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KATHLEEN K. BATES
ADMINISTRATIVE CODE EDITOR

ROSEMARY DRAKE
DEPUTY EDITOR

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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.

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

UPDATING INSTRUCTIONS
May 5, 1999, Biweekly Supplement

[Previous Supplement dated 4/21/99]

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

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CHAPTER 12
WATER PROTECTION PRACTICES—WATER PROTECTION FUND

27—12.1 to **12.9** Reserved.

PART 1

27—12.10(161C) Authority and scope. This chapter establishes procedures and standards to be followed by soil and water conservation districts and the division of soil conservation of the Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing water protection practices through the water protection fund created in Iowa Code section 161C.4, unnumbered paragraph 1, and subsection 2. This account shall be used to establish water protection practices with individual landowners including, but not limited to, woodland establishment and protection, establishment of native grasses and forbs, sinkhole management, agricultural drainage well management, streambank stabilization, grass waterway establishment, stream buffer strip establishment, and erosion control structure construction. Twenty-five percent of funds appropriated to the water protection practices account plus any additional appropriations for reforestation shall be used for woodland establishment and protection and establishment of native grasses and forbs.

27—12.11(161C) Rules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—12.12 to **12.19** Reserved.

PART 2

27—12.20(161C) Definition of terms. In addition to the term defined herein, definitions in rule 27—10.20(161A) shall apply.

"Agricultural production" means the commercial production of food or fiber.

27—12.21 to **12.29** Reserved.

PART 3

27—12.30(161C) Compliance, refund, reviews and appeals. Rule 27—10.30(161A) shall apply.

27—12.31 to **12.39** Reserved.

PART 4

27—12.40(161C) Appropriations. Resource enhancement and protection program, soil and water enhancement account funds are allocated to the water protection fund. Each year's allocation of water protection funds is divided equally between the water quality protection account and the water protection practices account until the water quality protection account has received $1 million. The balance of funds is deposited in the water protection practices account.

27—12.41 to **12.49** Reserved.

PART 5

27—12.50(161C) Water protection practices account. This part defines procedures for allocation, recall and reallocation of water protection practices funds to soil and water conservation districts and to the division's reserve fund. These funds shall not be used alone or in combination with other public funds to provide a financial incentive payment greater than 75 percent of the approved cost for practices listed in 12.84(161C), or 50 percent in 12.77(1), 12.77(2) and 12.77(3).

27—12.51(161C) Allocation to soil and water conservation districts.

12.51(1) *Original allocation.* July 1 of each year, funds appropriated to the water protection practices account will be allocated to districts. Seventy-three and one-half percent of the funds will be divided equally among 100 soil and water conservation districts. Twenty-five percent of the funds plus any additional appropriations for reforestation will be kept in a separate account for woodland establishment and protection, and establishment of native grasses and forbs. One and one-half percent will be held in a reserve fund.

12.51(2) *Recall of funds.* Any funds allocated to the districts that have not been obligated in 12 months and any funds that were obligated for projects for which construction has not been started during that time period will be recalled by the division.

12.51(3) *Supplemental allocations.* Unobligated funds recalled by the division will be provided to the districts in a supplemental allocation. The districts shall submit their requests identifying valid applications and cost estimates for supplemental allocations to the division by October 15. The allocation to any district will be the lesser amount of:

a. The amount of remaining available funds divided by the number of districts applying for a supplemental allocation.

b. The amount requested.

12.51(4) *Reallocation of recalled funds.* Funds that were obligated for projects for which construction has been started but not reimbursed by the state during the 12 months following allocation will be recalled and reallocated back to the district.

12.51(5) *Woodland, native grass and forbs fund.* Twenty-five percent of the funds and any additional appropriations for reforestation will be allocated to districts.

a. Original allocation. Seventy-five percent of the funds distributed to this program will be allocated equally to districts at the beginning of each fiscal year.

b. Supplemental allocation. The remaining balance of the funds and any unobligated recalled funds will be provided to the districts in a supplemental allocation. The districts shall submit their requests identifying valid applications and cost estimates for supplemental allocations to the division by October 15. The allocation to any district will be the lesser amount of:

(1) The amount of remaining available funds divided by the number of districts applying for a supplemental allocation.

