line (entire length in county);

Lizard Creek, mouth (S19, T89N, R28W, Webster Co.) to confluence with D.D. #3 (S35, T90N, R30W, Webster Co.);

South Branch Lizard Creek, mouth (S23, T89N, R29W, Webster Co.) to west line S32, T89N, R29W, Webster Co.;

WINNEBAGO COUNTY

Winnebago River, south county line to north county line;

WINNESHIEK COUNTY

Bear Creek (a.k.a. South Bear Creek), east county line to source (a.k.a. Mestad Springs, S29, T100N, R7W);

Bohemian Creek, mouth to west county line;

Canoe Creek, mouth (S25, T99N, R7W, Winneshiek Co.) to west line of S8, T99N, R8W, Winneshiek Co.;

Coon Creek, mouth to road crossing in NW 1/4, S13, T98N, R7W;

Dry Run, mouth to west line of S36, T98N, R9W;

East Pine Creek, mouth (S28, T100N, R9W) to north county line (S10, T100N, R9W);

Martha Creek, mouth to west line of S13, T99N, R10W;

Middle Bear Creek, mouth to north line of S16, T100N, R7W;

Nichols Creek (a.k.a. Bigalk Creek), mouth to west county line;

North Bear Creek, mouth to north county line;

North Canoe Creek, mouth to north line of S2, T99N, R8W;

Paint Creek (a.k.a. Pine Creek), east county line to confluence with unnamed creek (SE 1/4, S11, T99N, R7W, Winneshiek Co.);

Pine Creek, mouth (S10, T99N, R9W) to north county line;
Pine Creek, mouth (S26, T99N, R7W) to north line of S21, T99N, R7W;
Silver Creek, mouth to north line of S26, T100N, R9W;
Smith Creek (a.k.a. Trout River), mouth (S21, T98N, R7W) to south line of S33, T98N, R7W;
Ten Mile Creek, mouth to confluence with Walnut Creek (S18, T98N, R9W);
Trout Creek, mouth (S9, T98N, R7W) to confluence with Smith Creek (S21, T98N, R7W);
Trout Creek, mouth (S23, T98N, R8W) to confluence with unnamed tributary (a.k.a. Trout Run) in S27, T98N, R8W;
Turkey River, south county line to west county line;
Twin Springs Creek, mouth (S17, T98N, R8W) through one half mile reach;
Unnamed Creek, mouth (SE 1/4, S11, T99N, R7W, Winneshiek Co.) to north line S12, T99N, R7W, Winneshiek Co.;
Unnamed tributary to Trout Creek (a.k.a. Trout Run), mouth to south line of S27, T98N, R8W;
Unnamed tributary to Upper Iowa River (a.k.a. Casey Springs Creek), mouth (S25, T99N, R9W) to west line of S26, T99N, R9W;
Unnamed tributary to Upper Iowa River (a.k.a. Coldwater Creek), mouth (S32, T100N, R9W) to north county line;
Upper Iowa River, east county line to west county line;
Yellow River, east county line to confluence with North Fork Yellow River (S13, T96N, R7W);
WOODBURY COUNTY
Little Sioux River, confluence with Parnell Creek (S25, T86N, R44W, Woodbury Co.) to east county line;
Maple River, south county line to east county line;
WORTH COUNTY
Deer Creek, east county line to confluence with unnamed creek (east line, S28, T100N, R19W, Worth Co.);
Elk Creek, mouth (S27, T99N, R20W, Worth Co.) to Highway 105 (S5, T99N, R22W, Worth Co.);
Shell Rock River, south county line to north county line;
Winans Creek, mouth (S36, T98N, R22W, Worth Co.) to N/S road crossing (S 1/2, S25, T98N, R22W, Worth Co.);
Winnebago River, south county line (S32, T98N, R21W, Worth Co.) to south county line (S34, T98N, R22W, Worth Co.) (entire length in county);
WRIGHT COUNTY
Boone River, south county line to confluence with Middle Branch Boone River (S2, T93N, R26W, Wright Co.);
Eagle Creek, south county line to confluence with Drainage Ditch No. 9 (S30, T91N, R25W, Wright Co.);
East Fork Iowa River, mouth (S19, T93N, R23W, Wright Co.) to north county line;
Iowa River, east county line (S13, T90N, R23W, Wright Co.) to confluence with East and West Fork Iowa Rivers (S19, T93N, R23W, Wright Co.) (entire length in county);
West Fork Iowa River, mouth (S19, T93N, R23W, Wright Co.) to north county line;
White Fox Creek, south county line to confluence with unnamed creek (E 1/2, SE 1/4, S36, T91N, R25W, Wright Co.).

567—72.51(455B) Protected stream designation procedure.

72.51(1) *Eligible petitioners.* Any state agency, governmental subdivision, association or interested person may petition the commission, according to the rules of this division, to designate a stream as a protected stream. However, if the stream had been the subject of a similar petition filed within the past 2 years, the commission shall not accept a petition except upon a majority vote.

72.51(2) *Content of petition.* The petition for protected stream designation shall contain the following: (a) names, addresses, and the telephone numbers of the petitioners; (b) location of the stream nominated for designation; (c) reasons why the stream is nominated, each reason being stated in a separate numbered paragraph; and (d) adequate evidence supporting the reasons for nomination. Eleven copies of the petition shall be filed with the department.

72.51(3) *Department review of petition.* Upon receipt of a petition for designation of a stream as a protected stream, the department shall make an initial determination as to whether the petition complies with 72.51(2) and whether the stream has a sufficient number of environmental amenities listed in 72.51(7) that further investigation is warranted. If the department finds the petition not in compliance with 72.51(7) or that further investigation is not warranted, agency proceedings to designate the nominated stream as protected shall cease and the petitioner shall be notified of the reasons for refusing to accept and act upon the petition. A petitioner aggrieved by the department's decision may appeal the decision within 30 days to an executive committee of at least three commission members.

72.51(4) *Notice of initiation of protected stream designation proceedings.* Upon department acceptance of a petition nominating a stream for protected stream designation, the department shall do the following:

a. Notice of intended action. Publish a notice of intended action in the Iowa Administrative Bulletin, the content of which identifies the nominated stream and requests public input into the protected stream designation procedure.

b. Commission notification. Notify the commission at the next meeting of the filing of a petition for protected stream designation.

c. Interested agency notification. Notify regional planning commissions, county boards of supervisors, city councils, soil conservation districts through which the nominated stream runs, the fish and wildlife division of the department, the soil conservation division of the department of agriculture and land stewardship, the department of agriculture and land stewardship and the geological survey bureau of the department.

d. Countywide notification. Publish notice of the filing of the petition in a newspaper of general circulation for two consecutive weeks in each county in which the nominated stream is located.

72.51(5) *Department investigation report.* Upon department acceptance of a petition nominating a stream for protected stream designation, the department shall do the following:

a. Investigation. Supervise a field staff investigation of the stream nominated for protected stream status for the purpose of assessing the effect that extending department flood plain regulation would have on the factors listed in 72.51(7);

b. Report. File a report with the commission at a monthly commission meeting held within one year after the notice of intended action was published; the report shall specifically state findings of fact or each reason alleged in the petition in support of a protected stream designation and convey a staff recommendation, including any minority recommendations and recommendations of other governmental bodies and interested persons on whether or not the stream should be regulated;

c. Interagency coordination. Invite the fish and wildlife division of the department, the geological survey bureau, and any other agency or governmental subdivision expressing an interest in the proceeding to participate in the field investigation and preparation of the report, and request their assessment of whether extension of department jurisdiction over the nominated stream would have either an adverse or beneficial impact on their agency's water resource programs.

72.51(6) *Commission determination.* After receipt of the director's report and the public has had an opportunity to submit written comments and make an oral presentation, the commission shall make a determination in writing whether or not to designate the stream identified in the petition as a protected stream, except that the commission may continue the proceeding as needed to collect or analyze additional data. The commission's determination shall be based on the factors listed in 72.51(7), as applied to the nominated stream and its flood plain, and to other relevant streams and flood plains located in the same watershed as the nominated stream, as well as any underground water system hydrologically connected to the nominated stream.

72.51(7) *Basis for protected stream designation.* Commission determination of whether or not to classify a stream as a protected stream shall be based on the balancing of the costs and benefits of possible flood plain development as it would affect the following factors: (a) maintenance of stream fishery capacity; (b) water quality preservation; (c) wildlife habitat preservation; (d) flood control; (e) flood plain management; (f) existing flood plain developments; (g) soil erosion control; (h) the needs of agriculture and industry; (i) the maintenance and enhancement of public recreational opportunities; (j) the public's health, welfare and safety; (k) compatibility with the state water plan; (l) property and water rights of landowners; (m) other factors relevant to the control, development, protection, allocation, and utilization of the nominated stream and water hydrologically connected to it.

567—72.52(455B) Protected stream declassification procedure. The procedure for removing a stream from the list of protected streams in 72.50(2) of these rules shall be the same as the rules for designation of a stream as a protected stream, except that all notices, investigations and reports shall be addressed to the issue of declassification.

These rules are intended to implement Iowa Code sections 455B.261, 455B.262, 455B.263, 455B.264 and 455B.275.

[Filed 10/9/75, Notice 8/25/75—published 10/20/75, effective 11/24/75]
[Filed 5/5/78, Notice 3/8/78; Amended Notice 4/19/78—published 5/31/78, effective 7/5/78]
[Filed 9/14/78, Notice 7/12/78—published 10/4/78, effective 11/8/78]
[Filed 11/13/78, Notice 9/20/78—published 11/29/78, effective 1/3/79]
[Filed emergency 11/5/80—published 11/26/80, effective 11/5/80]
[Filed 2/23/82, Notice 12/9/81—published 3/17/82, effective 4/21/82]
[Filed 2/24/82, Notice 11/11/81—published 3 /17/82, effective 4/21/82]
[Filed 4/23/82, Notice 11/11/81—published 5/12/82, effective 6/16/82*]
[Filed 4/6/83, Notice 2/16/83—published 4/27/83, effective 6/30/83]
[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed 12/2/83, Notices 6/22/83, 7/20/83—published 12/21/83, effective 1/25/84]
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
[Filed 2/1/91, Notice 11/14/90—published 2/20/91, effective 3/27/91]
[Filed 12/30/93, Notice 8/18/93—published 1/19/94, effective 2/23/94*]
[Filed 7/1/94, Notice 4/13/94—published 7/20/94, effective 8/24/94]
[Filed 3/19/99, Notice 12/30/98—published 4/7/99, effective 5/12/99]

*Effective date of 2/23/94 for segments incorporated by ARC 4559A in 72.50(2) and 72.52 delayed 70 days by the Administrative Rules Review Committee at their meeting held February 14, 1994.

TITLE XII
WASTE MANAGEMENT AUTHORITY

CHAPTER 209
SOLID WASTE ALTERNATIVES PROGRAM

567—209.1(455B,455E) Goal. The goal of this program is to reduce the amount of solid waste being generated and the amount of solid waste being landfilled through implementation of solid waste management projects.

567—209.2(455B,455E) Purpose. The purpose of this program is to provide financial assistance to eligible applicants for the purpose of implementing best practices, education and market development projects, to achieve a reduction in solid waste generation and a reduction in solid waste landfilling. Emphasis for selected projects will be placed on tonnage avoided, sustainability, and replicability.

567—209.3(455B,455E) Definitions.

"Applicant" means any unit of local government, public or private group, business or individual with an interest in or having responsibility for solid waste management in Iowa and is currently in compliance with all applicable department statutes and regulations.

"Cost share" means applicant's share of proposed eligible project costs.

"Demonstration project" means any project that is innovative or new to the state of Iowa.

"Department" means the Iowa department of natural resources.

"Eligible costs" means costs directly related to the project and for which financial assistance moneys may be used.

"Eligible projects" means any project which, when implemented, will reduce the amount of solid waste being generated or the amount of solid waste being landfilled.

"Financial assistance" means monetary assistance awarded under these rules to an applicant in the form of grants or loans.

"Forgivable loan" means financial assistance in the form of cash payments to recipients for reimbursement of eligible project expenses. Repayment of loan moneys awarded will be forgiven if the recipient has met all identified project goals, milestones and conditions identified in the written agreement between the department and the recipient or as amended by written agreement.

"Groundwater protection Act" means Iowa Code chapter 455E, which sets forth laws pertaining to the protection of Iowa's groundwater resources through reduced disposal of solid wastes at landfills and provides financial assistance for this protection.

"Indirect costs" means costs that are not identifiable with a specific product, function, or activity.

"Loans" means an award of financial assistance with the requirement that the award be repaid including interest as identified in the written agreement between the department and the recipient.

"Overhead costs" means expenses not chargeable to a particular part of the work or product including, but not limited to, utilities, insurance, and rent.

"Recipient" means any applicant selected to receive financial assistance under these rules.

"Regionalization" means a project that involves two or more units of local government or public or private groups with an interest in or having responsibility for solid waste management in Iowa and through the cooperative provision of alternative solid waste management services, the project's impact will have a positive influence on such factors as, including, but not limited to, operational efficiency, materials diversion, and population served.

"Sanitary landfill" means a permitted disposal site where solid waste is buried between layers of earth.

"Waste management assistance" means the waste management assistance division of the department of natural resources established by Iowa Code section 455B.483.

"Waste reduction" means practices which reduce, avoid, or eliminate the generation of solid waste at the source and not merely the shifting of a waste stream from one medium to another medium.

567—209.4(455B,455E) Role of the department of natural resources. The department is responsible for the administration of funds for projects receiving financial assistance under these rules. The department will ensure that funds disbursed meet guidelines established by the groundwater protection Act and the waste management authority Act.

567—209.5(455B,455E) Funding sources. The department will use funds appropriated by the legislature and other sources that may be obtained for the purpose of achieving the goals outlined in these rules. The department will ensure that moneys appropriated meet both federal and state guidelines pertaining to their use.

567—209.6(455B,455E) Eligible projects. The department may provide financial assistance to applicants for the following types of projects that are consistent with the goal and purpose of this program:

1. Best practices — practices and programs that will move Iowa toward long-term pollution prevention, waste reduction and recycling sustainability;
2. Education — practices and programs that are consistent with a coordinated statewide message on pollution prevention, waste reduction, and recycling to ensure ongoing support of these integrated solid waste management activities; and
3. Market development — practices and programs that develop a demand for value-added recyclables sufficient to provide increased and stable commodity markets.

567—209.7(455B,455E) Type of financial assistance. The type of financial assistance offered to an applicant (forgivable loan, zero interest loan, low interest loan) is dependent upon the amount of program funds awarded to each selected project. The department reserves the right to offer any combination of financial assistance types to any selected project.

567—209.8(455B,455E) Loans. The term of all loans, executed under these rules, shall be determined on a case-by-case basis and shall be based on the specific capital costs financed, as well as the terms of other financing provided for the project. The written agreement between the department and the recipient will establish other conditions or terms needed to manage or implement the project.

567—209.9(455B,455E) Reduced award. The department reserves the right to offer financial assistance in an amount less than that requested by the applicant. In the event that financial assistance is offered that is less than the amount requested by an applicant, the applicant may be asked to document the impact on the proposed project. Reduced awards shall be offered where it has been determined by the department that:

209.9(1) Program resources are insufficient to provide the level of financial assistance requested to all applicants to which the department intends to offer financial assistance.

209.9(2) The applicant could implement the project at a reduced level of financial assistance and achieve project objectives and goals of this program.

567—209.10(455B,455E) Fund disbursement limitations. No funds shall be disbursed until the department has:

1. Determined the total estimated cost of the project;
2. Determined that financing for the cost share amount is ensured by the recipient;
3. Received final design plans from the recipient, if applicable;
4. Received confirmation that all permits or permit amendments have been obtained by the recipient;
5. Received commitments from the recipient to implement the project;
6. Executed a written agreement with the recipient; and
7. Determined that the recipient is currently in compliance with all applicable federal, state, and local statutes and regulations.

567—209.11(455B,455E) Minimum applicant cost share. An applicant for financial assistance shall agree to provide a minimum cost share of funds committed to the project. Financial assistance moneys received by the applicant under these rules or through the landfill alternatives grant program or the landfill alternatives financial assistance program are ineligible to be utilized for any portion of the required applicant cost share. Minimum applicant cost share shall be in accordance with the schedule outlined in the application guideline manual.

567—209.12(455B,455E) Eligible costs. Applicants may request financial assistance in the implementation and operation of a project which includes, but is not limited to, funds for the purpose of:

1. Waste reduction equipment purchase and installation;
2. Collection, processing, or hauling equipment including labor for installation;
3. Development, printing and distribution of educational materials;
4. Planning and implementation of educational forums including, but not limited to, workshops;
5. Materials and labor for construction or renovation of buildings;
6. Salaries directly related to implementation and operation of the project;
7. Laboratory analysis costs; and
8. Engineering or consulting fees.

567—209.13(455B,455E) Ineligible costs. Financial assistance shall not be provided or used for costs including, but not limited to, the following:

1. Taxes;
2. Vehicle registration;
3. Overhead expenses;
4. Indirect costs;
5. Legal costs;

6. Contingency funds;
7. Proposal preparation;
8. Contractual project administration;
9. Land acquisition;
10. Office furniture, office computers, fax machines and other office furnishings and equipment;
11. Costs for which payment has or will be received under another federal, state or private financial assistance program; and
12. Costs incurred before a written agreement has been executed between the applicant and the department.

567—209.14(455B,455E) Selection criteria. To receive consideration under these rules, proposals submitted to the department for financial assistance must be provided to the agency responsible for submitting an approved solid waste comprehensive plan or subsequent plan for agency review and comment. Responsible agency review and comments are required from the area in which the proposed project is located or the area or areas in which the proposed project will be implemented.

For each project type, points assigned to the selection criteria total 100 points. The department shall coordinate evaluation of proposals and applicants will be awarded financial assistance based on selection criteria contained in the application guideline manual.

Applicants submitting preproposals deemed viable after review will be required to submit additional information as requested by the department. Additional information submitted will be reviewed for project viability prior to receiving a financial assistance commitment from the department.

567—209.15(455B,455E) Written agreement. Recipients shall enter into a contract with the department for the purposes of implementing the project for which financial assistance has been awarded. The contract shall be signed by the department director, the administrator of the waste management assistance division, and the authorized officer of the recipient. In cases where the department has awarded other than a forgivable loan, the recipient will be required to make regularly scheduled installment payments to retire the loan and any interest assigned to the loan as identified in the executed contract. The recipient will be required to submit periodic progress reports as identified in the executed contract. Progress reports are considered part of the public record. The department may terminate any contract and seek the return of any funds released under the contract for failure by the recipient to perform under the terms and conditions of the contract. Amendments to contracts may be adopted by mutual written consent by the department and the selected applicant.

567—209.16(455B,455E) Proposals. Applicants shall submit proposals on forms provided by the department. The proposals are considered part of the public record. Proposals will be accepted during normal business hours throughout the year by the department unless otherwise designated by the waste management assistance division. Proposals will be evaluated in accordance with the timeline established in the applications and guidelines manual.

567—209.17(455B,455E) Financial assistance denial. An applicant may be denied financial assistance for any of the following reasons:

209.17(1) Funds are insufficient to award financial assistance to all qualified applicants;

209.17(2) The area in which the proposed project is located or the area or areas in which the proposed project will be implemented does not have an approved solid waste comprehensive plan, or if the area in which the proposed project is located or if the area or areas in which the proposed project will be implemented have not submitted a subsequent solid waste comprehensive plan by the assigned deadline, or if the area in which the proposed project is located or the area or areas in which the proposed project will be implemented has a landfill which is not legally permitted;

209.17(3) An applicant does not meet the definition of "Applicant" as defined in 209.3(455B,455E);

209.17(4) An applicant does not meet eligibility requirements pursuant to provisions of rules 209.8 (455B,455E) to 209.14(455B,455E);

209.17(5) An applicant does not provide sufficient information requested on forms provided by the department pursuant to rules 209.8(455B,455E) to 209.16(455B,455E);

209.17(6) An applicant that has previously received a loan under these rules and is determined by the department to be delinquent in repaying the loan; and

209.17(7) The project goals or scope is not consistent with rules 209.1(455B,455E), 209.2(455B,455E), 209.6(455B,455E), and 209.14(455B,455E).

567—209.18(455B,455E) Amendments. The department will solicit recommendations from impacted agencies, associations, and other interested entities for significant alterations to the program.

These rules are intended to implement Iowa Code sections 455B.301A and 455E.11.

[Filed emergency 2/18/88 after Notice 12/30/87—published 3/9/88, effective 2/19/88]
[Filed 12/23/88, Notice 10/19/88—published 1/11/89, effective 2/15/89]
[Filed 8/31/90, Notice 6/13/90—published 9/19/90, effective 12/1/90]
[Filed emergency 10/16/90—published 11/14/90, effective 10/25/90]
[Filed 3/25/94, Notice 1/19/94—published 4/13/94, effective 5/18/94]
[Filed 3/19/99, Notice 1/13/99—published 4/7/99, effective 5/12/99]

571—40.26(462A) Zoning of the Mississippi River, Dubuque, Dubuque County.

40.26(1) All vessels shall be limited to no more than five miles per hour in Lake Peosta Cut south and east of the Hawthorn Street municipal boat launching ramp.

40.26(2) A restricted speed zone (five miles per hour/no-wake) is established in the vicinity of Chaplain Schmitt Memorial Island in proximity to the Schmitt Island municipal launching ramp and in waters adjacent to the southerly shoreline in the area of the Dubuque Yacht Basin.

40.26(3) A restricted speed zone of five miles per hour for the northern portion of Shawondassee Slough. Marker buoys shall be placed at a point approximately 750 feet upstream from the existing speed zone.

571—40.27(462A) Zoning Harpers Slough, Harpers Ferry, Allamakee County.

40.27(1) All vessels operated in Harpers Slough between a point 200 feet above the state ramp and 200 feet out from the west shore extending downstream to a point known as Sandy Point Road Dead-End, shall operate at a no-wake speed.

40.27(2) The city of Harpers Ferry will designate the no-wake zone with buoys approved by the natural resource commission.

571—40.28(462A) Black Hawk Lake, Sac County—zoned areas.

40.28(1) No motorboat shall operate at a speed which will create a wake within the zoned area marked by the regulatory buoys. The zoned area shall be the area commonly known as Town Bay on the northwest corner of Black Hawk Lake in Sac County.

40.28(2) Areas may be specifically designated for swimming by the use of regulatory buoys.

571—40.29(462A) Speed and other restrictions on Brown's Lake, Woodbury County. All vessels shall be operated at a no-wake speed within the two zoned areas designated by buoys or other approved uniform waterway markers.

40.29(1) *Zone 1.* Zone 1 shall extend 570 yards from the boat ramp east to the regulatory buoys and 150 yards west from the boat ramp.