(2) The amount requested.

c. Recall of funds. Any funds allocated to the districts that have not been obligated in 12 months and any funds that were obligated for projects for which construction has not been started during that time period will be recalled by the division.

d. Reallocation of recalled funds. Funds that were obligated for projects for which construction has been started but not reimbursed by the state during the 12 months following allocation will be recalled and reallocated back to the district.

e. Eligibility of soil and water conservation districts for supplemental allocation. For a district to qualify for a supplemental allocation, it must meet the following requirement: ninety percent of the woodland, native grass and forbs funds shall be obligated to landowners.

12.51(6) *Reserve funds.* The division shall administer a reserve fund for the program consisting of 1.5 percent of each year's appropriated funds.

a. Purpose and use of the reserve fund. The reserve fund will be set aside and used only to fund contingencies that occur in the application of practices in the districts.

b. On June 30 each year the division will transfer the unspent reserve fund balance into the water protection practices account to be allocated to districts under subrule 12.51(1).

27—12.52 to 12.59 Reserved.

PART 6

27—12.60(161C) Applications and agreements. The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving water protection practices funds.

27—12.61(161C) Applications submitted to soil and water conservation district. Landowners or farm operators desiring to be considered for water protection practices funds shall complete necessary applications as specified in this part. Application and agreement forms referenced in this chapter are those described in rule 27—10.95(161A,312). All application forms and agreements for water protection practices funds are available from and shall be submitted to the district office located in the county where such practices are proposed. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

27—12.62(161C) Application sign-up.

12.62(1) *Signatures by landowner(s) and qualified farm operator(s).* All applications and agreements shall be signed by the landowner. For a farm operator to qualify for payment, both landowner and operator must sign the application.

12.62(2) *Land being bought under contract.* All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

12.62(3) *Power of attorney.* Applications and agreements may be signed by any person designated to represent the landowner or farm operator, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a completed Power of Attorney, Form SCD-2, or other properly notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

27—12.63(161C) Eligibility for financial incentives.

12.63(1) *District cooperator.* Financial incentives will not be available for land not covered under a cooperator agreement. Application for district cooperator shall be made by submitting a completed Cooperator Agreement, Form SCD-1, to the district office. The district shall approve or deny the application and notify the applicant of the action within 60 days of receipt of the completed cooperator agreement.

12.63(2) *Practices installed on adjoining public lands.* Where water protection practices which benefit adjoining private lands are installed on public lands and costs of the installation are to be shared by the parties, state water protection practices funds may be used to cost-share only the landowner cost of the water protection practice.

12.63(3) *Ineligible lands.*

a. Water protection practices funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

b. Privately owned land not used for agricultural production shall not qualify for water protection practices funds.

12.63(4) *District priorities.* Each application for water protection practices shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The priority system adopted by the district shall be made available for review at the district office.

27—12.64 to **12.69** Reserved.

PART 7

27—12.70(161C) Water protection practices. The purpose of this part is to establish the general conditions, eligible practices, specifications, and cost-share rates for the installation of water protection practices authorized in Iowa Code chapter 161C.

27—12.71(161C) General conditions. The following general conditions shall be met.

12.71(1) *Technician certification.* The designated water protection practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to protect water quality.

12.71(2) *Limitation of reimbursable cost of practices.* Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state.

12.71(3) *Materials.* Projects funded with water protection funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

12.71(4) *Repair or maintenance.* Repair or maintenance of existing practices is not eligible for funding.

27—12.72(161C) Eligible practices. Practices listed in this rule are eligible for water protection practices fund reimbursement.

12.72(1) *Critical area planting.* Establishment of vegetative planting to control sediment movement from severely eroding areas by stabilizing the soil. These plantings would include vegetation such as trees, shrubs, vines, grasses or legumes.

12.72(2) *Strip-cropping (wind).* A strip of tall growing perennial vegetation within or adjacent to a field to reduce sediment damage and soil depletion caused by wind.

12.72(3) *Field border.* A strip of perennial vegetation established at the edge of a field, to be used as a turn area in lieu of end-rows up and down hill to control erosion and provide wildlife food and cover.

12.72(4) *Filter strips.* A strip or area of vegetation for removing sediment, organic matter and other pollutants from runoff.

12.72(5) *Strip-cropping, contour.* Growing crops in a systematic arrangement of strips or bands on the contour to reduce water and wind erosion. The crops are arranged so that a strip of grass or close-growing crop is alternated with a strip of clean-tilled crop or fallow or a strip of grass is alternated with a close-growing crop.

12.72(6) *Pasture and hayland planting.* The establishment of long-term stands of adapted species of perennial forage plants, to control excessive water erosion, by converting land from row crop production to permanent vegetative cover.

12.72(7) *Restored or constructed wetlands in buffer systems.* An area where hydric (wetland) vegetation and hydrology are established within or adjacent to a buffer system that filters pollutants from runoff or underground tile lines, or both. (Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.)

12.72(8) *Bioengineering for stabilization of banks along waterways.* A system designed to emphasize the use of live vegetation, natural materials, and structural practices to produce living, functioning systems to stabilize stream banks, reduce sedimentation, provide habitat, and filter pollutants. Bioengineering uses combinations of stream-side plantings or trees, other vegetation, structural practices such as modification of slopes, and installation of reinforcing materials and in-stream structures. (Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.)

27—12.73(161C) Eligible practices for priority water resource protection. Practices listed in this rule are eligible for water protection practice fund reimbursement only in those areas or instances approved in rule 27—12.75(161C).

12.73(1) *Grassed waterway.* A natural or constructed waterway or outlet, shaped and graded, on which suitable vegetation is established to conduct excess surface runoff water from terraces, diversions or natural watershed basins.

12.73(2) *Grade stabilization structure.* An earthen dam or embankment with a mechanical outlet (pipe conduit, drop spillway or chute outlet, etc.) to stabilize the flowline grade or control head cutting in a natural or constructed channel.

12.73(3) *Terrace.* An earthen barrier or embankment constructed across the field slope using a combination of a ridge and channel to reduce field erosion and trap sediment. Types of terraces commonly referred to as broad based, narrow based, grassed backslope, basin, level, gradient and parallel are eligible for water protection practice fund reimbursement.

12.73(4) *Water and sediment control basin.* A short earthen embankment with an underground outlet, constructed across the slope in minor water courses to reduce erosion and trap sediment.

12.73(5) *Diversion.* A channel with a supporting ridge on the lower side constructed across the slope to conduct excess runoff water to a suitable outlet.

12.73(6) *Animal waste management system.* A planned system to correct existing animal waste management problems in which all necessary components are installed for managing liquid and solid waste, including runoff from concentrated waste areas from an existing animal feeding operation, in a manner that does not degrade soil or water resources.

Cost-sharing under this practice is not authorized for:

a. Portable pumps and pumping equipment.

b. Waste disposal equipment.

c. Building, modification of a building, that portion of the animal waste structure that serves as part of the building, or its foundation.

d. That portion of the cost of animal waste control structures attributed to expansion of an animal waste management system.

27—12.74(161C) Agricultural drainage well closure. Practices listed in this rule are eligible for water protection practice fund reimbursement where installation of the practice is consistent with current drainage law of the state of Iowa. This practice is intended to assist in the voluntary closure of agricultural drainage wells registered with the department of natural resources prior to September 30, 1988. It is not intended to be a substitute for future agricultural drainage well assistance programs authorized in Iowa Code section 159.29 that will be developed in conjunction with the Iowa department of agriculture and land stewardship's agricultural drainage well research and demonstration project.

12.74(1) *Eligible practices.*

a. Agricultural drainage well plugging and cistern removal.

b. Tile outlet from plugged agricultural drainage well to a suitable, legal outlet.

12.74(2) *Implementation of practice.* This practice shall not be used to provide outlet(s) for previously undrained wetland(s) as defined and classified under state or federal law.

12.74(3) *Outlets with excess capacity.* Tile outlets which exceed the minimum capacity required to provide one-half inch drainage coefficient to the area originally served by the drainage well shall be permitted, if approved by the technician. Any additional cost resulting from providing such excess capacity shall not be cost-shared by the state.

27—12.75(161C) Priority watersheds and water quality problems. Practices listed in rule 27—12.73(161C) will be eligible for landowner reimbursement from water protection practices funds only for watersheds and water quality problems designated by soil and water conservation district commissioners and approved by the state soil conservation committee.

12.75(1) *District designation.* Districts shall submit to the division the description of high priority watershed(s) or water quality problems within their district to be designated as eligible for practices listed in rule 27—12.73(161C).

12.75(2) *State soil conservation committee evaluation.* The state soil conservation committee shall examine the district submission under 12.75(1) with respect to the following criteria.

a. The public value and current use of the water resource to be protected.

b. The nature, extent and severity of the water quality problem to be addressed.

c. The degree to which the district designation focuses practice application in a manner that will achieve a water quality benefit from the funds available.