40.29(2) *Zone 2.* Zone 2 shall begin at the regulatory buoys located at the 24-inch steel pipe and shall extend west.

40.29(3) *Swimming.* Areas may be specifically designated for swimming by the use of regulatory buoys.

571—40.30(462A) Speed and other restrictions on Snyder Bend Lake, Woodbury County. All vessels shall be operated at a no-wake speed within the zoned area 400 yards from the boat ramp south to the regulatory sign and buoys.

Areas may be specifically designated for swimming by the use of regulatory buoys.

571—40.31(462A) Speed restrictions on East Okoboji and West Okoboji Lakes in Dickinson County. No motorboat shall be operated at a speed which will create a wake within the three zoned areas designated by regulatory buoys on East Okoboji and West Okoboji Lakes in Dickinson County.

40.31(1) Zone 1. Zone 1 shall be a line from the east side of Givens Point to the south end of Arnolds Park City Beach on West Okoboji. Also, a line 150 yards east from the north end of the railroad trestle bridge at Clair Wilson State Park south to the shoreline of East Okoboji.

40.31(2) Zone 2. Zone 2 shall be the area which is 300 feet north of the area commonly known as the Narrows on East Okoboji and 200 feet south of the area commonly known as the Narrows on East Okoboji.

40.31(3) Zone 3. Zone 3 shall be the area 50 feet east of the bridge between East Okoboji and Upper Gar on the East Okoboji side running in a northwesterly direction toward the end of the island from Gingles Point then west toward the shoreline.

40.31(4) Areas may be specifically designated for swimming by the use of regulatory buoys.

40.31(5) The following areas are zoned 5 miles per hour on West Okoboji.

a. Zone 1. Zone 1 shall be the area commonly known as Okoboji Harbor at the northwest corner of West Okoboji.

b. Zone 2. Zone 2 shall be the area commonly known as the canals in the city of Wahpeton including Turtle Lake.

c. Zone 3. Zone 3 shall be the area commonly known as Lazy Lagoon located in the Triboji Area on West Okoboji.

d. Zone 4. Zone 4 shall be the area commonly known as Little Millers Bay. The zone shall start at Pinkies Point and extend southeasterly (160 degrees) approximately 370 yards until bisecting the southern shoreline of Little Millers Bay.

e. Zone 5. Zone 5 shall be the area commonly known as Little Emmerson Bay. The zone shall start at Breezy Point and extend southwesterly (235 degrees) approximately 330 yards until bisecting the west shoreline of Little Emmerson Bay.

571—40.32(462A) Spirit Lake, Dickinson County—zoned areas.

40.32(1) Areas may be specifically designated for swimming by the use of regulatory buoys.

40.32(2) The following areas are zoned 5 miles per hour on Spirit Lake, Dickinson County:

a. Zone 1 shall be the area commonly known as Templar Park Lagoon located midlake on the west shore of Spirit Lake.

b. Reserved.

571—40.33(462A) Speed restrictions on the Mississippi River, Jackson County, at Spruce Creek County Park. No motorboat shall operate at a speed to exceed 5 miles per hour within the area designated by buoys or other approved uniform waterway markers, beginning at the entrance of Spruce Creek harbor and extending southeast 550 feet and extending east 150 feet from shore. The Jackson County conservation board will designate the speed zone with uniform waterway markers (buoys) approved by the natural resource commission.

571—40.34(462A) Speed restrictions on the Mississippi River, Jackson County, at the city of Sabula. No motorboat shall operate at a speed to exceed five miles per hour within the four zoned areas designated by buoys or other approved uniform waterway markers.

40.34(1) *Zone 1.* Zone 1 shall extend 200 feet from shore and begin at a point 250 feet upstream of the north Sabula city boat ramp and ending at a point downstream where Bank Street intersects the river bank.

40.34(2) *Zone 2.* Zone 2 shall extend 200 feet from shore and extend 100 feet upstream and 100 feet downstream from the entrance to the Island City Harbor.

40.34(3) *Zone 3.* Zone 3 shall extend 200 feet into South Sabula Lake from the county boat ramp and 100 feet to the west of the ramp and 600 feet to the east of the ramp.

40.34(4) *Zone 4.* Zone 4 shall extend 200 feet in all directions beginning at the center of the "cut" into Lower Sabula Lake.

The city of Sabula shall designate the speed zones with uniform waterway markers (buoys) approved by the natural resource commission.

571—40.46(462A) Zoning of Carter Lake, Pottawattamie County.

40.46(1) All vessels operated in a designated zone known as Shoal Pointe Canal shall be operated at a no-wake speed.

40.46(2) The city of Carter Lake shall designate and maintain the no-wake zone with marker buoys approved by the natural resource commission.

These rules are intended to implement the provisions of Iowa Code sections 462A.17, 462A.26, and 462A.31.

[Filed 12/19/61; amended 7/23/62, 1/14/64, 3/24/64, 9/14/65, 1/11/66, 9/13/66, 12/13/67, 7/16/68, 8/14/68, 3/15/73, amended 5/29/75]
[Filed 9/23/76, Notice 6/28/76—published 10/20/76, effective 11/24/76]
[Filed 7/7/77, Notice 3/23/77—published 7/27/77, effective 8/31/77]
[Filed emergency 8/5/77—published 8/24/77, effective 8/5/77]
[Filed 1/9/78, Notice 8/24/77—published 1/25/78, effective 3/1/78]
[Filed emergency 5/2/79 after Notice 3/21/79—published 5/30/79, effective 5/2/79]
[Filed 7/6/79, Notice 5/30/79—published 7/25/79, effective 8/29/79]
[Filed 7/13/82, Notice 5/26/82—published 8/4/82, effective 9/8/82]
[Filed 10/7/82, Notice 6/23/82—published 10/27/82, effective 12/1/82]
[Filed 10/7/82, Notice 9/1/82—published 10/27/82, effective 12/1/82]
[Filed 10/6/83, Notice of 8/3/83—published 10/26/83, effective 12/1/83]
[Filed 3/9/84, Notice 12/21/83—published 3/28/84, effective 5/3/84]
[Filed 4/5/85, Notice 1/30/85—published 4/24/85, effective 5/29/85]
[Filed 9/5/85, Notice 7/3/85—published 9/25/85, effective 10/30/85]
[Filed 4/4/86, Notice 2/26/86—published 4/23/86, effective 5/28/86]
[Filed 10/17/86, Notice 7/30/86—published 11/5/86, effective 12/10/86]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 8/5/88, Notice 6/1/88—published 8/24/88, effective 9/28/88]
[Filed 8/17/89, Notice 5/3/89—published 9/6/89, effective 10/11/89]
[Filed 2/2/90, Notice 11/29/89—published 2/21/90, effective 3/28/90]
[Filed 1/18/91, Notice 10/31/90—published 2/6/91, effective 3/28/91]
[Filed 2/15/91, Notice 11/28/90—published 3/6/91, effective 4/10/91]
[Filed 1/17/92, Notice 10/30/91—published 2/5/92, effective 3/11/92]
[Filed 6/5/92, Notice 4/1/92—published 6/24/92, effective 7/29/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 8/13/93, Notice 5/26/93—published 9/1/93, effective 10/6/93]
[Filed 2/11/94, Notice 8/4/93—published 3/2/94, effective 4/6/94]
[Filed 5/15/95, Notice 3/1/95—published 6/7/95, effective 7/12/95]
[Filed emergency 8/11/95 after Notice 6/7/95—published 8/30/95, effective 8/11/95]
[Filed 11/16/95, Notice 9/27/95—published 12/6/95, effective 1/10/96]
[Filed without Notice 2/9/96—published 2/28/96, effective 4/3/96]
[Filed 5/15/96, Notice 2/28/96—published 6/5/96, effective 7/10/96]
[Filed 10/18/96, Notice 8/28/96—published 11/6/96, effective 12/11/96]
[Filed 12/12/97, Notice 10/8/97—published 12/31/97, effective 2/4/98]
[Filed 11/13/98, Notice 9/9/98—published 12/2/98, effective 1/6/99]
[Filed 3/19/99, Notice 12/30/98—published 4/7/99, effective 5/12/99]

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

[Prior to 11/5/86, Public Employment Relations Board [660]]

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CHAPTER 13
CONSENT FOR THE SALE OF GOODS AND SERVICES

621—13.1(68B) General prohibition. An official shall not sell, either directly or indirectly, any goods or services to individuals or entities subject to the regulatory authority of the agency without obtaining written consent as provided in this chapter.

621—13.2(68B) Definitions.

"Agency" means the public employment relations board.

"Compensation" means any money, thing of value, or financial benefit conferred in return for goods or services rendered or to be rendered.

"Official" means the chairperson and members of the public employment relations board. Where the term "official" is used in this chapter, it includes a firm in which any of those persons is a partner and a corporation of which any of those persons hold 10 percent or more of the stock, either directly or indirectly, and the spouse and minor children of any of those persons.

"Sale of goods or services" means the receipt of compensation by an official for providing goods or services. For purposes of this chapter, the term does not include outside employment activities which constitute an employer-employee relationship.

621—13.3(68B) Conditions for consent. Consent to a sale of goods or services shall not be given unless all of the following conditions are met:

1. The official's job duties or functions are not related to the agency's regulatory authority over the individual or entity, or the selling of the good or service does not affect the official's job duties or functions.
2. The selling of the good or service does not include acting as an advocate on behalf of the individual or entity to the agency.
3. The selling of the good or service does not result in the official selling a good or service to the agency on behalf of the individual or entity.
4. The selling of the good or service does not reasonably appear to create a conflict of interest, a situation where the official's neutrality in the performance of the official's employment duties might thereafter be reasonably questioned, or the appearance of any other impropriety.

621—13.4(68B) Application for consent. An application for consent must be in writing and signed by the official seeking consent. The application must be filed with the agency at least 20 calendar days in advance of the proposed sale of goods or services. An application shall not be deemed filed until all of the following information has been provided:

1. A description of the goods or services proposed to be sold.
2. The identity of the prospective recipient(s) of the goods or services and the recipient's relationship to the agency's regulatory authority.
3. The anticipated dates of delivery of the goods or services.
4. The approximate amount and form of the compensation to be received by the official.
5. A statement by the official explaining why the proposed sale of goods or services will not create a conflict of interest, a situation where the official's neutrality in the performance of the official's employment duties might thereafter be reasonably questioned, or the appearance of any other impropriety.

621—13.5(68B) Consent or denial.

13.5(1) *Who may consent or deny.* The agency's officials not joining in the application will consider the application and consent to or deny it by majority vote, a tie vote being deemed a denial of the application. The officials entitled to vote on the application may require the submission of additional information prior to taking action on the application.

13.5(2) *Timing and content of consent or denial.* Written consent to or denial of the application will be issued within 14 days following the date of its filing or the receipt of the additional information submitted pursuant to subrule 13.5(1). If the application is denied, the denial will state the reasons therefor.

13.5(3) *Effect of consent.* Any consent granted is valid only for the activity and time period described in it and only to the extent that all material facts have been disclosed and the actual facts are consistent with those set forth in the application. Consent may be revoked at any time upon written notice to the official.

621—13.6(68B) Public information. The application and the resulting consent or denial thereof are public records, open for public examination, except to the extent that disclosure of details would constitute a clearly unwarranted invasion of personal privacy or trade secrets and the record is exempt from disclosure under Iowa law.

621—13.7(68B) Effect of other laws. Neither these rules nor any consent provided under them constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Despite agency consent, a sale of goods or services to an individual or entity subject to the jurisdiction of the agency may violate, for example, the gift law or bribery and corruption laws. It is the responsibility of the official to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

These rules are intended to implement Iowa Code section 68B.4.

[Filed 3/17/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

CHAPTER 75
STATEWIDE OBSTETRICAL AND NEWBORN INDIGENT PATIENT CARE PROGRAM

641—75.1(255A) Definitions.

"Applicant" means a person for whom assistance under this program is being requested.

"Delivery" means that the delivery occurs after 20 weeks gestation.

"Director" means the administrator of a maternal health center or other designated agency.

"Family" means a group of two or more persons related by birth, marriage, or adoption who reside together or a unit of one who is an unrelated individual not living with any relatives. The unborn fetus will be counted as a family member.

"Nonquota case" means a patient who is provided obstetrical or newborn care services at the University of Iowa Hospitals and Clinics under the indigent nonquota obstetrical care program established pursuant to Iowa Code chapter 255 and referenced in Iowa Code section 255A.2.

"Obstetrical and newborn care services" means those types of services as recognized by the latest editions of The American College of Obstetricians and Gynecologists, "Standards for Obstetric-Gynecologic Services" and The American Academy of Pediatrics, "Standards and Recommendations for Hospital Care of Newborn Infants."

"Poverty level" means poverty income guidelines established by the United States Department of Health and Human Services.

"Program" means the obstetrical and newborn indigent patient care program for quota cases.

"Provider" means a licensed hospital or a licensed physician who agrees to service eligible patients.

"Quota case" means a patient who is provided obstetrical or newborn care by a licensed hospital or physician under the obstetrical indigent patient quota program established pursuant to Iowa Code section 255A.4.

"Resident" means the individual is a legal resident of the state and resides in one of the designated 90 counties.

"Spenddown" means the process by which an applicant obligates income for allowable medical expenses to reduce income to a qualifying level. The medical expenses used for spenddown cannot be paid for with funds from this program.

"Spenddown interval" means one month for delivery services and six months for antepartum and delivery services.

641—75.2(255A) Covered services. The following obstetrical and newborn care services may be provided through the obstetrical indigent patient care program:

1. Antepartum and postpartum care except where patient qualifies for antepartum and postpartum care provided by the department of public health, maternal and child health care program.
2. Normal delivery.
3. Cesarean section.
4. Newborn hospital care.
5. Sick newborns who qualify as a quota case will be covered until the patient is stabilized and transferred to University of Iowa Hospitals and Clinics, where the patient may be eligible to receive care as a county quota indigent patient pursuant to Iowa Code chapter 255.
6. Inpatient transportation from one hospital to another when authorized by a medical provider.
7. One outpatient visit for false labor.
8. Excluded services for quota cases will include but not be limited to elective abortion, elective hysterectomy, circumcision, nonobstetric related procedures and services.

641—75.3(255A) Quota assignment. The department of public health shall establish the quota annually for each county. The formula used shall be based upon, but not limited to, the following criteria:

1. Dollars available to the program.
2. Average number of births for the most recent three-year period for each county.
3. Per capita income for each county.

641—75.4(255A) Eligibility criteria. The certification process to determine eligibility for services under this program will include the following requirements:

75.4(1) *Income.*

a. Income guidelines will be set at 185 percent of the poverty income guidelines published by the United States Department of Health and Human Services. State income guidelines will be adjusted following any change in Department of Health and Human Services guidelines.

b. Income information will be provided by the applicant, who will attest in writing to the accuracy of the information contained on the application. The director may request verification of income.

c. All earned and unearned income of family members as defined by DHHS poverty guidelines will be used in calculating the applicant's gross income for purposes of determining initial and continued eligibility.

d. Income will be estimated prospectively as follows:

(1) Annual income will be estimated based on the applicant's income for the past three months unless the applicant's income will be changing or has changed, or

(2) In the case of self-employed families the past year's income tax return will be used in estimating annual income unless a substantial change has occurred.

(3) Terminated income will not be considered.

e. An applicant for obstetric services under this program whose income falls between 185 percent and 300 percent of the poverty level guidelines may qualify through spenddown of medical expenses of all family members as follows:

(1) The applicant must provide copies of medical bills or a statement from the providers of projected medical expenses.

(2) Medical expenses which can be used to meet spenddown are as follows:

1. Health insurance premiums, deductibles, or coinsurance charges.
2. Medical and dental expenses as defined by the Internal Revenue Service.

(3) In order to qualify with spenddown, the amount of spenddown, adjusted by one-twelfth, must be equal to or less than the projected and actual medical expenses.

75.4(2) *Resources.*

a. The resource limitation for an applicant will be $10,000 per household.

b. The following are countable resources:

(1) Unobligated cash.

(2) Savings accounts.

(3) Stocks, bonds, certificates of deposit, excluding Internal Revenue Service defined retirement plans.

c. Resource information will be provided by the applicant, who will attest in writing to the accuracy of the information contained on the application. The director may request verification of resources.

75.4(3) *Noneligibility for Title XIX or medically needy without spenddown.* In order to be eligible, the applicant must not be eligible for services under Title XIX or the medically needy program without a spenddown.

75.4(4) *Residency.* The applicant for this program must be a legal resident of Iowa currently living in any county except Clinton, Cedar, Scott, Muscatine, Louisa, Washington, Iowa, Johnson, or Keokuk.

641—75.5(255A) Application procedures.

75.5(1) A person desiring obstetrical and newborn care under this program, or the parent or guardian of a minor desiring such care, may apply to the director of the maternal health center serving the person's county of residence at any time between confirmation of the pregnancy and not later than 60 days after delivery. If there is no maternal health center covering that county, the department will designate an agency.

75.5(2) The applicant will provide the following information to be considered for eligibility under this program:

a. Income and resource information on an application form.

b. Written verification obtained from the department of human services certifying that the applicant is not eligible for Title XIX or the medically needy program without a spenddown. The applicant will submit this copy within 60 days of applying with the director. To meet this 60-day deadline, the applicant will need to apply with the department of human services before or immediately after contacting the director.

75.5(3) Assignment of quotas shall be on a first-come, first-served basis based upon application date.

75.5(4) The director will provide written notification to the applicant regarding determination of eligibility or noneligibility and applicant's right to appeal a denial.

75.5(5) After an applicant has been determined to be eligible, the patient or provider will report any changes in eligibility or status of pregnancy to the director within 10 days from the date the change occurred.

75.5(6) Standardized application, determination of eligibility, and certification forms will be furnished by the department of public health to the directors.

75.5(7) Copies of appropriate certification forms will be mailed by the director to the department of public health as follows:

a. In counties covered by the department of public health's maternal and child health program, certification forms will be sent at 26 weeks or more gestation.

b. In counties not covered by maternal and child health programs, certification forms will be sent upon determination of eligibility for patients whose antepartum care will also be paid through the program.

75.5(8) Receipt of a certification form for a quota patient by the department of public health shall be considered the point in time when the quota has been used.

75.5(9) A woman who resides in a county which exceeds the patient quota allocated for the county, and who meets eligibility under rule 75.4(255A) shall be served at the University of Iowa Hospitals and Clinics pursuant to Iowa Code section 255.16. A woman who resides in a county with available quota and who meets eligibility under rule 75.4(255A) may be served at the University of Iowa Hospitals and Clinics pursuant to Iowa Code section 255.16.

75.5(10) Maternal health center directors shall negotiate 28E agreements with general relief directors for the purpose of coordinating application and eligibility services for obstetric patients under Iowa Code chapter 255.

641—75.6(255A) Reimbursement of providers.

75.6(1) The University of Iowa Hospitals and Clinics and other hospitals will submit their billings on the UB 82, uniform hospital billing form, and physicians will submit their billings on the Health Care Financing Administration form HCFA 1500. Forms will be furnished by the providers.

75.6(2) Providers will submit bills after delivery but not more than 60 days after the delivery or after determination of eligibility, whichever occurs later, to the department of public health.

75.6(3) Reimbursement for physicians and hospitals will be based upon the Title XIX rates. Bills will be adjusted accordingly by the department of public health and forwarded to the department of revenue and finance for payment.

75.6(4) Providers may be reimbursed for antepartum care prior to the patient becoming ineligible, as long as the patient is counted as a quota case.

75.6(5) On an annual basis the department of public health will furnish participating physicians with a list of reimbursable procedure codes and maximum rate.

75.6(6) The obstetrical indigent care fund is last pay. Private insurance shall be billed first.

75.6(7) All providers of services to quota obstetrical and newborn patients shall agree to accept as full payment the reimbursements allowable under the medical assistance program established pursuant to Iowa Code chapter 249A, up to a maximum of medical assistance's average reimbursement for the most recent fiscal year. When the medical assistance reimbursement methodologies change, the maximum reimbursement may be based upon projection.

75.6(8) The obstetrical and newborn indigent program will pay, out of a set-aside fund, for certain cases that exceed the current year's maximum reimbursement rate. Cases that can be paid out of this fund are:

a. Allowable physician and hospital costs associated with DRGs 370, 371, 372, 374, 375 for the woman. Costs associated with DRGs 383, 384 will be covered if followed by a qualifying delivery event.

b. Allowable physician and hospital costs for the newborn associated with DRGs 385, 385.1, 389, 390.

c. Care provided to newborns under DRGs 386, 386.1, 387, 387.1, 388, 388.1, 389.1, 390.1 are defined under rule 75.2(255A) as being outside the scope of this program. These services could, however, be covered by Iowa Code chapter 255 or medically needy programs.

d. Physicians who provide obstetrical or newborn care at the University of Iowa Hospitals and Clinics are not entitled to receive any compensation for the provision of such care to persons certified as eligible under this program.

75.6(9) In all other cases, the maximum reimbursement level will apply. If the total reimbursable charges exceed the maximum reimbursement level, reimbursement to providers will be prorated based upon allowable reimbursement amounts.

75.6(10) Certifications for quota cases received by June 30 will have medical assistance's average reimbursement and the 10 percent fund encumbered.

641—75.7(255A) Reassignment of county quotas.

75.7(1) Unused quota numbers will be assigned by the department of public health after March 31 of each year to counties according to receipt of request on a case-by-case, first-come basis.

75.7(2) Request for additional quotas cannot be made until all quotas have been used in a given county.

75.7(3) Requests for additional quotas may be submitted by directors and must be based on pending applications. Requests will be made on forms provided by the department of public health designed to provide necessary information regarding pending applications.

641—75.8(255A) Appeals and fair hearings.

75.8(1) *Right of appeal.* An applicant shall have the right to appeal whenever a decision of the director or the state program results in the individual's denial of eligibility for the program or denial as a quota case. No appeal can be filed for denial as a quota case, if there are no quotas available. Quotas would not be available if already assigned or sequestered to cases under appeal. Quotas will only be held when applicant is appealing a change in status.

75.8(2) *Request for reconsideration.* The applicant seeking to appeal shall first request reconsideration by the director of the denial of eligibility for this program or denial as a quota case. The written request shall be made within 15 days from the date the individual received notice of the decision which is the subject of appeal. The written request shall state the adverse decision being appealed and the reasons the applicant believes state standards were not correctly applied. The director shall reconsider the application and make a written determination with notice of right to appeal to the state within 10 days of receipt of the request. If the denial stands, the applicant may appeal to the department of public health.

75.8(3) *Request for hearing.* An appeal is brought by filing an appeal with the Division Director, Division of Family and Community Health, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 30 days of the director's final determination in subrule 75.8(2).

75.8(4) *Contested use.* Upon receipt of an appeal that meets contested case status, the appeal 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.

75.8(5) *Hearing.* 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.

75.8(6) *Decision.* A written decision of the hearing officer shall be issued, where possible, within 30 days from the date of the request for a hearing unless the parties agree to a longer period of time. The decision of the hearing 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 10 days after it is received by the aggrieved party unless an appeal to the director of public health is taken as provided in subrule 75.8(7).

75.8(7) *Appeal to director.* Any appeal to the director of public health for review of the proposed decision and order of the hearing officer shall be filed in writing and mailed to the director of public health by certified mail, return receipt requested, or delivered by personal service within 10 days after the receipt of the hearing officer's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the hearing officer. Any appeal shall state the reason for appeal.

75.8(8) *Record of hearing.* Upon receipt of an appeal request, the hearing officer shall prepare the record of the hearing for submission to the director of public health. 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 thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the hearing officer.

75.8(9) *Decision of director.* The decision and order of the director of public health 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.

75.8(10) *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director of public health 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.

75.8(11) *Petition for judicial review.* 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: Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code chapter 255A.

[Filed emergency 9/18/86—published 10/8/86, effective 10/1/86]
[Filed 1/23/87, Notice 10/8/86—published 2/11/87, effective 3/18/87]
[Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]
[Filed emergency 9/16/87—published 10/7/87, effective 9/18/87]
[Filed 2/1/88, Notice 10/7/87—published 2/24/88, effective 3/30/88]
[Filed emergency 9/12/91—published 10/2/91, effective 9/12/91]

CHAPTER 76
MATERNAL AND CHILD HEALTH PROGRAM

641—76.1(135) Program explanation. The maternal and child health (MCH) programs are operated by the Iowa department of public health as the designated state agency pursuant to an agreement with the federal government. The majority of the funding available is from the Title V, MCH services block grant, administered by the Health Resources and Services Administration within the United States Department of Health and Human Services.

The purpose of the program is to promote the health of mothers and children by ensuring or providing access to quality maternal and child health services (especially for low-income families or families with limited availability of health services); to reduce infant mortality and the incidence of preventable diseases and handicapping conditions; to increase the number of children appropriately immunized against disease; and to facilitate the development of community-based systems of health care for children and their families. The program promotes family-centered, community-based coordinated care, including care coordination services for children with special health care needs.

The department's family services bureau enters into contracts with selected private nonprofit or public agencies for the provision of prenatal, postpartum, and child health services. The types of services provided by these contracts are infrastructure building, population-based services, enabling services, and direct health services. The department contracts with the University of Iowa department of pediatrics' child health specialty clinics to provide services to children with special health care needs.

The MCH advisory council assists in the development of the state plan for MCH, including children with special health care needs and family planning. The advisory council assists with assessment of need, prioritization of services, establishment of objectives, and encouragement of public support for MCH and family planning programs. In addition, the advisory council advises the director regarding health and nutrition services for women and children, supports the development of special projects and conferences and advocates for health and nutrition services for women and children. The director appoints the council membership. Membership shall include parents and service provider representatives of children with special health care needs. The council membership shall also include the chairs, or designees, of the department's advisory committee for perinatal guidelines, the Iowa council on chemically exposed infants and children, and the birth defects advisory committee to ensure coordination of their respective issues and priorities. The chair of the family services bureau grantee committee or the designee of the chair may serve as an ex-officio member of the council.

The Iowa council on chemically exposed infants and children (CCEIC) defined in Iowa Code chapter 235C serves as a subcommittee to the MCH advisory council. The CCEIC assists in developing and implementing policies to reduce the likelihood that infants will be born chemically exposed and to assist those who are born chemically exposed to grow and develop in a safe environment.

641—76.2(135) Adoption by reference. Federal requirements contained in the Omnibus Reconciliation Act of 1989 (Public Law 101-239), Title V, MCH services block grant shall be the rules governing the Iowa MCH program and are incorporated by reference herein.

The department finds that certain rules should be exempted from notice and public participation as being a very narrowly tailored category of rules for which notice and public participation are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law governing the Iowa MCH program where the department has no option but to adopt such rules as specified and where federal funding for the MCH programs is contingent upon the adoption of the rules.

Copies of the federal legislation adopted by reference are available from Chief, Family Services Bureau, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

641—76.3(135) Rule coverage. These rules cover agencies contracting with the department to provide community-based MCH public health services and to receive funds from the department for that purpose. The contract agencies conduct essential public health services directed toward the maternal and child health populations consistent with the state's MCH services block grant state plan. The state plan is developed and administered by the family services bureau of the department. Other programs funded by the Iowa legislature from MCH services block grant are not included in these rules.

641—76.4(135) Definitions.

"Applicant" means a private nonprofit or public agency that seeks a contract with the department to provide MCH services.

"Care coordination" means a process of linking the service system to the recipient and organizing the various elements in order to achieve a successful outcome.

"Client" means an individual who receives MCH services through a contract agency.

"Contract agency" means a private nonprofit or public agency that has a contract with the department to provide MCH services and receives funds from the department for that purpose.

"Core public health functions" means the functions of community health assessment, policy development, and assurance.

1. Assessment: regular collection, analysis, interpretation, and communication of information about health conditions, risks, and assets in a community.
2. Policy development: development, implementation, and evaluation of plans and policies, for public health in general and priority health needs in particular, in a manner that incorporates scientific information and community values and is in accordance with state public health policy.
3. Assurance: ensuring, by encouragement, regulation, or direct action, that programs and interventions that maintain and improve health are carried out.

"Dental health education" means basic dental health information about dental disease, prevention, oral hygiene and other anticipatory guidance.

"Department" means the Iowa department of public health.

"DHHS" means the United States Department of Health and Human Services.

"DIA" means the Iowa department of inspections and appeals.

"Direct health services" means those services generally delivered one-on-one between a health professional and a client in an office or clinic.

"Director" means the director of the Iowa department of public health.

"Enabling services" means services that allow or provide for access to and the derivation of benefits from, the array of basic health care services and include activities such as outreach, case management, health education, transportation, translation, home visiting, smoking cessation, nutrition, support services, and others.

"Essential public health services" means those activities carried out by public health entities and their contractors that fulfill the core public health functions in the promotion of maternal and child health.

"Family," for the purpose of establishing eligibility, means a group of two or more persons related by birth, marriage or adoption or residing together and functioning as one socioeconomic unit. For the purpose of these rules, a pregnant woman is considered as two individuals when calculating the number of individuals in the family. If a pregnant woman is expecting multiple births, the family size is thereby increased by the number expected in the multiple birth.

"Family planning" means the promotion of reproductive and family health by the prevention of and planning for pregnancy, and reproductive health education.

"HAWK-I" means healthy and well kids in Iowa and is the child health insurance program in Iowa as authorized in Title XXI of the Social Security Act.

"HCFA" means the DHHS, Health Care Finance Administration.

"Health education" means services provided by a health professional to include instruction about normal anatomy and physiology, growth and development, safety and injury prevention, signs or symptoms indicating need for medical care, and other anticipatory guidance topics.

"Health professional" means an individual who possesses specialized knowledge in a health or social science field or is licensed to provide health care.

"Health services" means services provided through MCH contract agencies.

"Informing" means the act of advising families of the services available through the EPSDT/Care for Kids program, explaining what to expect at screening, and providing information about health resources in the community.

"Infrastructure building" means activities directed at improving and maintaining the health status of all clients by providing support for the development and maintenance of comprehensive health services systems including development and maintenance of health services standards or guidelines, training, data, and planning systems.

"MCH services" means essential services provided by MCH contract agencies.

"Medicaid" means the Medicaid program authorized in the Social Security Act and funded through the Iowa department of human services from the DHHS.

"Nutrition counseling" means nutrition screening and education appropriate to the needs of the client, and referral to a licensed dietitian if indicated.

"OMB" means the United States Department of the Treasury, Office of Management and Budget.

"Oral health counseling" means services to assess oral health status and to provide education appropriate to the needs of the client and referral to a dentist if indicated.

"Parenting education" means educational services for parents or expectant parents provided by health professionals to include care of infants and children, normal development, discipline, and other topics as appropriate.

"Performance standards" means criteria or indicators of the quality of service provided or the capability of a contract agency to provide services in a cost-effective or efficient manner as defined in "Performance Standards, Maternal and Child Health Contractors, Family Services Bureau."

"Pharmacist" means a person currently licensed to practice pharmacy under Iowa Code chapter 155.

"Physician" means a person currently licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy under Iowa Code chapters 148 and 150A.

"Population-based services" means preventive interventions and personal health services, developed for and available to the entire MCH population of the state rather than for individuals in a one-on-one situation. Disease prevention, health promotion, and statewide outreach are major components.

"Prenatal and postpartum care" means those types of services as recognized by the American College of Obstetricians and Gynecologists.

"Program income" means gross income earned by the contract agency from activities in which part or all of the cost is either borne as a direct cost by the funds received from the department or counted as a direct cost toward meeting cost-sharing or matching requirements of the contract agency. "Program income" includes but is not limited to such income in the form of fees for services, third-party reimbursements, and proceeds from sales of tangible, personal or real property.

"Psychosocial counseling" means services provided to include individual and family social assessment, counseling, and referral.

"Title V" means Title V of the Social Security Act and the federal requirements contained in the Omnibus Reconciliation Act of 1989 (Public Law 101-239) which address the Maternal and Child Health program.

"Title X" means the program authorized in the federal regulations found in 42 CFR Subpart A, Part 59, published in the Federal Register on June 3, 1980, and the Program Guidelines for Project Grants for Family Planning Services.

"Title XIX" means the Medicaid program authorized in the Social Security Act and funded through the Iowa department of human services from the DHHS.

"Title XXI" means the child health insurance program authorized in the Social Security Act and implemented in Iowa as the HAWK-I program as administered by the Iowa department of human services.

"Well-child health care" means those types of services as recognized by the latest edition of the American Academy of Pediatrics, Guidelines for Health Supervision.

"WIC" means the Special Supplemental Nutrition Program for Women, Infants and Children, funded through the department from the United States Department of Agriculture.

641—76.5(135) MCH services. The following services shall be provided by contract agencies:

76.5(1) *Infrastructure building services.*

a. Community assessment activities to identify population-based health conditions, risks, and assets in the community.

b. Analysis of health data to determine community population-based health status, health system utilization and community resources.

c. Support for a method of data collection, analysis, and dissemination.

d. Community planning activities to promote family and community health initiatives based on scientific, economic, and political factors.

e. Promotion of regulations, standards, and contracts that protect the public's health and safety.

f. Monitoring and evaluating the effectiveness, accessibility and quality of personal health and population-based services in the community.

g. Supporting innovative initiatives to gain new insights and solutions to family and community health-related needs.

76.5(2) *Population-based services.*

a. Immunization.

b. Injury prevention.

c. Outreach and public education.

d. Counseling for families who have lost a child to sudden infant death syndrome.

e. Childhood lead poisoning screening.

76.5(3) *Enabling services.*

a. Care coordination.

b. Informing.

c. Outreach services to families and children who do not access a regular and continuous source of care (medical home).

d. Coordination of local systems of care for improving access to health services.

e. Access to translation services.

f. Access to transportation.

g. Family support activities.

h. Referral or enrollment of families in health insurance for public insurance plans.

i. Reimbursement of diagnostic and therapeutic services for children subject to the following conditions.

(1) Eligible services include:

1. Physician or midlevel practitioner services provided for treatment of acute illness and physician or midlevel practitioner prescribed treatments necessary to treat an acute condition.
2. Physician services provided for diagnosis.
3. Diagnostic tests to include laboratory tests and x-rays.
4. Prescription drugs necessary to treat an acute condition.

(2) Coverage for diagnosis and therapeutic services for children is restricted:

1. To clients eligible for MCH direct care and enabling services as specified in rule 641—76.6(135).
2. By the amount of funds available to the department.

(3) Coverage is not available for the following diagnostic and therapeutic services:

1. Services covered by another private or public funding source.
2. Services provided as a result of an injury or accident.
3. Treatment or follow-up of a chronic disease or condition.
4. Hospital inpatient or surgical services, including surgical diagnostic procedures.

76.5(4) *Direct health services.* Direct health services may be provided to meet identified community needs. The following preventive direct health services may be supported by MCH program funds to the extent the comprehensive community assessment documents that the services are not otherwise available from health professionals within the community.

a. Child health.

(1) Informing.
(2) Care coordination.
(3) Nutrition counseling.
(4) Psychosocial counseling.
(5) Parenting education.
(6) Health education.
(7) Well-child health services include routine, ambulatory well-child care.

b. Prenatal and postpartum services.

(1) Care coordination.
(2) Risk assessment.
(3) Psychosocial assessment and counseling.
(4) Nutrition assessment and counseling.
(5) Health education.
(6) Routine, ambulatory prenatal medical care, postpartum exams, and family planning services.

c. Dental health—maternal and child.

(1) Dental screening.
(2) Dental treatment services through referral.
(3) Dental health education.

641—76.6(135) Client eligibility criteria. The certification process to determine eligibility for direct health care under the program shall include the following requirements:

76.6(1) *Age.*

a. Prenatal program—no age restrictions.

b. Child health care services—birth through 20 years of age.

76.6(2) *Income.*

a. Income guidelines will be the same as those established for the state's Title XXI program. Guidelines are published annually by DHHS. Department income guidelines will be adjusted following any change in DHHS guidelines.

b. Income information will be provided by the individual, who will attest in writing to the accuracy of the information contained in the application.

c. Proof of Title XIX or Title XXI (HAWK-I) eligibility will automatically serve in lieu of an application.

d. All income of family members as defined by DHHS poverty guidelines will be used in calculating the individual's gross income for purposes of determining initial and continued eligibility.

e. Income will be calculated as follows:

(1) Annual income will be estimated based on the individual's income for the past three months unless the individual's income will be changing or has changed, or

(2) In the case of self-employed families the past year's income tax return (adjusted gross income) will be used in estimating annual income unless a change has occurred.

(3) Terminated income will not be considered.

f. Individuals will be screened for eligibility for Title XIX and Title XXI (HAWK-I). If an individual's income falls within the eligibility guidelines for Title XIX and Title XXI (HAWK-I), the individual should be referred to the Iowa department of human services or other enrollment source to apply for coverage. Pregnant women shall be considered for Title XIX presumptive eligibility. Children shall be considered for Title XIX eligibility to the extent these activities are approved by the Iowa department of human services.

g. An individual whose income is above the poverty level established by Title XXI and below 300 percent of the federal poverty guidelines will qualify for services on a sliding fee scale, as determined by the local agency's cost for the service. The department provides annual guidelines. An individual whose income is at or above 300 percent will qualify for services at full fee.

h. Eligibility determinations must be performed at least once annually. Should the individual's circumstances change in a manner which affects third-party coverage or Title XIX/Title XXI eligibility, eligibility determinations shall be completed more frequently.

76.6(3) *Residency.* Individuals must be currently residing in Iowa.

76.6(4) *Pregnancy.* An individual applying for the prenatal program shall have verification of pregnancy by an independent health provider, by the maternal health contract agency, or by a family planning (Title X) agency.

641—76.7(135) Client application procedures for MCH services.

76.7(1) A person desiring direct health services under this program or the parent or guardian of a minor desiring such care shall apply to a contract agency using a Health Services Application, Form 470-2927, or the alternate form authorized by the HAWK-I board.

76.7(2) The contract agency shall verify the following information to apply for MCH services under this program:

a. The information requested on the application form under "Household Information."

b. Income information for all family members or proof of eligibility for Title XIX (Medicaid) or Title XXI (HAWK-I).

c. Information about health insurance coverage.

d. The signature of the individual or responsible adult, dated and witnessed.

e. For pregnant women, denial of benefits under Title XIX (Medicaid) due to economic or categorical ineligibility.

76.7(3) If an individual has completed a Health Services Application, Form 470-2927, within the last year and the form accurately documents the current financial and family status, the MCH contract agency shall accept a copy of that application and determine eligibility without requiring completion of any other application form.

76.7(4) If an individual indicates on the Health Services Application, Form 470-2927, that the individual also wishes to apply for WIC or Medicaid or HAWK-I, the contract agency shall forward the appropriate copy to the indicated agency within two working days.

76.7(5) The contract agency shall determine the eligibility of the family and the percent of the cost of care that is the family's responsibility. The individual shall be informed in writing of eligibility status prior to incurring costs for care.

76.7(6) Once an individual has been determined to be eligible, the individual shall report any changes in income, family composition, or residency to the contract agency within 30 days from the date the change occurred.

641—76.8(135) Right to appeal—client.

76.8(1) *Right of appeal.* Individuals applying for MCH services and clients receiving MCH services shall have the right to appeal whenever a decision or action of the department or contract agency results in the denial of participation, suspension, or termination from the approved MCH program. Notification of the denial of participation, suspension or termination shall be made in writing and shall state the basis for the action. All hearings shall be conducted in accordance with these rules.

76.8(2) *Notification of appeal rights and right to hearing.* Individuals applying for MCH services shall be notified of the right to appeal and the procedures for requesting a hearing at the time of application for MCH services. Information about the appeal and hearing process shall be provided in writing and shall be immediately available at maternal and child health centers. A health professional shall be available to explain the method by which an appeal or hearing is requested and the manner in which the appeal and hearing will be conducted.

76.8(3) *Request for hearing.* A request for a hearing is a written expression by an individual or the individual's parent, guardian, or other representative that an opportunity to present the individual's case is desired. The request shall be filed with the contract agency within 60 days from the date the individual receives notice of the decision or action which is the subject of appeal.

76.8(4) *Receipt of benefits during appeal.* Individual applicants, who are denied program benefits due to a finding of ineligibility, shall not receive benefits during the administrative appeal period. Clients who are involuntarily suspended or terminated from the MCH program shall continue to receive program benefits during the administrative appeal period.

76.8(5) *Hearing officer.* The hearing officer shall be impartial, shall not have been directly involved in the initial determination of the action being contested, and shall not have a personal stake in the decision. Hearing officers may be contract agency directors, health professionals, community leaders, or any impartial citizen. If prior to the hearing, the appealing party objects to a contract agency director serving as the hearing officer in a case involving the director's own agency, another hearing officer shall be selected and, if necessary, the hearing shall be rescheduled as expeditiously as possible. Contract agencies may seek the assistance of the Chief, Family Services Bureau, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, in the appointment of a hearing officer.

76.8(6) *Notice of hearing.* The hearing officer shall schedule the time, place and date of the hearing as expeditiously as possible. Parties shall receive notice of the hearing at least ten days in advance of the scheduled hearing. The hearing shall be accessible to the party requesting the hearing. The hearing shall be scheduled within three weeks from the date the contract agency received the request for a hearing or as soon as possible thereafter, unless a later date is agreed upon by the parties.

76.8(7) *Conduct of hearing.* The party requesting the hearing or the party's representative shall have the opportunity to:

a. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

b. Be represented by an attorney or other person at the party's own expense;

c. Bring witnesses;

d. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;

e. Submit evidence to establish all pertinent facts and circumstances in the case; and

f. Advance arguments without undue interference.

76.8(8) *Decision.* Decisions of the hearing officer shall be in writing and shall be based on evidence presented at the hearing. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy. The decision shall be issued within 90 days of the receipt of the request for the hearing, unless a longer period is agreed upon by the parties.

76.8(9) *Appeal of decision to the department.* A party receiving an unfavorable decision may file an appeal with the department. Such appeals must be filed within 15 days of the mailing date of the hearing decision. Appeals shall be sent to the Division Director, Family and Community Health, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

76.8(10) *Contested case.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the DIA pursuant to the rules adopted by the DIA 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 DIA.

76.8(11) *Hearing.* Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible. The hearing shall be conducted according to the procedural rules of the DIA found in 481—Chapter 10, Iowa Administrative Code.

76.8(12) *Decision of administrative law judge.* The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. 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 decision without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 76.8(13).

76.8(13) *Appeal to the director.* 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.

76.8(14) *Record of hearing.* 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 thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

76.8(15) *Decision of director.* An appeal to the director shall be based on the record of the hearing before the administrative law judge. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

76.8(16) *Exhausting administrative remedies.* It is not necessary to file an application for the 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 decision of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

76.8(17) *Petition for judicial review.* 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 director by certified mail, return receipt requested, or by personal service. The address is Director, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

76.8(18) *Benefits after decision.* If a final decision is in favor of the person requesting a hearing and benefits were denied or discontinued, benefits shall begin immediately and continue pending further review should an appeal to district court be filed. If a final decision is in favor of the contract agency, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of the decision. Benefits denied during an administrative appeal period may not be awarded retroactively following a final decision in favor of a person applying for MCH services.

641—76.9(135) Grant application procedures for contract agencies. Private nonprofit or public agencies seeking to provide community-based Title V-MCH public health services shall file a letter of intent to make application to the department no later than April 1 of the competitive year. Applications shall be to administer MCH services for a specified project period, as defined in the request for proposal, with an annual continuation application. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are considered public records in accordance with Iowa Code chapter 22, after a notice of award is made by the department. Notification of the availability of funds and grant application procedures will be provided in accordance with the department rules found in 641—Chapter 176.

Contract agencies are selected on the basis of the grant applications submitted to the department. The department will consider only applications from private nonprofit or public agencies. In the case of competing applications, the contract will be awarded to the applicant that scores the highest number of points in the review. Copies of review criteria are available from Chief, Family Services Bureau, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

641—76.10(135) Funding levels for contract agencies. The amount of funds available to each contract agency on an annual basis shall be determined by the department using a methodology based upon dollars available, number of clients enrolled, and selected needs criteria. A contract agency will receive four dollars of the available funds from the department for each one dollar of matching funds up to but not to exceed the total available funds for that contract agency.

641—76.11(135) Contract agency performance. Contract agencies are required to provide services in accordance with these rules.

76.11(1) *Performance standards.* The department shall establish performance standards that contract agencies shall meet in the provision of services. The performance standards are published in the document "Performance Standards, Maternal and Child Health Contractors, Family Services Bureau." The performance standards are included in the contract agency MCH program grant application packet each year. Copies of the performance standards are available from the Chief, Family Services Bureau, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Contract agencies that do not meet the performance standards shall not be eligible for continued funding as an MCH contract agency unless the contract agency has secured a waiver.

76.11(2) *Contract agency review.* The department shall review contract agency operations through the use of reports and documents submitted, state-generated data reports, chart audits, on-site and clinic visits for evaluation and technical assistance.

76.11(3) *Exception.* A contract agency that does not meet a performance standard may be granted an exception for up to one year in order to improve performance. Such an exception must be requested in writing. If granted, the approval for the exception will include the conditions necessary for the successful completion of the standard, a time frame, and additional reporting requirements. The procedures for applying and approving of an exception are outlined in the "Performance Standards, Maternal and Child Health Contractors, Family Services Bureau."