12.75(3) *Review time limit.* The state soil conservation committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.75(4) *Disapproval of designation.* In the event of disapproval of district designation, the state soil conservation committee shall inform the district of the reason for disapproval.

27—12.76(161C) Specifications. In addition to specifications defined herein, rule 27—10.84(161A) specifications shall apply.

12.76(1) *Filter strips.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 393, January 1988.

12.76(2) *Field borders.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 386, July 1988.

12.76(3) *Waste management systems.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 312, January 1997.

12.76(4) *Agricultural drainage well closure.* Iowa Department of Natural Resources, Technical Information Series 15, 1988, Guidelines for Plugging Abandoned Water Wells.

12.76(5) *Agricultural drainage well plugging and cistern removal.* Iowa Department of Natural Resources, Technical Information Series 15, 1988, Guidelines for Plugging Abandoned Water Wells.

12.76(6) *Tile outlet from plugged agricultural drainage wells.* Underground Outlet, USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 620, March 1991.

12.76(7) *Subsurface drain.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 606, February 1986.

12.76(8) *Restored or constructed wetlands in buffer systems.* Wetland Restoration, Enhancement, or Creation (Acres), USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. Interim Standard 657-1, July 1992.

12.76(9) *Bioengineering for stabilization of banks along waterways.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 580-1, September 1983 or Section IV, Code No. 391-1.

27—12.77(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rules 12.72(161C) to 12.74(161C).

12.77(1) *Cost-share rates.* Cost-share rates for practices designated in rule 12.72(161C) shall be 50 percent of the actual or estimated cost of installation, whichever is less, except for strip-cropping contour and field borders. Cost-share rates for 12.72(3), field borders, and 12.72(5), strip-cropping contour, shall be a one-time payment of 50 percent of the cost up to $25 per acre.

12.77(2) *Cost-share rates for water protection practices.* Cost-share rates for practices designated in rule 12.73(161C) shall be 50 percent of the actual or estimated cost, whichever is less.

12.77(3) *Cost-share rates for agricultural drainage well closure.* Cost-share rates for practices designated in rule 12.74(161C) shall be the following:

a. 50 percent of the actual or estimated cost, whichever is less, of agricultural drainage well plugging and cistern removal, not to exceed $500.

b. 50 percent of the actual or estimated cost, whichever is less, of establishing a tile outlet from the plugged agricultural drainage well to a suitable, legal outlet, not to exceed $2000.

27—12.78 and **12.79** Reserved.

PART 8

27—12.80(161C) Water protection practices—woodlands, native grasses and forbs. The purpose of this part is to establish the general conditions, eligible practices, specifications and cost-share rates for the installation of woodlands, native grasses and forbs as authorized in Iowa Code chapter 161C.

27—12.81(161C) General conditions. The following general conditions shall be met.

12.81(1) *Practice need.* The designated practices shall not be funded unless the certifying technician has inspected the site and has determined that such practice(s) is needed.

12.81(2) *Forest management plan required.* A forest management plan approved by the forestry division of the department of natural resources is required for the practices of timber stand improvement, tree planting, site preparation for natural regeneration and rescue treatments.

12.81(3) *Eligibility of practices.* Planting or management of trees for nut orchards or Christmas tree production is only eligible as intermediate products in stands being established for other approved purposes. Planting or management of trees for ornamental purposes or fruit orchards is not eligible.

27—12.82(161C) Eligible practices. Land enrolled in the Conservation Reserve Program is only eligible for woodland establishment, management and protection practices. All practices listed in this part are available to all other eligible landowners within Iowa soil and water conservation districts. All practices listed below are permanent.

12.82(1) *Farmstead windbreaks.* A belt of trees or shrubs established or restored next to a farmstead.

12.82(2) *Field windbreak.* A belt of trees or shrubs established or restored, within or adjacent to a field.

12.82(3) *Timber stand improvement.* To increase the growth and quality of forest stands and improve wildlife habitat. Minimum eligible area is five acres.

12.82(4) *Tree planting.* To establish a stand of trees for timber production and environmental improvement. Minimum eligible area is three acres.

12.82(5) *Site preparation for natural regeneration.* To establish a stand of forest trees through natural regeneration for timber production and environmental improvement. Minimum eligible area is three acres.