641—76.12(135) Reporting. Completion of grant applications, budgets, expenditure reports, performance standards reports, and data forms shall be performed by contract agencies in compliance with the contract with the department.

641—76.13(135) Fiscal management. All contract agencies are required to meet fiscal management policies.

76.13(1) *Last pay.* MCH grant funds are considered last pay. Title XIX and other third-party payers are to be billed first if other resources cover the service.

76.13(2) *Program income.* Program income shall be used for allowable costs of the MCH program. Program income shall be used before using the funds received from the department. Excess program income may be retained to build a three-month operating capital. Program income shall be used during the current fiscal year or the following fiscal year. Five percent of unobligated program income may be used by the contract agency for special purposes or projects provided such use furthers the mission of the MCH program and does not violate state or federal rules governing the program.

76.13(3) *Advances.* A contract agency may request an advance of up to one-sixth of its contract at the beginning of a contract year. The amount of any advance will be deducted prior to the end of the fiscal year.

76.13(4) *Local share.* Contract agencies are required to match the MCH funds received from the department at a minimum rate of one dollar of local match for every four dollars received from the department. Sources that may be used for match are reimbursement for service from third parties such as insurance and Title XIX, client fees, local funds from nonfederal sources, or in-kind contributions. In-kind contributions must be documented in accordance with generally accepted accounting principles.

76.13(5) *Subcontracts.* Contract agencies may subcontract a portion of the project activity to another entity provided such subcontract is approved by the department. Subcontract agencies must follow the same rules, procedures, and policies as required of the contract agency by these rules and contract with the department. The contract agency is responsible for ensuring the compliance of the subcontract. Subcontract agencies may not subcontract these project activities with other entities.

641—76.14(135) Audits. Every two years, each contract agency shall undergo financial audit of the MCH program. The audit shall be conducted in compliance with OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations. Each audit shall cover all unaudited periods through the end of the previous grant year. The department's audit guide should be followed to ensure an audit which meets federal and state requirements.

641—76.15(135) Diagnosis and therapeutic services for children. Diagnosis and therapeutic services for children are paid directly to the provider following authorization by the contract agency.

76.15(1) *Distribution of funds.* Funds will be reserved for each contract agency based upon percentage of children eligible for the service, poverty indicators and the contract agency's past utilization of the program. Funds will be reserved at the department to cover services that exceed expected costs.

76.15(2) *Restriction on expenditure.* If the funds reserved are expended before the end of a contract year, further authorizations for payment cannot be made.

76.15(3) *Redistribution of funds.* Funds may be redistributed among contract agencies based upon utilization.

76.15(4) *Authorization for coverage.* Authorization is required before providers submit bills to the department for payment. Contract agencies authorize the use of funds by determining the child's eligibility, if the service meets the definition of coverage and if funds are available.

a. Each authorization is to include specific information about the reason for referral.

b. Prior authorization of the department is needed to authorize payment for services that would constitute extended treatment or treatment exceptions.

76.15(5) *Payment to providers.* Payments to providers will be made under the following conditions:

a. Authorization information must accompany the claim.

b. Claims must be submitted within 60 days of the date of service on an HCFA 1500, UB92 or Universal Claim Form. When other financial or medical resources are available to the client, the department may approve all or partial payment of an eligible unpaid claim.

c. Payment shall be based upon Title XIX rates to the extent current Title XIX rate information is available to the department.

d. Services provided by personnel employed by MCH contract agencies are not reimbursable.

641—76.16(135) Denial, suspension, revocation or reduction of contracts with contract agencies. The department may deny, suspend, revoke or reduce contracts with contract agencies in accord with applicable federal regulations or contractual relationships. Notice of such action shall be in writing.

641—76.17(135) Right to appeal—contract agency. Contract agencies may appeal the denial of a contract or the suspension, revocation or reduction of an existing contract.

76.17(1) *Appeal.* The appeal shall be made in writing to the department within ten days of receipt of notification of the adverse action. Notice is to be addressed to the Division Director, Family and Community Health Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

76.17(2) *Contested case.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the DIA pursuant to the rules adopted by the DIA 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 DIA.

76.17(3) *Hearing.* Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible. The hearing shall be conducted according to the procedural rules of the DIA found in 481—Chapter 10.

76.17(4) *Decision of administrative law judge.* The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. 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 decision without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 76.17(5).

76.17(5) *Appeal to the director.* 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.

76.17(6) *Record of hearing.* 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 thereon;

e. All proposed findings and exceptions; and

f. The proposed decision and order of the administrative law judge.

76.17(7) *Decision of director.* An appeal to the director shall be based on the record made at the hearing. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

76.17(8) *Exhausting administrative remedies.* 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 decision of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A. Petition for judicial review must be filed within 30 days after decision becomes final.

These rules are intended to implement Iowa Code section 135.11.

[Filed 9/30/88, Notice 8/10/88—published 10/19/88, effective 11/23/88]
[Filed emergency 7/21/89—published 8/9/89, effective 7/21/89]
[Filed 11/9/89, Notice 8/9/89—published 11/29/89, effective 1/3/90]
[Filed 9/28/90, Notice 6/13/90—published 10/17/90, effective 11/21/90]
[Filed 5/10/91, Notice 1/9/91—published 5/29/91, effective 7/3/91]
[Filed 9/13/91, Notice 7/10/91—published 10/2/91, effective 11/6/91]
[Filed 3/13/92, Notice 2/5/92—published 4/1/92, effective 5/6/92]
[Filed 1/11/96, Notice 11/8/95—published 1/31/96, effective 3/6/96]
[Filed emergency 3/10/99 after Notice 1/13/99—published 4/7/99, effective 3/10/99]

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13.14(422) Vending machines and other coin-operated devices
13.15(422) Other amusements
13.16(422) Substantially delinquent tax—denial of permit
13.17(422) Substantially delinquent tax—revocation of permit

CHAPTER 14
COMPUTATION OF TAX

14.1(422) Tax not to be included in price
14.2(422,423,77GA,ch1130) Retail bracket system for state sales and local option sales and service tax
14.3(422,423) Taxation of transactions due to rate change

701—12.3(422) Permits and negotiated rate agreements. A person making retail sales in Iowa is required to obtain a sales tax permit from the department of revenue and finance. Certain qualified purchasers, users, or consumers may obtain a direct pay permit which allows qualified purchasers, users, or consumers to remit tax directly to the department rather than to the retailer at the time of purchase or use. The following provisions govern the issuance of each type of permit.

12.3(1) *Sales tax permits.* Sales tax permits will be required of all resident and nonresident persons making retail sales at permanent locations within the state. A permit must be held for each location except that retailers conducting business at a permanent location who also make sales at a temporary location are not required to hold a separate permit for any temporary location. All tax collected from the temporary location shall be remitted with the tax collected at the permanent location. Persons who are registered retailers pursuant to rule 701—29.1(423) relating to use tax may remit sales taxes collected at a temporary location with their quarterly retailers use tax return. Retailers conducting a seasonal business shall also obtain a regular permit. However, returns will be filed on either a quarterly or annual basis depending upon the number of quarters in which sales are made. Sales tax permits will be required of all persons, except cities and counties, who have sales activity from gambling.

12.3(2) *Direct pay permits.* Effective January 1, 1998, qualified purchasers, users, and consumers of tangible personal property or enumerated services pursuant to Iowa Code chapters 422, 422B, and 423 may remit tax owed directly to the department of revenue and finance instead of the tax being collected and remitted by the seller. A qualified purchaser, user, or consumer may not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department of revenue and finance.

a. Qualifications for a direct pay permit. To qualify for a direct pay permit, all of the following criteria must be met:

(1) The applicant must be a purchaser, user, or consumer of tangible personal property or enumerated services.

(2) The applicant must have an accrual of sales and use tax liability on consumed goods of more than $4,000 in a semimonthly period. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of $4,000 in sales and use tax liability in a semimonthly period to qualify, if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit. If a purchaser, user, or consumer has more than one location, but not all locations wish to remit under a direct pay permit, the purchaser, user, or consumer must indicate which locations will be utilizing the direct pay permit at the time of application.

(3) The applicant must make deposits and file returns pursuant to Iowa Code section 422.52. See subrule 12.3(2), paragraph *"d,"* for further details.

b. Nonqualifying purchases or uses. The granting of a direct pay permit is not allowed for any of the following:

(1) Taxes imposed on the sale, furnishing, or service of gas, electricity, water, heat, pay television service, or communication service.

(2) Taxes imposed under Iowa Code section 422C.3 (sales tax on the rental receipts of qualifying rental motor vehicles), Iowa Code section 423.7 (use tax on the sale or use of motor vehicles), or Iowa Code section 423.7A (use tax on the lease price of qualifying leased motor vehicles).

c. Application and permit information. To obtain a direct pay permit, a purchaser, user, or consumer must properly complete an application form prescribed by the director of revenue and finance and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department of revenue and finance or vendors over the last two years prior to application, an average of $4,000 in a semimonthly period.

Upon approval, the director will issue a direct pay permit to qualifying applicants. The permit will contain direct pay permit identifying information including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—15.3(422,423).

d. Remittance and reporting. Sales, use, and local option tax that is to be reported and remitted to the department will be on a semimonthly basis. Remittance of tax due under a direct pay permit will begin with the first quarter after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit must be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales and service tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a quarterly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 422.52. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 422.52.

e. Permit revocation and nontransferability. A direct pay permit may be used indefinitely unless it is revoked by the director. A direct pay permit is not transferable and it may not be assigned to a third party. The director may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 422.53. If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

f. Record-keeping requirements. The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit must retain possession of the direct pay permit. The permit holder must keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(422,423).

(2) Vendor. A vendor must retain a valid exemption certificate under rule 701—15.3(422,423) which is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(422,423). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—15.3(422,423).

12.3(3) *Negotiated rate agreements.* Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in subrule 12.3(2), paragraph *"b,"* above, and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

All negotiated rate agreements shall contain the following information or an explanation for its omission:

1. The name of the taxpayer who has entered into the agreement with the department.
2. The name and title of each person signing the agreement and the name, telephone or fax number, and E-mail or physical address of at least one person to be contacted if questions regarding the agreement arise.
3. The period during which the agreement is in effect and the renewal or extension rights (if any) of each party, and the effective date of the agreement.
4. The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items which will be excluded from the agreement, and any circumstances which will result in a changed rate or rates or changed composition of classes to which rates are applicable.
5. Actions or circumstances which render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.
6. Rights, if any, of the parties to resort to mediation or arbitration.
7. An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.
8. The conditions by which the agreement may be terminated and the effective date of the termination.
9. The methodology used to determine the negotiated rate and any schedules needed to verify percentages.
10. Any other matter deemed necessary to the parties' mutual understanding of the agreement.

This rule is intended to implement Iowa Code sections 422.45(20) and 422.53 as amended by 1997 Iowa Acts, House File 266.

12.15(1) *Personal liability—how determined.* There are various criteria which can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

a. The duties of officers as outlined in the corporate bylaws,

b. The duties which various officers have assumed in practice,

c. Which officers are empowered to sign checks for the corporation,

d. Which officers hire and fire employees, and

e. Which officers control the financial affairs of the corporation. An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills which had been selected for payment will be paid. "Final control" means a significant control over which bills should or should not be paid rather than exclusive control. The observations in this paragraph are applicable to partnerships as well as corporations.

12.15(2) *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An open account is one which is neither finally settled or finally closed, but is still running and "open" to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an "account receivable." The amount due has been finally settled and is not open to future adjustment. The usual consumer installment contract is a "note receivable" rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

12.15(3) *Beginning date of personal liability.* Officers and partners are not personally liable for state sales tax due and unpaid prior to March 13, 1986. They are liable for state sales taxes which are both due and unpaid on and after that date. See department rule 701—107.12(422B) for an explanation of officer and partner liability for unpaid local option sales tax.

701—12.16(422) Show sponsor liability. Persons sponsoring flea markets or craft, antique, coin, stamp shows, or similar events are, under certain circumstances, liable for payment of sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Included within the meaning of the term "similar event" is any show at which guns or collectibles, e.g., depression glassware or comic books, are sold or traded. To avoid liability, sponsors of these events must obtain from retailers appearing at the events proof that a retailer possesses a valid Iowa sales tax permit or a statement from the retailer, taken in good faith, that the property or service which the retailer offers for sale is not subject to sales tax. "Good faith" may demand that the sponsor inquire into the nature of the property or service sold or why the retailer believes the property or services for sale to be exempt from tax. A sponsor who fails to take these measures assumes all of the liabilities of a retailer. This includes not only the obligation to pay tax, penalty, and interest, but also to keep the records required of a retailer and to file returns.

Excluded from the requirements of this rule and from sponsor liability are organizations which sponsor events fewer than three times a year and state, county, or district agricultural fairs.

This rule is intended to implement the requirements of Iowa Code section 422.52.

701—12.17(422) Purchaser liability for unpaid sales tax. For sales occurring on and after March 13, 1986, if a purchaser fails to pay sales tax to a retailer required to collect the tax, the tax is payable by the purchaser directly to the department. The general rule is that the department may proceed against either the retailer or the purchaser for the entire amount of tax which the purchaser is, initially, obligated to pay the retailer. However, see 701—subrule 15.3(2) for a situation in which the obligation to pay the tax is imposed upon the purchaser alone.

This rule is intended to implement Iowa Code section 422.52.

[Filed 12/12/74]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed emergency 4/28/78—published 5/17/78, effective 4/28/78]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed emergency 3/2/79—published 3/21/79, effective 3/2/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]
[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]
[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]
[Filed 8/13/82, Notice 7/7/82—published 9/1/82, effective 10/6/82]
[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]
[Filed emergency 12/17/82—published 1/5/83, effective 1/1/83]
[Filed emergency 2/10/83—published 3/2/83, effective 3/1/83]
[Filed 2/10/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]
[Filed 1/10/86, Notice 12/4/85—published 1/29/86, effective 3/5/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed 10/3/86, Notice 8/13/86—published 10/22/86, effective 11/26/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 4/13/88, Notice 3/9/88—published 5/4/88, effective 6/8/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]◊
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 5/23/91, Notice 4/17/91—published 6/12/91, effective 7/17/91]
[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 11/14/97, Notice 10/8/97—published 12/3/97, effective 1/7/98]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

◊Two ARCs

701—16.30(422) Commercial amusement enterprises—companies or persons which contract to furnish show for fixed fee. Sales by commercial amusement enterprises occurring on or after May 31, 1984, shall not be subject to tax.

This rule is intended to implement Iowa Code section 422.43.

701—16.31(422) Admissions to state, county, district and local fairs. Rescinded IAB 11/10/93, effective 12/15/93.

701—16.32(422) River steamboats. River steamboats carrying passengers for pleasure rides on any river within the state or which forms a boundary line between Iowa and another state shall be an amusement enterprise. Gross receipts from the sale of such tickets sold in Iowa shall be taxable. For an exception to this rule and an exemption applicable to tickets for admission to excursion gambling boats, see rule 701—17.25 (422,423).

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.33(422) Pawnbrokers. Pawnbrokers are primarily engaged in the business of lending money for and accepting as security tangible personal property from the owner or pledger.

In case the pledger does not redeem the property pledged or pawned, such property is forfeited to the pawnbroker, to whom the title passes.

When pawnbrokers thereafter sell such articles at retail, they are making sales and shall collect and remit tax.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.34(422,423) Druggists and pharmacists. Persons licensed to practice pharmacy in Iowa and registered prescription druggists in Iowa engaged in the business of selling drugs and medicines shall not be liable for tax on the applicable exemptions prescribed under 701—Chapter 20.

Unless otherwise exempt from tax, the purchase of tangible personal property for individual use or consumption by licensed pharmacists and registered prescription druggists shall be subject to tax. Furthermore, such persons shall hold a retail sales tax permit and collect and report all tax due from consumers and users in all transactions involving taxable retail sales.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(13), 423.1, 423.2, and 423.4(4).

701—16.35(422,423) Memorial stones. Persons engaged in the business of selling memorial stones are selling tangible personal property, the gross receipts from which shall be subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total gross receipts from such sale shall be taxable.

Any designs, lettering or engraving performed on a memorial stone or monument is also subject to the tax. See rule 701—26.17(422,423) and In Re, *Des Moines-Winterset Monuments, Inc.*, Docket No. 79-228-6A-DR, March 13, 1980.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—16.36(422) Communication services furnished by hotel to its guests. As a common practice, hotels in the state of Iowa purchase telephone communication service from telephone companies and furnish said services to the guests of the hotel. The hotel makes a charge for this communication service to its guests in an amount which exceeds the cost of such service to it from the telephone company. Tax shall apply to the entire charges which the hotel makes to its guests for such communication service, regardless of whether the guest's calls are local or long-distance within the state.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.37(422) Private clubs. Private clubs, such as country clubs, athletic clubs, fraternal and other similar social organizations, are retailers of tangible personal property sold by them, even though the sales are made only to members. These organizations shall procure a permit and report and pay tax on the gross receipts of all sales by such clubs.

When clubs operate amusements or amusement devices or coin-operated machines, the gross receipts therefrom shall be included with the gross receipts from other taxable sales on which tax is computed.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—16.38(422,423) Aircraft sales. Rescinded IAB 10/13/93, effective 11/17/93.

701—16.39(422) Athletic events. The sale of tickets or admissions to athletic events occurring in the state of Iowa sponsored by educational institutions without regard to the use of the proceeds from such sales shall be subject to tax, except when sponsored by elementary and secondary educational institutions as set forth in Iowa Code section 422.43.

This rule is intended to implement Iowa Code section 422.43.

(4) *"Printing"* includes, but is not limited to, any type of printing, lithographing, mimeographing, photocopying and similar reproduction. The following activities are nonexclusive examples of property which are subject to tax: printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.

(5) *"Retouching"* includes the renovation or retouching of an existing likeness or design.

b. Reserved.

16.51(2) Effective May 18, 1984, the sale of vulcanizing, recapping and retreading services is no longer the sale of enumerated services, but is the sale of tangible personal property. For the purposes of this subrule these services will also be referred to as "property."

a. "Vulcanizing" means the act or process of treating crude rubber, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity.

b. The effective date of the statute mandating change in the treatment of vulcanizing, recapping and retreading is May 18, 1984. However, the change in the treatment of this property is retroactive to January 1, 1979. The statute provides that no tax may be assessed for a retailer's treatment of the sale of this property as the sale of tangible personal property between the dates January 1, 1979, and May 17, 1984, inclusive. However, no refund may be claimed on any tax collected prior to May 18, 1984, if the basis for the refund claim is the argument that the sale of vulcanizing, recapping and retreading services is the sale of tangible personal property.

16.51(3) Effective July 1, 1997, sales of prepaid telephone calling cards and prepaid authorization numbers which furnish the holder with communication service are taxable as sales of tangible personal property. See rule 16.52(422,423) below for an explanation of the sales tax treatment of other types of prepaid merchandise cards.

This rule is intended to implement Iowa Code sections 422.43 and 423.1.

701—16.52(422,423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards, see 16.51(3) above) are not sales of tangible personal property and are not sales which are subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the gross receipts at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE: Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of $200.00. A purchases a sweater for $50.00 from ABC Clothing. ABC Clothing Company will debit A's card $52.50 ($50.00 × 1.05) or $53.00 ($50.00 × 1.06) if local option tax is applicable.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

[Filed December 12, 1974]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed effective date change 10/20/77—published 11/2/77, effective 10/20/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed 3/28/80, Notice 2/20/80—published 4/16/80, effective 5/21/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 3/13/81, Notice 2/4/81—published 4/1/81, effective 5/6/81]
[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]
[Filed emergency 2/9/83—published 3/2/83, effective 3/1/83]
[Filed 4/22/83, Notices 3/2/83, 3/16/83—published 5/11/83, effective 6/15/83]
[Filed 8/10/84, Notice 7/4/84—published 8/29/84, effective 10/3/84]
[Filed 11/30/84, Notice 7/18/84—published 12/19/84, effective 1/23/85]
[Filed 1/10/85, Notice 10/10/84—published 1/30/85, effective 3/6/85]
[Filed 10/18/85, Notice 9/11/85—published 11/6/85, effective 12/11/85]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 12/29/86, Notice 11/19/86—published 1/14/87, effective 2/18/87]
[Filed 2/5/88, Notice 10/21/87—published 2/24/88, effective 3/30/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 8/16/91, Notice 7/10/91—published 9/4/91, effective 10/9/91]
[Filed 3/26/92, Notice 2/19/92—published 4/15/92, effective 5/20/92]
[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/22/93, Notice 9/15/93—published 11/10/93, effective 12/15/93]
[Filed 10/31/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

701—17.19(422,423) Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax.

17.19(1) On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to the following nonprofit corporations are exempt from tax.

a. Community health centers as defined in 42 U.S.C.A. Section 254c.

b. Migrant health centers as defined in 42 U.S.C.A. Section 254b.

17.19(2) After July 1, 1985, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered or furnished to the following nonprofit corporations are exempt from tax.

a. Residential care facilities and intermediate care facilities for the mentally retarded and residential care facilities for the mentally ill licensed by the department of health under Iowa Code chapter 135C.

b. Residential facilities for mentally retarded children licensed by the department of human services under Iowa Code chapter 237 including facilities maintained by "individuals" as defined in section 237.1(7) until and including June 30, 1989. On and after July 1, 1989, all residential facilities for child foster care (not only those for mentally retarded children) licensed by the department of human services under chapter 237, other than those maintained by "individuals" as defined in Iowa Code section 237.1(7) are eligible for the exemption.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for mentally retarded and other developmentally disabled persons and adult day care services approved for reimbursement by the department of human services.

d. Community mental health centers accredited by the department of human services under Iowa Code chapter 225C.

17.19(3) The exemption does not apply to tax paid on the purchase of building materials by a contractor which are used in the construction, remodeling or reconditioning of a facility used or to be used for one or more of the uses set forth in subrule 17.19(2). See 1985 O.A.G. 66.

17.19(4) Taxes payable on transactions occurring between July 1, 1980, and July 1, 1985, involving the retail sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit corporation described in subrule 17.19(2) and which have not been paid by the nonprofit corporation are no longer due and payable after July 1, 1985, and these taxes are not to be collected notwithstanding any other provisions of the Code.

This rule is intended to implement Iowa Code section 422.45.

701—17.20(422) Raffles. Gross receipts from the sale of fair raffle tickets pursuant to Iowa Code section 99B.5 are not subject to tax.

This rule is intended to implement Iowa Code section 422.45(32).

701—17.21(422) Exempt sales of prizes. For sales occurring on and after July 1, 1987, the gross receipts from sales of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B are exempt from tax. See Chapters 481—100 through 104 of Inspections and Appeals, Iowa Administrative Code, for a description of the games of skill, games of chance, raffles, and bingo games which are lawful. See rule 481—100.6(99B) for a description of the prizes which it is lawful to award. A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize at the time the person redeems the gift certificate for merchandise, on and after July 1, 1987, tax remains payable at the time the gift certificate is redeemed. See rule 701—15.16(422).

This rule is intended to implement Iowa Code section 422.45(32).

701—17.22(422,423) Modular homes. On and after July 1, 1988, 40 percent of the gross receipts from the sale of a modular home is exempt from tax. A "modular home" is any structure, built in a factory, made to be used as a place for human habitation which cannot be attached or towed behind a motor vehicle and which does not have permanently attached to its body or frame any wheels or axles.

This rule is intended to implement Iowa Code section 422.45.

701—17.23(422,423) Sales to other states and their political subdivisions. On and after July 1, 1990, gross receipts from the sale of tangible personal property or from the furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state are exempt from tax if that other state provides a similar reciprocal exemption for Iowa and its political subdivisions. The states known to provide a similar reciprocal exemption to Iowa and its subdivisions (as of October 1, 1998) are Illinois, Kentucky, North Dakota, South Dakota, and the District of Columbia.

This rule is intended to implement Iowa Code section 422.45.

701—17.24(422) Nonprofit private museums. For sales occurring on or after July 1, 1990, the gross receipts of all sales of goods, wares, merchandise, or services used for educational, scientific, historic preservation, or aesthetic purpose to a nonprofit private museum are exempt from tax. A "museum" is an institution organized for educational, scientific, historical preservation, or aesthetic purposes which is predominately devoted to the care and exhibition of a collection of objects in a room, building, or locale. This collection must be open to the public on a regular basis, and its staff must be available to answer questions regarding the collection. See the example at the end of the rule for a characterization of the phrase "open to the public on a regular basis."

Words contained in exemption statutes are strictly construed; all doubt regarding their meaning is resolved in favor of taxation and against exemption. *Ballstadt v. Iowa Department of Revenue*, 368 N.W.2d 147 (Iowa 1985) and *Iowa Movers and Warehousemen's Association v. Briggs*, 237 N.W.2d 759 (Iowa 1976). Furthermore, an institution is not a "museum" unless it can be included in the "ordinary and usual public concept" of a museum, regardless of the abstract definition of the term within which the institution might fit. See *Sorg v. Department of Revenue*, 269 N.W.2d 129 (Iowa 1978). Using the above principles, the department excludes from its definition of "museum" the following: aquariums, arboretums, botanical gardens, nature centers, planetariums, and zoos. Included within the meaning of "museum" are: art galleries, historical museums, museums of natural history, and museums devoted to one particular subject or one person.

EXAMPLE: The Blank County History Museum is open every Tuesday afternoon from 1 p.m. to 4:30 p.m., other than on national holidays. The museum is open periodically or at fixed intervals, so it is open "on a regular basis," even though, each week, it is open only briefly.

This rule is intended to implement Iowa Code section 422.45(43).

701—17.25(422,423) Exempt sales by excursion boat licensees. The following sales by licensees authorized to operate excursion gambling boats are exempt from Iowa sales and use tax: (1) charges for admission to excursion gambling boats, and (2) gross receipts from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

Gross receipts from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and gross receipts from nongambling video games and other types of games which do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10(6).

[Filed 12/12/74]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/15/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed emergency 4/28/78—published 5/17/78, effective 4/28/78]
[Filed 5/26/78, Notice 3/22/78—published 6/14/78, effective 7/19/78*]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 2/16/79, Notice 1/10/79—published 3/7/79, effective 4/11/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed emergency 6/11/79—published 6/27/79, effective 7/1/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 2/10/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]
[Filed 3/23/84, Notice 2/15/84—published 4/11/84, effective 5/16/84]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/7/85, Notice 8/14/85—published 10/23/85, effective 11/27/85]
[Filed 12/2/85, Notice 7/17/85—published 12/18/85, effective 1/22/86]
[Filed 3/21/86, Notice 9/11/85—published 4/9/86, effective 5/14/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 12/29/86, Notice 11/19/86—published 1/14/87, effective 2/18/87]
[Filed 11/12/87, Notice 10/7/87—published 12/2/87, effective 1/6/88]
[Filed 2/5/88, Notice 10/21/87—published 2/24/88, effective 3/30/88]
[Filed 10/14/88, Notice 9/7/88—published 11/2/88, effective 12/7/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]◊
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]◊
[Filed 10/12/90, Notice 9/5/90—published 10/31/90, effective 12/5/90]
[Filed emergency 3/15/91—published 4/3/91, effective 3/15/91]
[Filed 3/15/91, Notice 2/6/91—published 4/3/91, effective 5/8/91]
[Filed 5/10/91, Notice 4/3/91—published 5/29/91, effective 7/3/91]
[Filed 8/16/91, Notice 7/10/91—published 9/4/91, effective 10/9/91]
[Filed 3/26/92, Notice 2/19/92—published 4/15/92, effective 5/20/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 7/1/93, Notice 5/26/93—published 7/21/93, effective 8/25/93]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/22/93, Notice 9/15/93—published 11/10/93, effective 12/15/93]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]◊
[Filed 2/9/96, Notice 1/3/96—published 2/28/96, effective 4/3/96]
[Filed 10/31/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 4/17/98, Notice 12/3/97—published 5/6/98, effective 6/10/98]
[Filed 8/5/98, Notice 7/1/98—published 8/26/98, effective 9/30/98]
[Filed 10/15/98, Notice 9/9/98—published 11/4/98, effective 12/9/98]
[Filed 10/30/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

*Effective date of 17.3"c" delayed by the Administrative Rules Review Committee at its July 11, 1978, meeting under the provisions of the Sixty-seventh General Assembly, S.F. 244, section 19. See amendment published 3/7/79.
◊Two ARCs

701—18.53(422,423) Sales to persons engaged in the consumer rental purchase business. On and after July 1, 1989, the gross receipts from the sale of tangible personal property, except vehicles subject to registration, to persons regularly engaged in the consumer purchase business are exempt from tax if the property (1) is sold for the purpose of utilization in a transaction involving a "consumer rental purchase agreement" as defined in Iowa Code subsection 537.3604(8), and (2) the gross receipts from the consumer rental of the property are subject to Iowa sales or use tax.

If property exempt under this rule is made use of for any purpose other than a consumer rental purchase, the person claiming the exemption is liable for the tax that would have been due had the exemption not existed. The tax shall be computed on the original purchase price to the person claiming the exemption. The aggregate of the tax paid on the consumer rental purchase of the property, not exceeding the amount of sales or use tax owed, shall be credited against the tax.

This rule is intended to implement Iowa Code section 422.45(18).

701—18.54(422,423) Sales of advertising material. On and after July 1, 1990, gross receipts from the sales of advertising material to any person in Iowa are exempt from tax if that person, or any agent of that person, will, after the sale, send that advertising material outside of Iowa and subsequent sole use of that material will be outside this state.

For the purposes of this rule "advertising material" is tangible personal property only, including paper. "Advertising material" is limited to the following: brochures, catalogs, leaflets, fliers, order forms, return envelopes, floppy discs, CD-ROMs, videotapes, and any similar items of tangible personal property which will be used to promote sales of property or services.

This rule is intended to implement Iowa Code section 422.45.

701—18.55(422,423) Drop shipment sales. A "drop shipment" generally involves two sales transactions and three parties. The first party is a consumer located inside Iowa. The second party is a retailer located outside the state. The third party is a supplier who may be located inside or outside of Iowa. The two sales transactions in question are the sale of property from the supplier to the out-of-state retailer, and the further sale of that property from the out-of-state retailer to the consumer in Iowa.

EXAMPLE: Company A owns and operates a gravel pit. It sells the gravel extracted from the pit to others who use the gravel for surfacing roads and as an ingredient in concrete manufacture. Company A removes overlay and raw gravel from the pit. It then transports the gravel to a plant where washing and sizing of the gravel take place. Company A is a manufacturer, but only with respect to those activities which occur after it severs the gravel from the ground.

"Pollution control equipment" means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. The term does not include any apparatus used to eliminate "noise pollution." Liquid, solid, and gaseous wastes are included within the meaning of the word "pollution." "Pollution control equipment" specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or the United States Government. Wastewater treatment facilities and scrubbers used in smokestacks are examples of pollution control equipment. However, pollution control equipment does not include any equipment used only for worker safety (e.g., a gas mask).

"Processing" means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components or products; quality control activities; construction of packaging and shipping devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the manufacturer.

"Processing or storage of data or information." All computers store and process information. However, only if the "final output" for a user or consumer is stored or processed data will the computer be eligible for exemption of tax.

"Receipt or producing of raw materials" means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, "production of raw materials" is deemed to occur immediately following the severance of the raw materials from the real estate.

"Recycling" means any process by which waste or materials which would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. "Recycling" does not include any form of energy recovery.

"Replacement parts." A "replacement part" is any machinery, equipment, or computer part which is substituted for another part that has broken, has become worn out or obsolete, or is otherwise unable to perform its intended function. "Replacement parts" are those parts which materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives or keep them in their ordinarily efficient operating condition. Excluded from the meaning of the term "replacement parts" are supplies, the use of which is necessary if machinery is to accomplish its intended function. Drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters are nonexclusive examples of supplies. Sales of supplies remain taxable.

Tangible personal property with an expected useful life of 12 months or more which is used in the operation of machinery, equipment, or computers is rebuttably presumed to be a "replacement part." Tangible personal property used in the same manner with an expected useful life of less than 12 months is rebuttably presumed to be a "supply."

"Research and development" means experimental or laboratory activity which has as its ultimate goal the development of new products or processes of processing. Machinery, equipment, and computers are used "directly" in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

18.58(2) *Exempt sales.* On and after July 1, 1997, sales or rentals of the following machinery, equipment, or computers (including replacement parts) are exempt from tax:

a. Machinery, equipment, and computers directly and primarily used in processing by a manufacturer.

b. Machinery, equipment, and computers directly and primarily used to maintain a manufactured product's integrity or to maintain any unique environmental conditions required for the product.

c. Machinery, equipment and computers directly and primarily used to maintain unique environmental conditions required for other machinery, equipment, or computers used in processing by a manufacturer.

d. Test equipment directly and primarily used by a manufacturer in processing to control the quality and specifications of a product.

e. Machinery, equipment, or computers directly and primarily used in research and development of new products or processes of processing.

f. Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

g. Machinery, equipment, and computers directly and primarily used in recycling or reprocessing of waste products.

h. Pollution control equipment used by a manufacturer. It is not necessary that the equipment be "directly and primarily" used in any kind of processing.

i. Materials used to construct or self-construct any machinery, equipment, or computer, the sale of which is exempted by paragraphs *"a"* through *"h"* above.

j. Exempt sales of fuel and electricity. Sales of fuel or electricity consumed by machinery, equipment, or computers used in any exempt manner described in paragraphs *"a," "b," "c," "d," "e," "g,"* and *"h"* of this subrule are exempt from tax. Sales of electricity consumed by computers used in the manner described in paragraph *"f"* remain subject to tax.

18.58(3) *Examples of exempt items.* Sales of the following nonexclusive types of machinery and equipment, previously taxable, are exempt on and after July 1, 1997, if that machinery or equipment is sold for direct and primary use in processing by a manufacturer: coolers which do not change the nature of materials stored in them; equipment which eliminates bacteria; palletizers; storage bins; property used to transport raw, semifinished, or finished goods; vehicle-mounted cement mixers; self-constructed machinery and equipment; packaging and bagging equipment (including conveyer systems); equipment which maintains an environment necessary to preserve a product's integrity; equipment which maintains a product's integrity directly; quality control equipment and electricity or other fuel used to power the machinery and equipment mentioned above.

18.58(4) *Processing—beginning to end.*

a. The beginning of processing. Processing begins with a manufacturer's receipt or production of raw material. Thus, when a manufacturer produces its own raw material it is engaged in processing. Processing also begins when raw materials are transferred to a manufacturer's possession by a manufacturer's supplier.

b. The completion of processing. Processing ends when the finished product is transferred from the manufacturer or delivered for shipment by the manufacturer. Therefore, a manufacturer's packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

c. Examples of the beginning, intervening steps, and the ending of processing. Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

[Filed 12/12/74]
[Filed 1/9/76, Notice 12/1/75—published 1/26/76, effective 3/1/76]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed effective date change 10/20/77—published 11/2/77, effective 10/20/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed 3/20/79, Notice 1/10/79—published 4/4/79, effective 5/9/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed 3/28/80, Notice 2/20/80—published 4/16/80, effective 5/21/80]
[Filed 5/23/80, Notice 4/16/80—published 6/11/80, effective 7/16/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 8/1/80, Notice 6/25/80—published 8/20/80, effective 9/24/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 3/13/81, Notice 2/4/81—published 4/1/81, effective 5/6/81]
[Filed 6/5/81, Notice 4/29/81—published 6/24/81, effective 7/29/81]
[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]
[Filed emergency 2/9/83—published 3/2/83, effective 3/1/83]
[Filed 4/22/83, Notices 3/2/83, 3/16/83—published 5/11/83, effective 6/15/83]
[Filed emergency 7/29/83—published 8/17/83, effective 7/29/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 11/30/84, Notice 7/18/84—published 12/19/84, effective 1/23/85]
[Filed 12/14/84, Notice 9/26/84—published 1/2/85, effective 2/6/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]
[Filed 10/18/85, Notice 9/11/85—published 11/6/85, effective 12/11/85]
[Filed 12/13/85, Notice 11/6/85—published 1/1/86, effective 2/5/86]
[Filed 1/10/86, Notice 9/11/85—published 1/29/86, effective 3/5/86]
[Filed 3/21/86, Notice 2/12/86—published 4/9/86, effective 5/14/86]
[Filed 3/21/86, Notice 9/11/85—published 4/9/86, effective 5/14/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed 10/31/86, Notice 9/24/86—published 11/19/86, effective 12/24/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 12/29/86, Notice 11/19/86—published 1/14/87, effective 2/18/87]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 10/30/87, Notice 9/23/87—published 11/18/87, effective 12/23/87]
[Filed 12/23/87, Notice 10/7/87—published 1/13/88, effective 2/17/88]
[Filed 1/7/88, Notice 12/2/87—published 1/27/88, effective 3/2/88]
[Filed 2/5/88, Notice 10/21/87—published 2/24/88, effective 3/30/88]
[Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]
[Filed 10/14/88, Notice 9/7/88—published 11/2/88, effective 12/7/88]

[Filed emergency 12/23/88—published 1/11/89, effective 1/2/89]
[Filed 3/3/89, Notice 1/25/89—published 3/22/89, effective 4/26/89]
[Filed 3/31/89, Notice 2/22/89—published 4/19/89, effective 5/24/89]
[Filed 8/16/89, Notice 7/12/89—published 9/6/89, effective 10/11/89]◊
[Filed 10/26/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]◊
[Filed 1/5/90, Notice 11/29/89—published 1/24/90, effective 2/28/90]
[Filed 4/26/90, Notice 3/21/90—published 5/16/90, effective 6/20/90]
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
[Filed 9/28/90, Notice 8/22/90—published 10/17/90, effective 11/21/90]
[Filed 7/5/91, Notice 5/29/91—published 7/24/91, effective 8/28/91]
[Filed 10/11/91, Notice 9/4/91—published 10/30/91, effective 12/4/91]
[Filed 3/13/92, Notice 2/5/92—published 4/1/92, effective 5/6/92]
[Filed emergency 3/26/92—published 4/15/92, effective 4/1/92]
[Filed 6/5/92, Notice 4/15/92—published 6/24/92, effective 7/29/92]
[Filed 9/23/92, Notice 8/19/92—published 10/14/92, effective 11/18/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/8/93, Notice 9/1/93—published 10/27/93, effective 12/1/93]
[Filed 12/30/94, Notice 11/23/94—published 1/18/95, effective 2/22/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]
[Filed 2/9/96, Notice 1/3/96—published 2/28/96, effective 4/3/96]
[Filed 5/16/96, Notice 4/10/96—published 6/5/96, effective 7/10/96]
[Filed 10/31/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 12/19/96, Notices 10/9/96, 11/20/96—published 1/15/97, effective 2/19/97*]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 4/17/98, Notice 12/3/97—published 5/6/98, effective 6/10/98]
[Filed 10/15/98, Notice 9/9/98—published 11/4/98, effective 12/9/98]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

◊Two ARCs
*Effective date of 18.20(5) and 18.20(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 10, 1997.

701—26.62(422) Landscaping. On or after July 1, 1985, the gross receipts from the service of "landscaping" are subject to tax. The services performed by one who arranges and modifies the natural condition of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment is engaged in the business of "landscaping." Any services for which registration is required as a "landscape architect" under Iowa Code section 544B.2 are not subject to tax on the service of "landscaping" if performed by a registered landscape architect and separately stated and separately billed on a charge for landscape architecture. The gross receipts from landscaping performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure shall not be subject to tax. See rule 701—19.13(422,423).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.63(422) Pet grooming. On or after July 1, 1985, persons engaged in the business of pet grooming are rendering a service, the gross receipts of which are subject to tax. A "pet" is any animal which has been tamed or gentled and which is kept by its owner for pleasure or affection rather than for utility or profit. "Grooming" consists of any act performed to maintain or improve the appearance of a pet and includes, but is not limited to, washing, combing, currying, hair cutting and nail clipping. Livestock are not pets, and the gross receipts from the grooming of livestock (e.g., to prepare those livestock for exhibition at fairs or shows) are nontaxable gross receipts. The gross receipts paid to any person who is not a veterinarian for the grooming of any dog (other than a Seeing Eye dog) or cat will be presumed to be the gross receipts from "pet grooming" and subject to tax.

If pet grooming is done for veterinary purposes, the sales tax does not apply since the grooming is an integral part of the nontaxable service of veterinary care. If pet grooming is done for both veterinary and cosmetic reasons, the primary purpose for the treatment will determine if sales tax should be collected. In situations where the charge for the cosmetic treatment and the veterinary-related treatment can be invoiced separately, sales tax should be collected only on the cosmetic portion of the billing. It will be presumed that pet grooming activities such as washing, trimming, and cutting are for cosmetic purposes unless it can be shown that the treatment was primarily done for veterinary purposes.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.64(422) Reflexology. On and after July 1, 1985, persons engaged in the business of reflexology are rendering a service, the gross receipts of which are subject to tax. "Reflexology" is a system for the treatment of illness which assumes that certain "reflex points" exist in the feet or hands and that each of these reflex points is related to the health of one organ or portion of the body. By massaging these reflex points, a "reflexologist" seeks to alleviate nervous tension, and by this alleviation to relieve arthritis, headaches, backaches, stiff necks and other ailments.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.65(422) Tanning beds and tanning salons. On or after July 1, 1985, persons engaged in the business of providing tanning beds and tanning salons are performing a service, the gross receipts of which are subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.66(422) Tree trimming and removal. On or after July 1, 1985, persons engaged in the business of tree trimming and removal are performing a service, the gross receipts of which are subject to tax. Persons engaged in "stump removal" are engaged in a taxable service, as are persons engaged in the removal of any other portion of a tree, such as the branches or trunk. The trimming or removal of any shrub which has a woody main stem or trunk with branches shall constitute tree trimming or removal and the gross receipts from the trimming or removal of such a shrub shall be subject to tax. Persons engaged in the business of tree trimming and removal who cut the wood from the trees which they trim or remove into sizes suitable for sale as firewood and who sell this wood for firewood are engaged in the sale of tangible personal property, and the gross receipts from the sale of this wood are subject to tax. The services of persons who trim or remove trees and sell the wood which they have cut are not services sold for resale and are subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.67(422) Water conditioning and softening. On and after July 1, 1985, persons engaged in the business of water conditioning and softening are performing a service, the gross receipts of which are subject to tax. "Water softening" means the removal of minerals from water to render it more suitable for drinking and washing. "Water conditioning" means any action other than water softening taken with respect to water which renders the water fit for its intended use or more healthful or enjoyable for human consumption. The phrase "water conditioning" includes but is not limited to water filtration, water purification, deionization and reverse osmosis. The service of water purification is taxable whether performed for residential, commercial, industrial, or agricultural users.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.68(422) Motor vehicle, recreational vehicle and recreational boat rental. On and after July 1, 1985, the gross receipts from the rental of certain motor vehicles subject to registration, which are registered for a gross weight of 13 tons or less, recreational vehicles and recreational boats are subject to tax.

26.68(1) *Use of vehicles and boats with drivers or operators.* For the purposes of this rule, if the services of a driver or operator are provided as part of the fee for the use of any vehicle or boat, no rental of the vehicle or boat has occurred. Even though the person using the vehicle or boat has the right to control the driver's or operator's movements, the gross receipts from use of the vehicle are not subject to tax as vehicle or boat rental. If the vehicle or boat is rented from one person and the services of the driver or operator rented from another, tax will apply.

26.68(2) *Rental of vehicles subject to registration.*

a. "Certain long-term" leases not subject to tax. The gross receipts from the leasing of any vehicle subject to registration for a gross weight of 13 tons or less are not subject to tax if the lease is a written agreement providing for the lease of the vehicle for more than 60 days and if the lessor, at the time of the signing of the lease, is licensed under Iowa Code chapter 321F. On or after January 1, 1997, a use tax shall be imposed on the lease price of certain motor vehicles leased for a period of 12 months or more. See rule 701—31.5(423).

[Filed 11/2/84, Notice 9/12/84—published 11/21/84, effective 12/26/84]
[Filed 11/30/84, Notice 7/18/84—published 12/19/84, effective 1/23/85]
[Filed 12/28/84, Notice 7/18/84—published 1/16/85, effective 2/20/85]
[Filed 1/10/85, Notice 10/10/84—published 1/30/85, effective 3/6/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]◊
[Filed 1/10/86, Notice 8/28/85—published 1/29/86, effective 3/5/86]
[Filed 4/18/86, Notice 9/11/85—published 5/7/86, effective 6/11/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 1/23/87, Notice 12/19/86—published 2/11/87, effective 3/18/87]
[Filed 7/24/87, Notice 6/17/87—published 8/12/87, effective 9/16/87]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 12/23/87, Notice 10/7/87—published 1/13/88, effective 2/17/88]
[Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 10/12/90, Notice 9/5/90—published 10/31/90, effective 12/5/90]
[Filed 10/11/91, Notice 9/4/91—published 10/30/91, effective 12/4/91]◊
[Filed emergency 3/26/92—published 4/15/92, effective 4/1/92]
[Filed 6/5/92, Notice 4/15/92—published 6/24/92, effective 7/29/92]
[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]
[Filed 12/13/96, Notice 11/6/96—published 1/1/97, effective 2/5/97]
[Filed 5/15/98, Notice 4/8/98—published 6/3/98, effective 7/8/98*]
[Filed 10/30/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

◊Two ARCs
*Effective date of 26.45 delayed until July 16, 1998, by the Administrative Rules Review Committee at its meeting held June 9, 1998.