12.82(6) *Riparian forest buffer.* To establish an area of trees or shrubs, or both, located adjacent to and up-gradient from water bodies.

12.82(7) *Rescue treatments.* To rescue plantations from conditions that would threaten the adequate survival or quality of the plantation if not controlled. Minimum eligible area is three acres.

12.82(8) *Planned grazing systems.* A practice in which two or more grazing units of native grasses are alternately rested and grazed in a planned sequence for a period of years, and rest periods may be throughout the year or during the growing season of key plants.

12.82(9) *Conservation cover.* Establishing and maintaining perennial vegetative cover on land.

27—12.83(161C) Specifications. These specifications and the general conditions shall be met in all cases. In each specification the listed USDA-Natural Resources Conservation Service specification in force on the date indicated in these rules or the Department of Natural Resources Forestry Technical Guide shall be used.

12.83(1) *Farmstead windbreak.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 380, April 1992.

12.83(2) *Field windbreak.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 392, February 1992.

12.83(3) *Timber stand improvement.* Department of Natural Resources Forestry Technical Guide.

12.83(4) *Tree planting.* Department of Natural Resources Forestry Technical Guide.

12.83(5) *Site preparation natural regeneration.* Department of Natural Resources Forestry Technical Guide.

12.83(6) *Riparian forest buffer.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 392, Interim.

12.83(7) *Rescue treatment.* Department of Natural Resources Forestry Technical Guide.

12.83(8) *Planned grazing systems.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 556, November 1986.

12.83(9) *Conservation cover.* USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 327, March 1997.

27—12.84(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rule 12.82(161C). The use of state cost-share funds alone or in combination with other public funds shall not exceed the limits established by these rules.

12.84(1) *Farmstead windbreaks.*

a. 75 percent of actual cost, not to exceed $12 per tree and $2.25 per shrub, to establish or restore farmstead windbreaks.

b. Actual cost, not to exceed $8 per rod, for permanent fences, to protect planted area from grazing, excluding boundary and road fencing.

c. Total cost-share for establishment, restoration, and fencing for farmstead windbreaks shall not exceed $700 per windbreak.

12.84(2) *Field windbreaks.*

a. 75 percent of actual cost, not to exceed $365 per acre.

b. Actual cost, not to exceed the lesser of $8 per rod or $45 per acre protected, for permanent fences, to protect planted area from grazing, excluding boundary and road fencing.

12.84(3) *Timber stand improvement.*

a. 75 percent of actual cost, not to exceed $75 per acre for thinning, pruning crop trees, or releasing seedlings or young trees.

b. Actual cost, not to exceed the lesser of $8 per rod or $45 per acre protected, for permanent fences, to protect planted area from grazing, excluding boundary and road fencing.

12.84(4) *Tree planting.*

a. 75 percent of the actual cost, not to exceed $365 per acre, for tree planting including the following:

(1) Establishing ground cover,
(2) Trees and tree planting operations,
(3) Weed and pest control,
(4) Mowing, disking, and spraying.

b. 75 percent of actual cost, not to exceed $120 per acre for woody plant competition control.

c. Actual cost, not to exceed the lesser of $8 per rod or $45 per acre protected, for permanent fences, to protect planted area from grazing, excluding boundary and road fencing.

12.84(5) *Site preparation for natural regeneration.*

a. 75 percent of the actual cost, not to exceed $120 per acre of site preparation.

b. Actual cost, not to exceed the lesser of $8 per rod or $45 per acre protected, for permanent fences, to protect treated area from grazing, excluding boundary and road fencing.

12.84(6) *Riparian forest buffer.* 75 percent of actual cost or estimated cost, whichever is less.

12.84(7) *Rescue treatment.*

a. 75 percent of the actual cost, not to exceed $60 per acre to establish alternate cover for competition control.

b. A one-time payment of 75 percent of the actual cost, not to exceed $15 per acre to control damaging rodent populations.

c. 75 percent of actual cost, not to exceed $365 per acre, for plantation replanting including the following:

(1) Establishing ground cover,

(2) Trees and tree planting,

(3) Weed control.

d. $2 per rod, not to exceed $24 per acre, for temporary electric fencing to control deer browse damage.

12.84(8) *Planned grazing systems.* 75 percent of actual cost or estimated cost whichever is less. Does not include boundary fences or road fences. Fencing limited to $8 per rod. Development of a water source is not eligible.