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CHAPTER 117
OUTDOOR ADVERTISING

[Prior to 6/3/87, Transportation Department[820]—(06,O) Ch 5]

761—117.1(306B,306C) Definitions. The definitions in Iowa Code section 306C.10 are adopted. In addition:

"Abandoned sign" means an advertising device for which the owner has failed to timely apply for the required outdoor advertising permit(s) or has failed to timely pay the required fee(s).

"Billboard control Act" means Iowa Code chapter 306C, division II.

"Bonus Act" means Iowa Code chapter 306B.

"Daylight area" means a triangular area formed by a line connecting two points each back (50 feet in city, 100 feet in unincorporated area) from the point where the right of way lines of the main traveled way and an intersecting street meet or would meet if extended.

"Directional and official signs and notices" means official signs and notices, public utility signs, service club and religious notices, public service signs, directional signs, and municipal, county and school district recognition signs.

"Directional sign" means a sign governed by 761—Chapter 120.

"Face" means that part of an advertising device that is devoted to the display of advertising and that is visible to traffic proceeding in any one direction.

"Interchange" means the entire area constructed for a junction of two or more public streets or highways by a system of separate levels that permit traffic to pass from one level to another without the crossing of traffic streams. This includes all acceleration and deceleration lanes constructed to accommodate this movement of traffic.

"Lease" means an agreement, oral or written, by which possession or use of land or interests therein are given by the owner or other person to another person for a specified purpose.

"Modification" means any addition to or change in dimensions, lighting, structure or advertising face, except as incidental to the customary maintenance of an advertising device.

1. A change in the number or type of support posts is a modification. A change in dimensions, other than the addition of extensions or cutouts (including forward projecting) for a period of 90 days or less, is a modification.

2. A lawful change in advertising message is not a modification. The use of a vinyl overlay or wrap on either a poster panel or paint unit is a change in advertising message, not a modification.

"Municipal, county or school district recognition sign" means an official recognition sign erected and maintained by a city, county or school district within its territorial or zoning jurisdiction. The recognition sign is limited to displaying a message that identifies the city, county or school district and its boundaries, public services, and noncommercial attractions of a scenic, historical, cultural, scientific, educational or recreational nature that are located therein.

"Nonconforming sign" means an advertising device that was lawfully erected and continues to be lawfully maintained.

"Obsolete sign" means an advertising device displaying information pertaining to activities that are no longer conducted or products or services that are no longer available at the advertised location.

"Official sign or notice" means a sign or notice lawfully erected and maintained by a public agency within its territorial or zoning jurisdiction for the purpose of carrying out an official duty or responsibility. The definition includes a historical marker lawfully erected by a state or local government agency or a nonprofit historical society.

"On-premise sign" means an advertising device advertising the sale or lease of, or activities being conducted upon, the property where the sign is located. The criteria to be used to determine if an advertising device qualifies as on-premise signing include but are not limited to the following:

1. A sign that consists solely of the name of the establishment or that identifies the establishment's principal or accessory products or services offered on the property is an on-premise sign.

2. An on-premise sign must be located on the same property as the advertised activity or the same property as that advertised for sale or lease. A subdivided property is considered to be one property if all lots remain under common ownership and all lots share a common, private access to public roads. However, if any lot in the subdivided property is sold or disposed of in any manner, that lot will be considered to be separate property.

3. Contiguous lots or parcels of land combined for development purposes are considered to be one property for outdoor advertising control purposes provided they are owned or leased by the same party or parties. However, land held by lease or easement must be used for a purpose related to the advertised activity other than signing.

4. An on-premise sign shall not be located on a narrow strip of land that cannot reasonably be used for a purpose related to the advertised activity other than signing.

5. An on-premise sign is limited to advertising the property's sale or lease, or identifying the activities located on or products or services available on the property.

6. An advertising device is not an on-premise sign if it consists principally of brand- or trade-name advertising and either the product or service advertised is only incidental to the establishment's principal products or services or the advertising brings rental income to the property owner. "Principally" means 50 percent or more of the display area of the sign.

7. An on-premise sign concerning the sale or lease of property shall not display the legend "sold" or "leased" or a similar message.

"Public utility sign" means a warning or informational sign, notice or marker that is customarily erected and maintained by a publicly or privately owned utility to mark the location of a utility facility.

"Scenic area" means any area of particular scenic beauty or historical significance, as determined by the federal, state or local officials having jurisdiction of the area. It includes real property interests that have been acquired for the restoration, preservation and enhancement of scenic beauty.

"Service club or religious notice" means a sign displaying a message that is limited to the name of a nonprofit service club, charitable association or church or religious group, the location and hours of its meetings or services, and an appropriate emblem.

"Tri-face device" means an advertising device with three singular faces attached to one common structure in a triangular configuration. The maximum area of any face is 750 square feet. The inside angle formed by any two faces may not exceed 60 degrees.

"Tri-vision device" means an advertising device that has an advertising face with a mechanical device that allows three advertising messages to be alternately visible to traffic proceeding in any one direction. Each message is attached to individual vertical or horizontal louvers, which are mechanically rotated to change the message.

761—117.2(306B,306C) General provisions.

117.2(1) *Scope.* This chapter of rules pertains to all advertising devices which are visible from the main traveled way of any interstate, freeway-primary, or primary highway, with the following exceptions:

a. Within incorporated areas, this chapter does not apply to advertising devices which are beyond 660 feet from the nearest edge of the right of way.

b. Except where specified otherwise, this chapter does not apply to official traffic control devices, logo signing, tourist-oriented directional signing, or private directional signing.

117.2(2) *Address.* Inquiries, requests for forms, and applications regarding this chapter shall be directed to Advertising Control Section, Office of Right of Way, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

117.2(3) *Unauthorized signs, signals, or markings (321.259).* In addition to the provisions of these rules, any sign, signal, marking or device prohibited by Iowa Code section 321.259 is a public nuisance and shall be removed by the department if it is within its jurisdiction.

117.2(4) *Obstruction of the highway or railway (319.10, 657.2(7)).* In addition to these rules, any advertising device, any other provision to the contrary notwithstanding, which obstructs the view of any portion of a public highway, public street, avenue, boulevard, alley, street, railroad, or railway tract as to render dangerous the use of a public highway in violation of Iowa Code section 319.10 and subsection 657.2(7), is a public nuisance and shall be enforced accordingly.

117.2(5) *Advertising devices within the right of way (319.12).* In addition to these rules, any advertising device placed or erected within the right of way of any primary, freeway-primary, or interstate highway, except signs or devices authorized by law or approved by the department, in violation of Iowa Code section 319.12 shall be removed and the costs assessed against the owner of the sign or device as provided by Iowa Code section 319.13.

761—117.3(306B,306C) General criteria. The department shall control the erection and maintenance of advertising devices, subject to the provisions of these rules, in accord with the following criteria:

117.3(1) *Prohibition.* Advertising devices shall not be erected, maintained or illuminated unless they comply with the following:

a. No sign shall attempt or appear to attempt to direct the movement of traffic.

b. No sign shall interfere with, imitate or resemble any official sign, signal or device.

c. No directional sign or sign subject to the more restrictive controls of the bonus Act shall move or have any animated or moving parts.

d. No sign shall be erected or maintained upon trees, painted or drawn upon rocks or other natural features.

e. No sign shall include any flashing, intermittent or moving light or lights except those signs giving public service information such as time, date, temperature, weather and news. Any variation or addition to the stated service information shall be subject to approval by the department.

f. No lighting shall be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of any highway, or is of such low intensity or brilliance as to not cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

g. No directional sign or sign subject to the more restrictive controls of the bonus Act shall be obsolete.

h. Signs shall be maintained in good repair so as to be legible. Any advertising device that for a period of at least 90 days is in a state of disrepair or is illegible due to deferred maintenance is subject to removal in the manner specified in subrule 117.8(2) or 117.8(3), as applicable, and any permit that has been issued for the advertising device is subject to revocation.

i. Signs shall be securely affixed to a substantial structure.

j. No directional sign or sign subject to the more restrictive controls of the bonus Act shall advertise activities which are illegal under federal or state laws in effect at the location of those activities or at the location of the sign.

k. An advertising device shall comply with all applicable state and local laws, regulations and ordinances, including but not limited to zoning, building and sign codes as locally interpreted and applied and enforced, which may be stricter than this chapter.

117.3(2) *Measurements of distance.* Distance from the edge of a right of way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway. All other measurements of distance shall be measured horizontally between points on a line parallel to the highway centerline.

117.3(3) *Measurement of area.* The area of an advertising device shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire display area including border and trim, but excluding temporary cutouts and extensions, base, apron, support, and other structural members.

117.3(4) *Zoning.*

a. A zone in which limited commercial or industrial activities are permitted incidental to other primary land uses is not a commercial or industrial zone for outdoor advertising control purposes.

b. Action which is not a part of comprehensive zoning and is taken primarily to permit outdoor advertising devices is not zoning for advertising control purposes.

761—117.4(306B,306C) Interstate special provisions. This rule applies to advertising devices located within the adjacent area of any interstate highway, except that subrules 117.4(1), 117.4(2), 117.4(3), and 117.4(4) do not apply to advertising devices located within areas exempt from control under Iowa Code section 306B.2(4).

117.4(1) *Interstate on-premise signs (restricted).* Within the adjacent area of any interstate highway not more than one on-premise sign, visible to traffic proceeding in any one direction on any one interstate highway, advertising activities conducted upon the real property where the sign is located, may be erected or maintained more than 50 feet from the advertised activity. Such on-premise signs more than said 50 feet shall be subject to the permit provisions of rule 117.6(306C).

117.4(2) *Interstate on-premise signs (for sale or lease).* Within the adjacent area of any interstate highway, not more than one on-premise sign advertising the sale or lease of the same property upon which the sign is located may be permitted in such a manner as to be visible to traffic proceeding in any one direction on any one interstate highway.

117.4(3) *Interstate on-premise size limitations.* An on-premise sign within the adjacent area of an interstate shall be no larger than 20 feet in length, width or height and 150 square feet in area. However, an on-premise sign advertising activities conducted within 50 feet of the sign is exempt from these size limitations. This exemption does not apply to a sign advertising the sale or lease of property where the sign is located.

117.4(4) *Interstate on-premise signs (unrestricted).* Within the adjacent area of any interstate highway, on-premise signs advertising activities conducted within 50 feet of the sign, located upon the same real property where the sign is located, are not subject to regulations as to number of signs, size, or spacing; however, for the purpose of determining the 50-foot distance, the limits of the advertised activity shall be determined as follows:

a. When the advertised activity is a business, commercial or industrial land use, the distance shall be measured from the regularly used buildings, parking lots, storage or processing areas or other structures which are essential and customary to the conduct of the business.

b. When the advertised activity is a noncommercial or nonindustrial land use such as a residence, farm, or orchard, the distance shall be measured from the major structures or areas used in furtherance of the advertised activities.

117.4(5) *Interstate advertising devices not subject to control until July 1, 1972.* The following advertising devices along interstate highways became subject to control on July 1, 1972, and shall comply with rule 761—117.5(306C):

a. Advertising devices which are visible from any interstate highway, but which are located beyond the adjacent area of any interstate highway in unincorporated areas.

b. Within adjacent areas, advertising devices which are located in commercial or industrial zones traversed by segments of the interstate system within the boundaries of incorporated municipalities as these boundaries existed September 21, 1959, where the use of property adjacent to the interstate system is subject to municipal regulation and control, or other areas where the land on September 21, 1959, was clearly established by law for industrial or commercial purposes.

761—117.5(306C) Interstate highways not subject to control until July 1, 1972, freeway-primary highways, and primary highways. Subject to the more strict provisions of rule 761—117.4(306B,306C), no advertising device which is visible from any interstate, freeway-primary, or primary highway shall be erected or maintained unless it complies with this rule. This rule does not apply to on-premise signs.

117.5(1) *Advertising devices lawfully in existence prior to July 1, 1972, located in zoned and unzoned commercial or industrial areas.* Within zoned and unzoned commercial or industrial areas, advertising devices lawfully in existence prior to July 1, 1972, not in violation of Iowa Code chapter 306B, or any other statute, rule, or ordinance for which timely application for a permit has been made, and fees have been paid in accordance with rule 117.6(306C), may remain in existence, not in conformity with these rules pertaining to subsequently erected devices.

117.5(2) *Advertising devices lawfully in existence prior to July 1, 1972, beyond 660 feet from the right of way.* Advertising devices lawfully in existence prior to July 1, 1972, beyond the adjacent area of any interstate, freeway-primary, or primary highway, for which timely application for a permit has been made, and fees have been paid in accordance with rule 117.6(306C) may remain in existence, not in conformity with these rules pertaining to subsequently erected devices.

117.5(3) *Abandoned signs.* Abandoned signs which do not comply with these rules shall be removed by the department without compensation regardless of when erected.

117.5(4) *Advertising devices lawfully in existence prior to July 1, 1972, within adjacent areas neither zoned nor unzoned commercial or industrial.* Advertising devices lawfully in existence prior to July 1, 1972, located within the adjacent area of any primary, freeway-primary, or interstate highway, which is not a zoned or unzoned commercial or industrial area for which device timely application for a permit has been made, and fees paid in accordance with rule 117.6(306C) may remain in existence not in conformity with these rules pertaining to subsequently erected signs, by provisional permit to be issued by the department until the advertising device is acquired by the department.

117.5(5) *Advertising devices erected after July 1, 1972.* No advertising device which is visible from any interstate, freeway-primary, or primary highway shall be erected after July 1, 1972, or subsequently maintained within the adjacent area in incorporated areas or within or beyond the adjacent area in unincorporated areas unless it complies with the following:

a. Permit required. A current permit from the department is required for the erection or subsequent maintenance of the advertising device.

b. Commercial or industrial area. The advertising device must be located within a zoned or unzoned commercial or industrial area.

c. Spacing within city—interstate and freeway-primary highway. Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a freeway-primary highway or an advertising device which is located in a commercial or industrial zone traversed by a segment of the interstate system within the boundaries of an incorporated municipality as these boundaries existed on September 21, 1959, where the use of the property adjacent to the interstate system is subject to municipal regulation or control:

(1) The advertising device shall not be located within 250 feet of another advertising device when both are visible to traffic proceeding in the same direction.

(2) The advertising device shall not be located within the adjacent area on either side of the highway within 250 feet of an interchange or rest area. The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite the advertising device.

(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.

d. Spacing outside city—interstate and freeway-primary highway. Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a freeway-primary highway; an advertising device which is visible from an interstate highway and is located within the adjacent area in a commercial or industrial zone traversed by a segment of the interstate system where the land use as of September 21, 1959, was clearly established by Iowa law as industrial or commercial; or an advertising device which is visible from an interstate highway and is located beyond the adjacent area:

(1) The advertising device shall not be located within 500 feet of another advertising device when both are visible to traffic proceeding in the same direction.

(2) The advertising device shall not be located within the adjacent area on either side of the highway within 250 feet of an interchange or rest area. The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite the advertising device.

(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.

e. Spacing within city—nonfreeway-primary highway. Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a nonfreeway-primary highway:

(1) The advertising device shall not be located within 100 feet of another advertising device when both are visible to traffic proceeding in the same direction.

(2) The advertising device shall not be located within the daylight area. However, if a building is located within the daylight area, a wall advertising device may be attached to the building provided the device does not protrude more than 12 inches, exclusive of catwalk and lights. No part of a catwalk or lights may overhang the right of way. The permit for the advertising device shall be revoked if the building the device is attached to is removed.

f. Spacing outside city—nonfreeway-primary highway. Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a nonfreeway-primary highway:

(1) The advertising device shall not be located within 300 feet of another advertising device when both are visible to traffic proceeding in the same direction.

(2) The advertising device shall not be located within the daylight area. However, if a building is located within the daylight area, a wall advertising device may be attached to the building provided the device does not protrude more than 12 inches exclusive of catwalk and lights. No part of a catwalk or lights may overhang the right of way. The permit for the advertising device shall be revoked if the building the device is attached to is removed.

g. Spacing—signs separated by a building. The distance and spacing requirements of subparagraphs *"c"*(1), *"d"*(1), *"e"*(1), and *"f"*(1), above, shall not apply to advertising devices which are separated by a building in such a manner that only one advertising device located within the minimum spacing distance is visible from a highway at any one time.

h. Spacing—measurement of distance. The minimum distance between two advertising devices visible to traffic proceeding in the same direction shall apply without regard to the side of the highway on which the advertising devices may be located and shall be measured along a line parallel to the centerline of the highway between points directly opposite the advertising devices.

i. Spacing—rural area next to incorporated area.

(1) In a rural area next to an incorporated area, the first rural sign placement shall be no closer than the rural spacing requirement measured from the point where the corporation line intersects the centerline or from the point where a line normal or perpendicular to the centerline of the highway intersects the first unincorporated area within the adjacent area to a point directly opposite the first potential sign location.

(2) In those areas where the adjacent area on one side of the highway is incorporated and on the opposite side of the highway all or part of the adjacent area is not, the spacing on both sides of the highway shall be regulated by the rural or unincorporated area spacing requirements.

j. Signs not considered when determining spacing. Directional and other official signs and notices and on-premise advertising devices shall not be taken into consideration in determining compliance with spacing requirements.

k. Sizes and types. Only the following types of advertising devices are permitted: single-face, side-by-side, double-deck, tri-vision, back-to-back, v-type, and tri-face.

(1) The multiple faces or panels of an advertising device must be contiguous or on a common structure. Side-by-side structures are contiguous if the faces are not more than two feet apart and they are owned by the same permit holder. Side-by-side structures must be on the same vertical and horizontal planes.

(2) A maximum of one face of an advertising device may be visible to traffic proceeding in any one direction. An advertising device other than a tri-face device may have no more than two faces.

(3) For an advertising device with one face, the maximum display area of the face is 1200 square feet. This applies to single-face, side-by-side, double-deck and tri-vision devices.

(4) For an advertising device with two or more faces, the maximum display area of each face is 750 square feet. This applies to back-to-back and v-type devices (which have two faces) and tri-face devices (which have three faces).

(5) Each message on a tri-vision device must be displayed for a minimum of four seconds and the transition between messages must be completed in two seconds.

l. Spacing—transition to freeway-primary highway. As a segment of a noninterstate primary highway changes to a freeway-primary highway, the first freeway-primary highway sign placement shall be no closer than the freeway-primary highway spacing requirements measured along a line parallel to the centerline from a point opposite the point where the centerline of the highway and centerline of the at-grade crossing intersect to a point opposite the first potential sign location. See the appendix for an illustration of this spacing requirement.

761—117.6(306C) Outdoor advertising permits and fees required. The owner of every advertising device visible from the main traveled way of any interstate, freeway-primary or primary highway, regulated by the more restrictive provisions of rule 117.4(306B,306C), except subrules 117.4(2) and 117.4(4), and rule 117.5(306C), is required to have made application for a permit to the department on or before July 31, 1972, if the device was in existence on July 1, 1972; or if the advertising device is erected after July 1, 1972, the owner is required to first obtain a permit from the department prior to the erection of the advertising device. Any advertising device which is lawfully erected which later becomes subject to the provisions of these rules due to an event such as establishment of a new highway or change in the designation of a highway, the owner of the advertising device so affected shall make application to the department for an advertising permit within 30 days of the event. In the case of advertising devices lawfully in existence in areas adjacent to any highway made an interstate, freeway-primary, or primary highway after July 1, 1972, the owner of the advertising device is required to make application for a permit and pay the required fee within 30 days after the highway acquired the designation. Upon timely application for a permit and payment of the required fee, advertising devices lawfully erected which become nonconforming due to such event after July 1, 1972, shall be eligible for permits as if the devices were erected prior to July 1, 1972.

117.6(1) *Application.* Application for a permit shall be made in accordance with Iowa Code section 306C.18.

a. A permit is required for each face of an advertising device; thus, a permit application must be submitted for each face. Three permits are required for a tri-face device if all three faces are visible from the main traveled way of an interstate, freeway-primary, or primary highway. However, only one application and permit are required for a back-to-back advertising device that identifies the same business or service on each face if each face is no larger than 8 feet in width or height and 32 square feet in area.

b. A copy of the current lease shall be submitted upon application for a permit.

c. Any intentional falsification or misrepresentation of information in the application or renewal process shall result in immediate denial or revocation of the permit.

117.6(2) *Fees.*

a. The initial fee, payable at the time of application, is $100 per permit. This fee is not refundable unless the application is withdrawn prior to the department's field review of the proposed location.

b. The annual renewal fee for each permit, due on or before June 30 of each year, is as follows:

Area of Sign	Annual Renewal Fee
Up to 375 square feet	$15
376 to 999 square feet	$25
1000 square feet or more	$50

For tri-vision signs, the area shall be calculated by multiplying the area of the face by three.

(1) The renewal fee is not refundable.

(2) Failure to timely pay the annual renewal fee when due shall result in revocation of any permit that has been issued for the advertising device and removal of the advertising device as an abandoned sign.

c. Fees shall not be prorated.

d. If an outdoor advertising permit is revoked, any permit fee paid is forfeited.

117.6(3) *Permits to be issued.* The department shall issue a permit in accordance with Iowa Code section 306C.18.

a. Advertising devices lawfully in existence prior to July 1, 1972, for which timely application for a permit, together with the required fees have been timely paid, which are located within the adjacent area of any highway, which is not a zoned or unzoned commercial or industrial area, shall be issued a provisional permit, and annual renewals thereof, upon timely payment of the required fees, until such time as the department acquires the advertising devices as provided for by rule 117.8(306B,306C) of these rules.

b. All other advertising devices lawfully in existence prior to July 1, 1972, for which timely application for a permit, together with the required fees have been timely paid, which do not violate any provision of law or these rules, shall be issued an advertising permit, and annual renewal thereof upon timely payment of the required fees.

117.6(4) *Permit plate.*

a. Upon approval of the application, the department shall issue a metal permit plate for the advertising face.

b. The owner of the advertising device shall securely attach the plate to the advertising face at the bottom corner nearest the main traveled way or to the support structure immediately below the bottom corner. If these locations do not permit unobscured display of the permit number, the permit plate shall be attached to another prominent area of the advertising device. The permit number shall not be obscured when viewed from the main traveled way.

c. The owner of an advertising device is responsible for replacing a permit plate that is missing or illegible. To obtain a replacement, the owner shall apply to the department and pay a $10 fee.

d. If the department notifies the owner of the advertising device that a permit plate is not properly displayed, the owner shall within 90 days of notification either correct the situation or secure and display a replacement permit plate. Failure to properly display a permit plate after the 90-day period has expired shall result in revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable.