12.84(9) *Conservation cover.* 75 percent of actual cost or estimated cost, whichever is less.

27—12.85(161C) Special practice and cost-share procedures eligibility. Districts may submit requests to establish eligible practices, develop cost-share procedures, experiment with new conservation practices and explore new technologies with approval of the state soil conservation committee.

12.85(1) *District designation.* Districts shall submit to the SSCC the description of their intentions which could include:

a. Type of practice.

b. Cost-share rate.

c. Resource to be protected.

d. Estimated cost.

e. Landowner interest.

f. Technology to be addressed.

12.85(2) *State soil conservation committee evaluation.* The state soil conservation committee shall examine the district submission under 12.85(1) with respect to the following criteria.

a. The public and current use of the resource to be protected.

b. The nature, extent, and severity of the problem to be addressed.

c. The degree to which the request focuses practice or technology application in a manner that will achieve a soil erosion or water quality benefit from the funds available.

d. Whether a specification can be developed by NRCS or DNR for the new technology or practice.

12.85(3) *Review time limit.* The state soil conservation committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.85(4) *Disapproval of designation.* In the event of disapproval of district requests, the state soil conservation committee shall inform the district of the reason for disapproval.

This rule is intended to implement Iowa Code chapters 161A and 161C.

27—12.86 to **12.89** Reserved.

PART 9

27—12.90(161C,312) Reporting and accounting. Reports will be prepared in the same manner as provided in rule 27—10.91(161A,312).

These rules are intended to implement Iowa Code chapters 161A and 161C, Iowa Code section 99E.34 and 1989 Iowa Acts, chapter 236.

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50.97(2) *Withdrawals.*

a. Requests to withdraw from investment adviser licensure shall be filed on a current Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser).

b. Requests to withdraw from investment adviser representative licensure shall be filed on a current Form U-5 (Uniform Termination Notice for Securities Industry Registration).

c. If a federal covered adviser is no longer conducting business in the state, the federal covered adviser shall notify the administrator by letter or by filing with the administrator a current Form ADV-W.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

191—50.98 and **50.99** Reserved.

191—50.100(502) Definition of investment adviser representative of a federal covered adviser.

50.100(1) The term "investment adviser representative" as used in Iowa Code chapter 502 and as employed by or associated with a federal covered adviser only includes a person who has a "place of business" in this state, as defined in 50.100(2)*"d,"* and who either:

a. Is a "supervised person," as defined in 50.100(2)*"c,"* provided the supervised person:

(1) Has clients more than 10 percent of whom are natural persons, other than "excepted persons," as defined in 50.100(2)*"a,"* or has no more than five clients who are natural persons other than "excepted persons" as defined in 50.100(2)*"a."*

(2) On a regular basis solicits, meets with, or otherwise communicates with clients of a federal covered adviser, and

(3) Does not provide only "impersonal investment advice," as defined in 50.100(2)"b"; or who

b. Is not a "supervised person" as that term is defined in 50.100(2)*"c,"* and solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered adviser.

50.100(2) For purposes of subrule 50.100(1):

a. "Excepted person" means a natural person who:

(1) Immediately after entering into the investment advisory contract with the investment adviser has at least $750,000 under management with the investment adviser;

(2) The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth (together with assets held jointly with a spouse) of more than $1,500,000 at the time the contract is entered into;

(3) Owns not less than $5,000,000 in investments at the time the advisory contract is entered into;

(4) Is an executive officer, director, trustee, general partner or person serving in a similar capacity, of the federal covered adviser;

(5) Is an employee of the federal covered adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the federal covered adviser) and who, in connection with the employee's regular functions or duties, participates in the investment activities of such federal covered adviser, provided that such employee has been performing such functions and duties for or on behalf of the federal covered adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months; or

(6) Is not a resident of the United States.

b. "Impersonal investment advice" means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

c. "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

d. "Place of business" means:

(1) An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, or

(2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

e. "Client" means

(1) A natural person and any of the following:

1. Any minor child of the natural person;

2. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

3. All accounts of which the natural person or the persons referred to in 50.100(2)*"e,"* or both, are the only primary beneficiaries; and

4. All trusts of which the natural person or the person referred to in 50.100(2)*"e,"* or both, are the only primary beneficiaries;

(2) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in 50.100(2)*"e"*(1)"4"), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(3) Two or more legal organizations referred to in 50.100(2)*"e"*(2) that have identical owners.