117.6(5) *New permit required for reconstruction or modification.* A new permit is required from the department prior to the reconstruction or modification of an advertising device subject to the permit provisions of this rule.

a. To obtain a new permit, the owner of the advertising device shall submit a new application to the department, accompanied by the initial application fee.

b. A reconstructed or modified advertising device is subject to the provisions of this chapter as if it were a new advertising device.

c. Reconstruction or modification of an advertising device prior to the issuance of the required permit shall result in revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable.

d. Rescinded IAB 4/7/99, effective 5/12/99.

117.6(6) *One year to erect advertising device.* The permit for an advertising device that has not been erected within one year after the date the permit was issued shall be revoked. After revocation, a new permit is required. To obtain a new permit, the owner of the advertising device shall submit a new application to the department, accompanied by the initial application fee and a copy of the current lease.

117.6(7) *Access.* Access to the private property upon which an advertising device is located shall be gained from highway right of way only at access points designated or allowed by the department in accordance with 761—Chapter 112. An initial violation of this requirement by or on behalf of the permit holder shall result in the department sending a written warning by certified mail to the permit holder. A second violation of this requirement shall result in revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable. If a permit is revoked for an access violation, the permit holder is ineligible to apply for a permit for at least 12 months after revocation for any location within 500 feet of the revoked permit's sign location.

117.6(8) *Destruction of vegetation.* Without the written authorization of the department, vegetation growing on the highway right of way shall not be cut, trimmed, removed, or in any manner altered or damaged to improve the visibility of an advertising device. Violation of this prohibition by or on behalf of the permit holder shall result in revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable. If a permit is revoked for destruction of vegetation, the permit holder is ineligible to apply for a permit for 12 months after revocation for any location within 500 feet of the revoked permit's sign location.

117.6(9) *Blank sign.*

a. A blank sign is:

(1) An advertising device that has had a face physically removed.

(2) An advertising device that has been completely removed.

(3) An advertising device that does not display copy. "This space for rent" or a similar message is not copy.

(4) An advertising device that qualifies as an obsolete sign.

b. A sign that is a blank sign for at least six months shall result in revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(2) or 117.8(3), as applicable.

761—117.7(306C) Official signs and notices, public utility signs, service club and religious notices, and municipal recognition signs. This rule does not pertain to on-premise signs.

117.7(1) Rescinded, effective 7/8/87.

117.7(2) Rescinded, effective 7/8/87.

117.7(3) *Official signs and notices.* Official signs and notices regulated by the "Manual on Uniform Traffic Control Devices for Streets and Highways," as adopted in rule 761—130.1(321), shall comply with its provisions. All other official signs and notices shall comply with applicable state law, local ordinance or administrative authority. Historical markers shall be subject to the approval of the department if they are erected within the right of way of any interstate, freeway-primary or primary highway.

117.7(4) *Public utility signs.* Public utility signs shall be erected no larger than required to adequately convey the necessary message, and only at such places as are required to adequately mark the location of the utility, and subject to the approval of the department if located within the right of way of any highway under its jurisdiction.

117.7(5) *Service club and religious notices.*

a. Service club and religious notices shall not be placed within the right of way.

b. Service club and religious notices may be placed within the adjacent area of an interstate highway only if they are eligible for issuance of an outdoor advertising permit. All permit provisions apply, including but not limited to size and spacing requirements of subrule 117.5(5) and permit fees.

c. Service club and religious notices may be placed outside the right of way of a freeway-primary or primary highway and outside the adjacent area of an interstate highway. Notices in these locations may be grouped upon a common panel or on a municipal, county or school district recognition sign and shall comply with the following:

(1) The message shall comply with the definition of "service club or religious notice" in rule 761—117.1(306B,306C).

(2) A notice shall not exceed eight square feet in area.

(3) A notice shall comply with rule 761—117.3(306B,306C).

(4) The department's approval shall be obtained prior to erection. A special application form shall be filed with the department, but no fees are required.

117.7(6) *Municipal, county and school district recognition signs.*

a. Municipal, county and school district recognition signs shall not be placed within the right of way.

b. Municipal, county and school district recognition signs may be placed within the adjacent area of an interstate highway only if they are eligible for issuance of an outdoor advertising permit. All permit provisions apply, including but not limited to the size and spacing requirements of subrule 117.5(5) and permit fees.

c. A municipal, county or school district recognition sign may be placed outside the right of way of a freeway-primary or primary highway and outside the adjacent area of an interstate highway if the following conditions are met:

(1) The recognition sign shall comply with the definition of "Municipal, county or school district recognition sign" in rule 761—117.1(306B,306C).

(2) The recognition sign shall comply with rule 761—117.3(306B,306C).

(3) The recognition sign shall not display advertising.

(4) The recognition sign may identify no more than two sponsors of the sign. Each sponsor's message is limited to eight square feet in area and is limited to identifying the sponsor. No advertising or product logos are allowed.

(5) The department's approval of the recognition sign and its proposed location shall be obtained prior to the sign's erection. A special application form shall be filed with the department, but no fees are required.

761—117.8(306B,306C) Acquisition and removal procedures. The department shall cause to be removed every advertising device illegally erected or maintained, and every abandoned advertising device which violates the provision of these rules. The department shall acquire by purchase, gift, or condemnation, and shall pay "just compensation" upon the removal of any advertising device for which a provisional permit has been issued, provided the permit has not been revoked.

117.8(1) *Advertising devices lawfully in existence within 660 feet of the right of way not in zoned and unzoned commercial or industrial areas.* Before July 1, 1978, the department shall acquire or require to be removed all advertising devices which became nonconforming upon July 1, 1972, for which provisional permits were issued. Any advertising device lawfully erected which becomes nonconforming after that date, for which a provisional permit has been issued, shall be acquired or required to be removed within five years after the device became nonconforming. Provided, if the advertising device is eligible for federal participation in payment of "just compensation," the advertising device shall not be acquired or be required to be removed unless the department has received notification from the federal government that the federal share to be paid is immediately available to contribute to the cost of acquisition or removal.

a. Acquisition or removal of advertising devices for which "just compensation" shall be paid, shall be initiated by the department by mailing or delivering to the owner of the advertising device and the owner of the land upon which it is located, written notice of intention to revoke the provisional permit issued for such devices to be removed. The notice shall offer to buy the advertising device in accord with advertising device appraisal and acquisition procedures approved by the department, insofar as possible. If the offer to buy is not accepted by the owner of the sign and owner of the land upon which it is located, the provisional permit shall be revoked and condemnation proceedings shall be instituted as provided for in Iowa Code chapter 472.

b. In the event of condemnation the department will take possession of the advertising device condemned as soon as the award has been deposited with the sheriff.

117.8(2) *Removal of illegal and abandoned advertising devices under billboard control Act.* Any advertising device erected or maintained after July 1, 1972, in violation of Iowa Code chapter 306C, is a public nuisance and may be removed by the department upon 30 days' notice, by certified mail, to the owner of the advertising device and to the owner of the land on which the advertising device is located.

a. The notice shall require the owner of the advertising device to remove the advertising device if it is prohibited, or to cause it to conform to the provisions of these rules if it is not.

b. If the advertising device has not been removed or made to conform with the provisions of these rules, the department shall enter upon the land and remove the advertising device, aided by injunction to abate the nuisance and to ensure peaceful entry, if necessary.

c. Costs of removal, including fees and costs or expenses as may arise out of any action brought by the department to ensure peaceful entry and removal, shall be assessed against the owner of the advertising device. Should the owner of the advertising device fail to promptly pay such fees, costs, or expenses, the department shall proceed to advertise and sell the advertising device for purposes of collecting the same.

d. Any balance from the total receipts of the sale after deducting all fees, costs, and expenses, including those of the sale, shall be paid to the owner of the advertising device; however, if in the opinion of the department the proceeds of the sale will not be sufficient to justify the expense involved, the advertising device may be used, scrapped, dismantled, or otherwise destroyed or disposed of by the department as it sees fit.

e. No compensation shall be paid to the owner of any advertising device which is illegally erected or maintained except as may result pursuant to sale as provided for in paragraph 117.8(2)*"d."*

117.8(3) *Removal of illegal advertising devices under bonus Act.* Any advertising device erected or maintained in violation of the more strict provisions of Iowa Code chapter 306B is a public nuisance and may be removed by the department upon 30 days' notice, by certified mail, to the owner of the device and to the owner of the land on which the advertising device is located.

a. The notice shall require the owner of the advertising device to remove the advertising device if it is prohibited, or to cause it to conform to the provisions of these rules if it is not.

b. If the landowner or owner of the device fails to act within 30 days as required in the notice, the department may file a petition in the district court of the county where the advertising device is located to abate the nuisance.

c. If the court finds a violation exists as alleged in the petition, the court shall enter an order in abatement against the person or persons erecting and maintaining the advertising device and against the person or persons owning the land on which it is located.

d. If the landowner or owner of the sign fails to act within the time required in the order of abatement, the department may give 30 days' notice to the landowner or owner of the sign and at the end of 30 days the department may enter upon the land and remove the sign.

e. The department may be aided by injunction to abate the nuisance and to ensure peaceful entry.

f. Such entry after notice shall not be deemed a trespass and the department may be aided by injunction to abate the nuisance and to ensure peaceful entry.

g. The cost of removal, including any fees and costs or expenses as may arise out of any action brought by the department to ensure peaceful entry and removal, shall be assessed against the owner of the sign.

h. Should the owner of the sign fail to promptly pay such fees, costs or expenses, the department shall proceed to advertise and sell the sign for purposes of collecting the same.

i. Any balance from the total receipts of the sale after deducting the fees, costs and expenses, including those of the sale, shall be paid to the owner of the sign; however, if in the opinion of the department the proceeds of the sale will not be sufficient to justify the expense involved, the sign may be used, scrapped, dismantled, or otherwise destroyed or disposed of by the department as it sees fit.

117.8(4) *Misdemeanor.* Whoever erected or maintains an advertising device in violation of Iowa Code chapter 306B or in violation of these rules pertaining to the more strict provisions applicable thereto shall be guilty of a misdemeanor and upon conviction shall be fined not less than $25 nor more than $100.

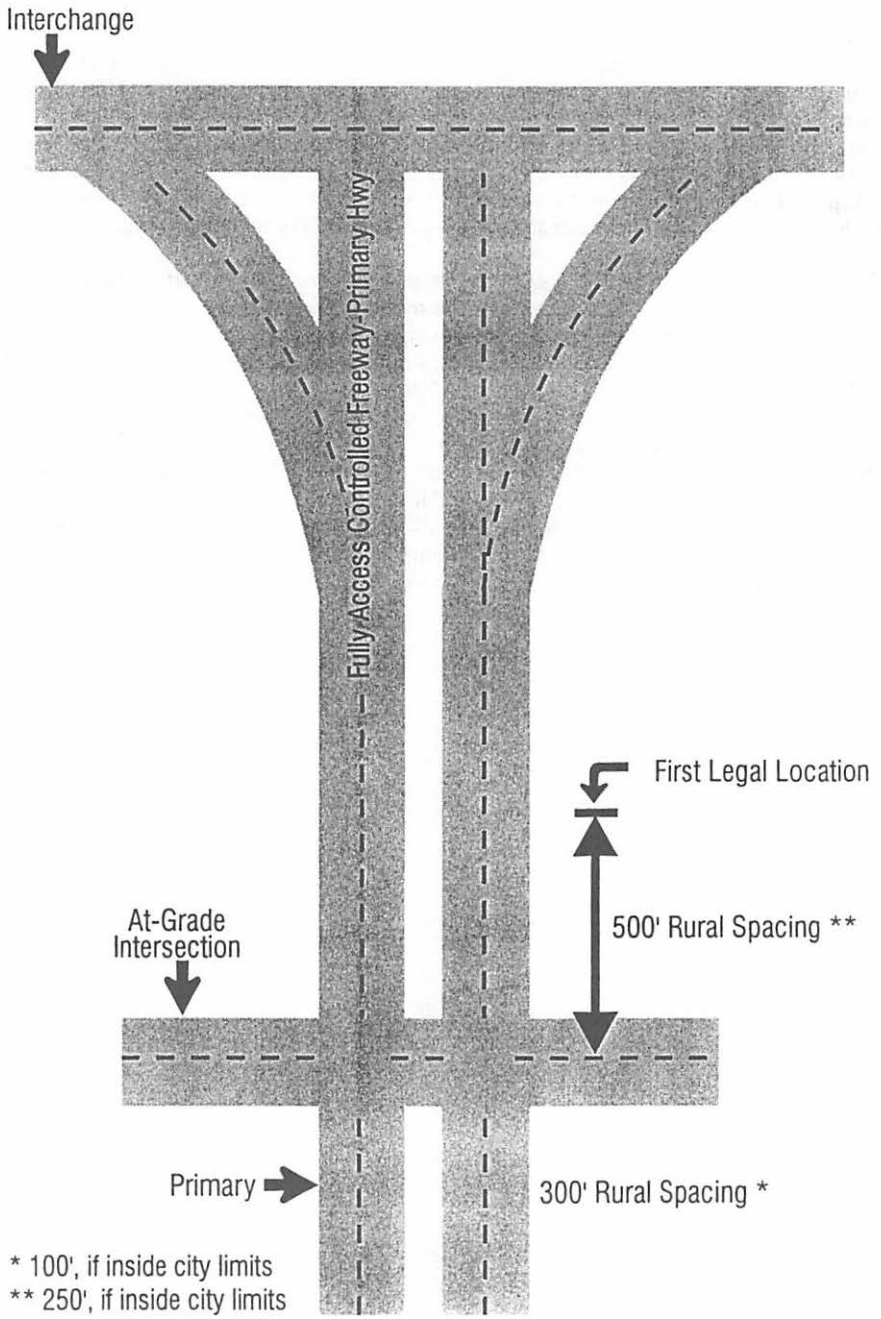
117.8(5) *Removal from right of way and other state-owned property.* Advertising devices erected upon the right of way of any public highway shall be removed pursuant to Iowa Code section 319.13. Unauthorized advertising devices erected upon other property owned by the state of Iowa shall be subject to removal by the agency, board, commission or department having control or jurisdiction of the same. [Intended to implement Iowa Code chapter 319.]

These rules are intended to implement Iowa Code chapters 306B and 306C.

[Filed 5/18/66; 761—Chapter 117 appeared as Ch 5, Highway Commission, 1973 IDR: amended January 1974 and January 1975 Supplements; amended 11/22/67, 9/27/73, 10/8/74, 12/4/74]
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]◊
[Filed emergency 5/22/96 after Notice 3/13/96—published 6/19/96, effective 5/23/96]
[Filed 5/23/96, Notice 3/13/96—published 6/19/96, effective 7/24/96]
[Filed 3/10/99, Notice 1/27/99—published 4/7/99, effective 5/12/99]

◊Three ARCs

Spacing--Transition To Freeway-Primary Highway



400.16(4) *Trailer with empty weight of 2000 pounds or less.* If the vehicle to be registered is a specially constructed or reconstructed trailer with an empty weight of 2000 pounds or less, the following shall apply:

a. Application forms. The applicant shall complete Forms 411007 and 417050 and submit them to the county treasurer.

b. Exhibits. The ownership document for the vehicle shall be submitted with the application forms.

c. Issuance of registration. When the application forms have been properly completed and the appropriate fees paid, the county treasurer shall register the vehicle, but shall not issue a certificate of title.

400.16(5) Reserved.

400.16(6) *Miscellaneous provisions.*

a. The model year of a specially constructed or reconstructed vehicle shall be the year the vehicle is first registered as a specially constructed or reconstructed vehicle.

b. The make, model, and model year of a kit vehicle shall be taken from the manufacturer's certificate of origin for the kit. The model shall be preceded by the word "kit" on the title and registration.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.52, 321.109 and 321.162.

761—400.17(321) Remanufactured vehicle. If the vehicle to be titled and registered is a remanufactured vehicle, the following shall apply:

400.17(1) *Application forms.*

a. The applicant shall complete the following forms and submit them to the Office of Motor Vehicle Enforcement, Iowa Department of Transportation, Park Fair Mall, 100 Euclid Avenue, P.O. Box 10382, Des Moines, Iowa 50306-0382:

(1) Form 420016, "Application for Remanufactured Vehicle."

(2) Form 411007, "Application for Certificate of Title and/or Registration for a Vehicle."

(3) Form 411041, "Application for Assigned Vehicle Identification Number Plate."

b. Form 420016 includes a certification by the applicant that the vehicle described meets all applicable equipment requirements of the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390, 393, 396, and 399 as adopted in paragraph 761—520.1(1)*"a."* A copy of these regulations may be purchased from the office of motor vehicle enforcement at the address listed in paragraph *"a"* of this subrule.

400.17(2) *Exhibits.* The following exhibits shall be submitted with the application forms:

a. A photocopy of the face of the certificate of title for the original vehicle. The certificate of title for the original vehicle shall be in the applicant's name.

b. Photocopies of the invoices for all component parts used in assembling the remanufactured vehicle. Each invoice shall include a description of the part, the manufacturer's identification number of the part, if any, and the name, address and telephone number of the seller.

c. A photocopy of any other invoice or record of expense incurred by the applicant in remanufacturing the vehicle. A written description of any labor performed shall be required.

d. A photocopy of a document issued by the manufacturer of the cab of the chassis which shows the gross vehicle weight rating. However, this is not required if the rating as certified by the manufacturer is shown on the cab of the chassis.

400.17(3) *Examination and fee.*

a. Upon receipt of the application forms and exhibits, the department shall contact the applicant in person or by telephone and schedule a time and place for an examination of the vehicle and required documents.

b. The applicant, when appearing with the vehicle for the examination, shall submit to the department the certificate of title, the invoices or other records of expenses incurred, and an examination fee of $100. If the department disapproves the vehicle for titling and registration and the reasons for disapproval are corrected by the applicant, the vehicle shall be reexamined at no charge to the applicant.

400.17(4) *Approval.* If the department determines that the motor vehicle is a remanufactured vehicle as defined in Iowa Code section 321.1, that the integral parts and components have been identified as to ownership, that the diesel engine and tires have not been previously put into service and carry manufacturer's warranties, and that the application forms have been properly completed:

a. The department shall affix to the vehicle an assigned identification number plate with a distinguishing number, and the vehicle shall thereafter be identified by that number.

b. The department shall complete, date and sign those parts of the application forms reserved for departmental approval. This approval shall constitute authorization by the department to have the motor vehicle titled and registered under Iowa Code section 321.23.

c. The department shall return the application forms and exhibits, certificate of title, invoices and other records of expenses incurred to the applicant. The applicant shall keep a copy of the invoices and other records of expenses incurred for three years. These documents shall be made available to peace officers upon request.

d. Rescinded, effective 3/6/85.

e. The applicant shall submit the application forms, exhibits, and the certificate of title for the vehicle to the county treasurer within 15 days after the date of approval by the department.

f. The county treasurer shall then issue a certificate of title and registration receipt for the vehicle upon payment of the appropriate fees.

400.17(5) *Disapproval.* If the department determines that the vehicle does not meet the definition of a remanufactured vehicle under Iowa Code section 321.1, that the integral parts or components have not been properly identified as to ownership, that the diesel engine or any tire of the vehicle has been previously put into service or is not under a manufacturer's warranty, or that the application forms have not been properly completed, then the department shall not approve the vehicle for titling and registration.

400.17(6) *Miscellaneous provisions.*

a. The model year of a remanufactured vehicle shall be the year the vehicle is first registered as a remanufactured vehicle.

b. Reserved.

This rule is intended to implement Iowa Code sections 321.1 and 321.23.

761—400.18(321) Rescinded IAB 3/26/97, effective 4/30/97.

761—400.19(321) Temporary use of vehicle without plates or registration card.

400.19(1) *Temporary use of vehicle without plates.* A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who does not possess registration plates which may be assigned to and displayed on the vehicle may operate or permit the operation of the vehicle not to exceed 15 days from the date of purchase or transfer without registration plates displayed thereon, if ownership evidence is carried in the vehicle.

b. A written statement from the peace officer listing the plate number of the registration plate removed from the vehicle and the vehicle owner's name. The statement must either reference Iowa Code subparagraph 321.20B(4)*"a"*(3) or 321.20B(4)*"a"*(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded. The statement must be signed by the peace officer or an employee of the law enforcement agency.

400.70(2) The peace officer may either destroy removed plates or deliver the removed plates to the county treasurer for destruction.

This rule is intended to implement Iowa Code section 321.20B and 1998 Iowa Acts, chapter 1121, section 2.

[761—Chapter 400 appeared as Ch 11, Department of Public Safety, 1973 IDR]
[Filed 7/1/75]
[Filed 11/9/77, Notice 9/21/77—published 11/30/77, effective 1/4/78]
[Filed 5/9/78, Notice 3/22/78—published 5/31/78, effective 7/5/78]
[Filed 10/10/78, Notice 8/23/78—published 11/1/78, effective 12/6/78]
[Filed 11/13/78, Notice 9/20/78—published 11/29/78, effective 1/3/79]
[Filed 4/23/79, Notice 3/7/79—published 5/16/79, effective 6/20/79]
[Filed 8/23/79, Notice 7/11/79—published 9/19/79, effective 10/24/79]
[Filed 8/23/79, Notice 7/11/79—published 9/19/79, effective 12/1/79]
[Filed 2/14/80, Notice 12/26/79—published 3/5/80, effective 4/9/80]
[Filed 12/4/80, Notice 10/15/80—published 12/24/80, effective 1/28/81]
[Filed 12/16/81, Notice 10/28/81—published 1/6/82, effective 2/10/82]
[Filed 9/30/82, Notice 8/18/82—published 10/27/82, effective 12/1/82]
[Filed 1/21/83, Notice 12/8/82—published 2/16/83, effective 3/23/83]
[Filed emergency 2/17/83—published 3/16/83, effective 3/23/83]
[Filed 8/4/83, Notice 6/22/83—published 8/31/83, effective 12/1/83]
[Filed 12/23/83, Notice 11/9/83—published 1/18/84, effective 2/22/84]
[Filed emergency 7/17/84—published 8/15/84, effective 7/18/84]
[Filed 9/28/84, Notice 8/15/84—published 10/24/84, effective 11/28/84]
[Filed emergency 12/6/84—published 1/2/85, effective 12/7/84]
[Filed 1/9/85, Notice 11/21/84—published 1/30/85, effective 3/6/85]
[Filed 7/10/85, Notice 5/22/85—published 7/31/85, effective 9/4/85]
[Filed emergency 9/4/85—published 9/25/85, effective 10/1/85]
[Filed 11/14/85, Notice 9/25/85—published 12/4/85, effective 1/8/86]
[Filed emergency 10/9/86—published 11/5/86, effective 10/10/86]
[Filed 12/18/86, Notice 11/5/86—published 1/14/87, effective 2/18/87]
[Filed emergency 2/18/87—published 3/11/87, effective 2/18/87]
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]◊
[Filed 11/5/87, Notice 9/23/87—published 12/2/87, effective 1/6/88]
[Filed 1/6/88, Notice 11/18/87—published 1/27/88, effective 3/2/88]

◊Two ARCs
NOTE: History for Chapter 400 continued on next page.

[Filed emergency 6/22/88—published 7/13/88, effective 7/1/88]
[Filed 2/9/89, Notice 12/28/88—published 3/8/89, effective 4/12/89]
[Filed 10/5/89, Notice 8/23/89—published 11/1/89, effective 12/6/89]
[Filed 11/1/89, Notice 9/20/89—published 11/29/89, effective 1/3/90]
[Filed emergency 11/30/89—published 12/27/89, effective 12/1/89]
[Filed 2/7/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
[Filed emergency 7/5/90—published 7/25/90, effective 7/5/90]
[Filed 12/5/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]
[Filed 7/17/91, Notice 5/1/91—published 8/7/91, effective 9/11/91]
[Filed 10/23/91, Notice 9/18/91—published 11/13/91, effective 12/18/91]
[Filed 11/6/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]
[Filed 11/22/91, Notice 10/16/91—published 12/11/91, effective 1/15/92]◊
[Filed 1/15/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]
[Filed emergency 3/26/92—published 4/15/92, effective 4/29/92]
[Filed 12/18/92, Notice 10/28/92—published 1/6/93, effective 2/10/93]
[Filed 1/14/93, Notice 12/9/92—published 2/3/93, effective 3/10/93]
[Filed 12/16/93, Notice 11/10/93—published 1/5/94, effective 2/9/94]
[Filed 2/8/95, Notice 1/4/95—published 3/1/95, effective 4/5/95]
[Filed 11/29/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]
[Filed 3/5/97, Notice 1/29/97—published 3/26/97, effective 4/30/97]
[Filed 3/11/98, Notice 1/28/98—published 4/8/98, effective 5/13/98]
[Filed 10/28/98, Notice 8/26/98—published 11/18/98, effective 12/23/98]
[Filed 12/16/98, Notice 11/4/98—published 1/13/99, effective 2/17/99]
[Filed 3/10/99, Notice 1/13/99—published 4/7/99, effective 5/12/99]

◊Two ARCs

761—401.9(321) Firefighter plates. Application for firefighter plates shall be made on Form 411065. The chief of the paid or volunteer fire department shall sign the back of the application form, certifying that the applicant is a current or former member of the fire department. If the chief cannot certify that the applicant is a former member, a person who has knowledge of the applicant's membership shall sign the application certifying that fact.

761—401.10(321) Emergency medical services plates. Application for emergency medical services (EMS) plates shall be submitted to the Iowa department of public health on Form 411065. The department of public health shall determine whether the applicant is a current member of a paid or volunteer emergency medical services agency and, if so, certify this fact on the back of the application form. A vehicle owner whose membership in a paid or volunteer emergency medical services agency is terminated shall within 30 days after termination surrender the EMS plates to the county treasurer in exchange for regular registration plates.

761—401.11(321) Natural resources plates—letter-number designated.

401.11(1) *Application.* Application for letter-number designated natural resources plates shall be made to the county treasurer. The issuance fee is a $35 special natural resources fee.

401.11(2) *Renewal.* The yearly validation fee is a $10 special natural resources fee. If renewal is delinquent for more than one month, a new application and $35 issuance fee are required.

401.11(3) *Reassignment.* A vehicle owner may request reassignment of letter-number designated natural resources plates in accordance with subrule 401.6(4).

401.11(4) *Gift certificate.* A gift certificate for the issuance fee may be purchased from the county treasurer. A gift certificate is void 90 days after issuance.

401.11(5) *Distribution of fees.* Special natural resources fees are paid to the Iowa resources enhancement and protection (REAP) fund.

761—401.12(321) Natural resources plates—personalized.

401.12(1) *Application.* Application for personalized natural resources plates shall be made on Form 411065. The issuance fee consists of a $35 special natural resources fee and a $45 personalized plate fee.

401.12(2) *Characters.* Personalized natural resources plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs *"a"* to *"d."*

401.12(3) *Renewal.* The yearly validation fee for personalized natural resources plates consists of a $10 special natural resources fee and $5 personalized plate fee. If renewal is delinquent for more than one month:

a. A new application and $80 issuance fee are required.

b. The department may issue the plates' combination of characters to another applicant.

401.12(4) *Reassignment.* A vehicle owner may request reassignment of personalized natural resources plates in accordance with subrule 401.6(4).

401.12(5) *Gift certificate.* A gift certificate for the issuance fee may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.13 and **401.14** Reserved.

761—401.15(321) Processed emblem application and approval process. Following is the application and approval process for special plate requests under Iowa Code subsection 321.34(13).

401.15(1) Application Form 411146 shall be used to submit a request to the department to recommend a new special registration plate with a processed emblem.

401.15(2) The application shall contain:

a. The applicant's name, address, and telephone number.

b. The name of the processed emblem.

c. A clear and concise explanation of the purpose of the special plate and all eligibility requirements.

d. The total number of the special plates the applicant anticipates being purchased.

401.15(3) The application shall be accompanied by:

a. A color copy of the processed emblem.

(1) The processed emblem shall be limited to 3" × 3½" on the registration plate, but the emblem submitted may be of a larger size.

(2) The processed emblem shall not have any sexual connotation, nor shall it be vulgar, prejudiced, hostile, insulting, or racially or ethnically degrading.

b. A certification by the person who has legal rights to the emblem allowing use of the emblem. This certification shall also include a statement holding the department harmless for using the processed emblem on a registration plate.

401.15(4) The office of vehicle services may consult with other organizations, law enforcement authorities, and the general public concerning the processed emblem.

401.15(5) Within 60 days after receiving the application, the office of vehicle services shall advise the applicant of the department's approval or denial of the application. The department reserves the right to approve or disapprove any processed emblem.

401.15(6) If the department approves the application, the applicant shall be advised that 500 paid special plate applications must be submitted to the department before the new plate will be manufactured and issued. If 500 paid applications are not submitted within one year after the date the department approved the plate, the department shall cancel its approval.

401.15(7) If the special plate is approved and at a later date it is determined that a false application was submitted, the department shall revoke the special plates. No refunds shall be paid.

761—401.16(321) Special plates with processed emblems—general.

401.16(1) *Fees.* Following are the fees for special plates with processed emblems:

	Letter-Number		Personalized	
Type	Issuance	Validation	Issuance	Validation
Persons With Disabilities	$0	$0	$25	$5
Ex-POW	$0	$0	N/A	N/A
National Guard	$25	$5	$50	$5
Pearl Harbor	$25	$5	$50	$5
Purple Heart	$25	$5	$50	$5
U.S. Armed Forces Retired	$25	$5	$50	$5
Silver or Bronze Star	$25	$5	$50	$5
Iowa Heritage	$35	$10	$60	$15
Education	$35	$10	$60	$15
Love Our Kids	$35	$10	$60	$15
Motorcycle Rider Education	$35	$10	$60	$15
State Agency-Sponsored	$35	$10	$60	$15

401.16(2) *Application.* Unless specified otherwise, application for special plates with processed emblems shall be made on Form 411065.

401.16(3) *Characters.* Personalized special plates with processed emblems shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs *"a"* to *"d."*

401.16(4) *Renewal.* If renewal of either letter-number designated or personalized special plates with processed emblems is delinquent for more than one month:

a. A new application and issuance fee are required.

b. The department may issue the combination of characters on personalized processed emblem plates to another applicant.

401.16(5) Reserved.

401.16(6) *Gift certificate.* Unless otherwise specified, a gift certificate for special plates with processed emblems may be purchased by completing Form 411065 and submitting it to the department. Proof of eligibility for the special plates may be required. A gift certificate is void 90 days after issuance.

761—401.17(321) State agency-sponsored processed emblem plates.

401.17(1) *Application and approval process for a new plate.* A state agency recommending a new special registration plate with a processed emblem shall submit its request to the department on a form prescribed by the department. The application and approval process is set out in rule 761—401.15(321). The application shall include clear and concise eligibility requirements for plate applicants.

401.17(2) *Plate application.* Once new state agency-sponsored processed emblem plates have been approved, manufactured and issued, the plates may be ordered as described below.

a. When the plates have no eligibility requirements:

(1) Application for letter-number designated plates shall be submitted to the county treasurer.

(2) Application for personalized plates shall be submitted to the department on a form prescribed by the department.

b. When the plates have eligibility requirements, application for either letter-number designated or personalized plates shall be submitted to the sponsoring state agency for approval on a form prescribed by the department. The sponsoring state agency shall forward approved applications to the department.

401.17(3) *Characters.* Personalized state agency-sponsored processed emblem plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs *"a"* to *"d."*

401.17(4) *Renewal.* If renewal of either letter-number designated or personalized state agency-sponsored processed emblem plates is delinquent for more than one month:

a. A new application and issuance fee are required.

b. The department may issue the combination of characters on personalized plates to another applicant.

401.17(5) *Reassignment.* A vehicle owner may request reassignment of either letter-number designated or personalized state agency-sponsored processed emblem plates in accordance with subrule 401.6(4). However, plates that have eligibility requirements may not be reassigned.

401.17(6) *Gift certificate.*

a. When state agency-sponsored processed emblem plates have no eligibility requirements:

(1) A gift certificate for the issuance fee for letter-number designated plates may be purchased from the county treasurer.

(2) A gift certificate for the issuance fee for personalized plates may be purchased by completing a form prescribed by the department and submitting the form to the department.

b. When state agency-sponsored processed emblem plates have eligibility requirements, a request to purchase a gift certificate for either letter-number designated or personalized plates shall be submitted to the sponsoring state agency.

c. A gift certificate is void 90 days after issuance.

761—401.18 and **401.19** Reserved.

761—401.20(321) Persons with disabilities plates.

401.20(1) *Application.* Application for special plates with a persons with disabilities processed emblem shall be made on Form 411055 or Form 411065.

a. The application shall include a signed statement written on the physician's, chiropractor's, physician assistant's or advanced registered nurse practitioner's letterhead. The statement shall certify that the owner or the owner's child is a person with a disability, as defined in Iowa Code section 321L.1, and that the disability is permanent.

b. If the person with a disability is a child, the parent or guardian shall complete the proof of residency certification on the application or complete and submit a separate proof of residency Form 411120, certifying that the child resides with the owner.

401.20(2) *Definition.*

"Child" includes, but is not limited to, stepchild, foster child, or legally adopted child who is younger than 18 years of age, or a dependent person 18 years of age or older who is unable to maintain the person's self.

401.20(3) *Renewal.* The owner shall, at renewal time, provide a self-certification stating that the owner or the owner's child is still a person with a disability and, if the person with a disability is the owner's child, that the child still resides with the owner.

761—401.21(321) Ex-prisoner of war plates. Application for special plates with an ex-prisoner of war processed emblem shall be made on Form 411065. The application shall include a copy of an official government document verifying that the applicant was a prisoner of war. If the document is not available, a person who has knowledge that the applicant was a prisoner of war shall sign a statement to that effect on the back of the application form.

The surviving spouse of a person who was issued ex-prisoner of war plates may continue to use or apply for the plates. If the surviving spouse remarries, the surviving spouse shall surrender the plates to the county treasurer in exchange for regular registration plates within 30 days after the date on the marriage certificate.

761—401.22(321) National guard plates. Application for special plates with a national guard processed emblem shall be made on Form 411065. The unit commander of the applicant shall sign the back of the application form confirming that the applicant is a member of the Iowa national guard.

761—401.23(321) Pearl Harbor plates. Application for special plates with a Pearl Harbor processed emblem shall be made on Form 411065. The applicant shall submit a copy of an official government document verifying that the applicant was stationed at Pearl Harbor, Hawaii, as a member of the armed forces on December 7, 1941.

761—401.24(321) Purple Heart, Silver Star and Bronze Star plates. Application for special plates with a Purple Heart, Silver Star, or Bronze Star processed emblem shall be made on Form 411065. To verify receipt of the medal, the applicant shall include a copy of one of the following:

1. The official military order confirming the medal.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

761—401.25(321) U.S. armed forces retired plates. Application for special plates with a United States armed forces retired processed emblem shall be made on Form 411065. To verify retirement from the United States armed forces after service of 20 years or longer, or to verify service for a minimum of 10 years and receipt of an honorable discharge from service due to a medical disqualification, the applicant shall include a copy of one of the following:

1. The official military order confirming retirement from the armed forces.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

761—401.26 Reserved.

761—401.27(321) Iowa heritage plates.

401.27(1) *Application.* Application for letter-number designated plates with an Iowa heritage processed emblem shall be made to the county treasurer. Application for personalized plates with an Iowa heritage processed emblem shall be made to the department on Form 411065.

401.27(2) *Reassignment.* A vehicle owner may request reassignment of letter-number designated or personalized Iowa heritage plates in accordance with subrule 401.6(4).

401.27(3) *Gift certificate.* A gift certificate for the issuance fee for letter-number designated Iowa heritage plates may be purchased from the county treasurer. A gift certificate for the issuance fee for personalized Iowa heritage plates may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.28(321) Education plates.

401.28(1) *Application.* Application for letter-number designated special plates with an education processed emblem shall be made to the county treasurer. Application for personalized plates with an education processed emblem shall be made to the department on Form 411065.

401.28(2) *Reassignment.* A vehicle owner may request reassignment of letter-number designated or personalized education plates in accordance with subrule 401.6(4).

401.28(3) *Gift certificate.* A gift certificate for the issuance fee for letter-number designated education plates may be purchased from the county treasurer. A gift certificate for the issuance fee for personalized education plates may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.29(321) Love our kids plates.

401.29(1) *Application.* Application for letter-number designated plates with a love our kids processed emblem shall be made to the county treasurer. Application for personalized plates with a love our kids processed emblem shall be made to the department on Form 411065.

401.29(2) *Reassignment.* A vehicle owner may request reassignment of letter-number designated or personalized love our kids plates in accordance with subrule 401.6(4).

401.29(3) *Gift certificate.* A gift certificate for the issuance fee for letter-number designated love our kids plates may be purchased from the county treasurer. A gift certificate for the issuance fee for personalized love our kids plates may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.30(321) Motorcycle rider education plates.

401.30(1) *Application.* Application for letter-number designated plates with a motorcycle rider education processed emblem shall be made to the county treasurer. Application for personalized plates with a motorcycle rider education processed emblem shall be made to the department on Form 411065.

401.30(2) *Reassignment.* A vehicle owner may request reassignment of letter-number designated or personalized motorcycle rider education plates in accordance with subrule 401.6(4).

401.30(3) *Gift certificate.* A gift certificate for the issuance fee for letter-number designated motorcycle rider education plates may be purchased from the county treasurer. A gift certificate for the issuance fee for personalized motorcycle rider education plates may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.31 to **401.34** Reserved.

761—401.35(321) Additional information.

401.35(1) *Surrender of special registration plates assigned to a vehicle.*

a. When ownership of a vehicle is transferred or assigned to another person, the owner must surrender the special registration plates to the county treasurer or assign the plates to another vehicle owned or leased by the person to whom issued.

b. When the lease for a vehicle is terminated, the lessee must surrender the special registration plates to the county treasurer or assign the plates to another vehicle owned or leased by the person to whom issued. Regular registration plates shall be reissued at no charge. Fees for issuing Congressional Medal of Honor plates shall be prorated for the remainder of the registration year.

401.35(2) *Revocation of special registration plates.* Special registration plates shall be revoked if they have been issued in conflict with the statutes or rules governing their issuance. Revoked plates shall be surrendered to the department within 30 days of the date of revocation.

401.35(3) *Refund of fees.* No refund of fees for special registration plates shall be allowed unless the special plates were issued in conflict with the statutes or rules governing their issuance.

These rules are intended to implement Iowa Code sections 321.34, 321.166 and 321L.1 and 1997 Iowa Acts, chapter 2; chapter 70, section 3; chapter 104, sections 8 to 10; and chapter 123, section 1.

[Filed 2/8/95, Notice 1/4/95—published 3/1/95, effective 4/5/95]
[Filed 11/25/97, Notice 10/8/97—published 12/17/97, effective 1/21/98]
[Filed 12/16/98, Notice 11/4/98—published 1/13/99, effective 2/17/99]
[Filed 3/10/99, Notice 1/13/99—published 4/7/99, effective 5/12/99]

CHAPTER 750
AIRCRAFT REGISTRATION

[Prior to 6/3/87, Transportation Department [820]—(04,C)Ch 2]

761—750.1(328) Purpose. This chapter establishes the procedures for registration of civil aircraft pursuant to Iowa Code chapter 328.

761—750.2(328) Definitions. The definitions in Iowa Code section 328.1 and rule 761—700.1(328) apply to this chapter of rules.

This rule is intended to implement Iowa Code section 328.1.

761—750.3(17A) Information and forms. Information, instructions and forms are available from the office of vehicle services. Application forms may also be obtained from aircraft dealers. The mailing address of vehicle services is: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

This rule is intended to implement Iowa Code section 17A.3.

761—750.4 to **750.8** Reserved.

761—750.9(328) Registration. When a used aircraft is registered in Iowa, the model year of the aircraft shall be used to determine the number of times the aircraft was previously registered, and a reduction of the registration fee shall be computed accordingly. "Model year," except where otherwise specified, means the year of original manufacture or the year certified by the manufacturer. For the purpose of registration, the model year shall advance one year each January 1.

This rule is intended to implement Iowa Code section 328.21.

761—750.10(328) First registration procedure.

750.10(1) *Registration requirement.* A civil aircraft which has an FAA-assigned N number is subject to registration in Iowa unless it is exempt by statute.

750.10(2) *Application.*

a. The owner of an unregistered aircraft shall submit Form 300038, "Aircraft Registration Application," to the department.

b. The owner shall submit with the application the registration fee and the required use tax or evidence of tax exemption.

c. The department shall review the application and may request additional information or documents from the owner.

d. Upon receipt of the completed application, registration fee, and use tax or evidence of tax exemption, the department shall issue Form 300018, "Aircraft Registration Certificate," to the applicant.

750.10(3) *Fee.* The aircraft registration fee shall be computed according to Iowa Code section 328.21.

This rule is intended to implement Iowa Code sections 328.20, 328.21, 328.25 to 328.27, 328.35, 328.37, 328.42, 328.44 to 328.46 and 328.56A.

761—750.11 to **750.14** Reserved.

761—750.15(328) Aircraft not airworthy. An aircraft that is damaged and is not in flying condition is not airworthy. The aircraft is not subject to registration fees if the owner submits with the registration application a written, signed explanation of the aircraft's condition and an estimate of the date when the aircraft will be airworthy. The department shall issue a certificate and shall mark the record of the aircraft until the owner notifies the department that the aircraft is airworthy or until the aircraft is no longer subject to registration in Iowa.

This rule is intended to implement Iowa Code section 328.21.

761—750.16 to **750.19** Reserved.

761—750.20(328) Renewal.

750.20(1) *Notice.* Thirty days before the beginning of the registration year, the department shall send a renewal application for each registered aircraft to the owner as shown on department records. The renewal application shall state the registration fee due for the registration year and the descriptive data recorded for the aircraft.

750.20(2) *Submission.* If all data is correct, the renewal application and registration fee shall be returned to the department. If the data is incorrect, the renewal application shall be returned to the department with an explanation of the changes.

750.20(3) *Issuance.* The department shall issue the certificate of registration within 15 days after receipt of the renewal fee.

750.20(4) *Penalty.* Rescinded IAB 1/15/97, effective 2/19/97.

This rule is intended to implement Iowa Code sections 328.20, 328.21, 328.26, 328.27, 328.37, and 328.56A.

761—750.21 to **750.28** Reserved.

761—750.29(328) Penalty on registration fees.

750.29(1) ***Amount of penalty.*** The penalty on the delinquent payment of a registration fee shall be computed on a monthly basis and is 5 percent per month.

750.29(2) ***Aircraft purchased.*** The penalty on the registration fee shall accrue from the first day of the month following 30 days from the date of purchase.

750.29(3) ***Aircraft moved into Iowa.*** The penalty on the registration fee shall accrue from the first day of the month following 30 days from the date the aircraft is moved into Iowa.

750.29(4) ***When delinquency extends beyond the current year.*** When the penalty on a delinquent registration fee extends beyond the current year, the penalty shall continue to accrue until paid. The penalty shall accrue only on the fee applicable at the time the delinquency accrued and shall not be applicable to subsequent registration fees which have not been paid.

750.29(5) ***Specific penalty date.*** When a specific penalty date is provided by statute or rule, the penalty shall accrue from that date, even if the day is a Saturday, Sunday or holiday.

This rule is intended to implement Iowa Code sections 328.50 to 328.52.

761—750.30(328) Lien. The department has the authority to record a lien against the federal aircraft title and sue to collect unpaid fees and penalties.

This rule is intended to implement Iowa Code sections 328.47 to 328.49.

[Filed 7/1/75]
[Filed 8/3/76, Notice 6/14/76—published 8/23/76, effective 9/27/76]
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]
[Filed 7/27/88, Notice 6/15/88—published 8/24/88, effective 9/28/88]
[Filed 1/15/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]
[Filed 12/26/96, Notice 11/20/96—published 1/15/97, effecive 2/19/97]
[Filed 3/10/99, Notice 1/13/99—published 4/7/99, effective 5/12/99]

CHAPTERS 751 to 799
Reserved

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.

*Effective date of 3/17/99 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.

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.*"

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

[Filed emergency 4/23/93—published 5/12/93, effective 6/1/93]
[Filed 6/17/93, Notice 5/12/93—published 7/7/93, effective 8/11/93]
[Filed 9/10/93, Notice 8/4/93—published 9/29/93, effective 11/3/93]
[Filed 11/16/94, Notice 9/14/94—published 12/7/94, effective 1/11/95]
[Filed 6/16/95, Notice 5/10/95—published 7/5/95, effective 8/9/95]
[Filed 12/28/95, Notice 11/22/95—published 1/17/96, effective 2/21/96]
[Filed 8/22/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]
[Transferred from 345—Ch 4 to 871—Ch 24 IAC Supplement 3/12/97]
[Filed 1/20/99, Notice 12/16/98—published 2/10/99, effective 3/17/99*]

*Effective date of 24.26(14) and 24.26(15) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.

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