50.100(3) Supervised persons may rely on the definition of "client" in 50.100(2)*"e"* to identify clients for purposes of subrule 50.100(1), except that supervised persons need not count clients that are not residents of the United States.

This rule is intended to implement Iowa Code chapter 502.

191—50.101(502) Investment adviser disclosure statement.

50.101(1) Unless otherwise provided, an investment adviser, registered or required to be registered pursuant to Iowa Code section 502.301, shall furnish each advisory client and prospective advisory client with a written disclosure statement. The disclosure statement may be a copy of Part II of the adviser's Form ADV or written documents containing at least the information then required by Part II of Form ADV, or such other information as the administrator may require.

50.101(2) Except as provided in paragraph *"c"* below, an investment adviser shall deliver the written disclosure statement to an advisory client or prospective advisory client as follows:

a. Not less than 48 hours prior to entering into any investment advisory contract with the client or prospective client; or

b. At the time of entering into the contract, if the advisory client has the right to terminate the contract without penalty within five business days after entering into the contract.

c. The disclosure statement need not be delivered in connection with entering into a contract for impersonal advisory services.

50.101(3) Except as provided in paragraph *"a"* below, an investment adviser shall annually deliver, or offer in writing to deliver upon written request, the written disclosure statement to each of the adviser's advisory clients without charge.

a. The disclosure statement need not be delivered or offered to advisory clients receiving services solely pursuant to a contract for impersonal advisory services requiring a payment of less than $200.

b. With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of $200 or more, an offer of the type specified in this rule shall also be made at the time of entering into an advisory contract. The investment adviser shall deliver the written statement to the client within seven days of receiving a written request made pursuant to an offer required by this rule.

50.101(4) An investment adviser that renders substantially different types of advisory services to different advisory clients may omit information required by Part II of Form ADV from the statement furnished to an advisory client or prospective advisory client, if the omitted information applies only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

50.101(5) Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of Iowa Code chapter 502 or the rules thereunder or other federal or state law to disclose any information to the adviser's advisory clients or prospective advisory clients not specifically required by this rule.

50.101(6) For purposes of this rule:

a. Contract for impersonal advisory services means any contract relating solely to the provision of investment advisory services:

(1) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(2) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) Any combination of the foregoing services.

b. Entering into, in reference to an investment advisory contract, does not include an extension or renewal without material change of the contract which is in effect immediately prior to the extension or renewal.

This rule is intended to implement Iowa Code chapter 502.

191—50.102 Reserved.

191—50.103(502) Cash solicitation.

50.103(1) It shall constitute an act, practice, or course of conduct which operates as a fraud or deceit upon a person, as provided under Iowa Code section 502.401(3), for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

a. The solicitor is not a person:

(1) Subject to an order issued by the administrator under Iowa Code section 502.304(1), or

(2) Convicted within the previous ten years of any felony or misdemeanor involving conduct described in Iowa Code section 502.304(1)*"c,"* or

(3) Who has been found by the administrator to have engaged, or has been convicted of engaging, in any of the conduct specified in Iowa Code section 502.405, 502.304(1)*"b,"* or 502.304(1)*"j,"* or has materially aided in the act of violation of 502.304(1)*"d,"* or

(4) Subject to an order, judgment, or decree described in Iowa Code section 502.304(1)*"d,"* or

(5) Described in the rules implementing Iowa Code chapter 502; and

b. Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and

c. Such cash fee is paid to a solicitor:

(1) With respect to solicitation activities for the provision of impersonal advisory services only; or

(2) Who is:

1. A partner, officer, director or employee of such investment adviser, or

2. A partner, officer, director or employee of a person who controls, is controlled by, or is under common control with such investment adviser, provided that the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and any such other person, is disclosed to the client at the time of the solicitation or referral; or

(3) Other than a solicitor specified in 50.103(1)*"c"*(1) or 50.103(1)*"c"*(2) above if all of the following conditions are met:

1. The written agreement required by 50.103(1)*"b"*:

• Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;

• Contains an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of Iowa Code chapter 502 and the rules promulgated thereunder, whichever is applicable;

• Requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by subrule 50.101(3) or SEC Rule 204-0, as applicable, and a separate written disclosure statement as described in subrule 50.103(2).

2. The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

3. The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

50.103(2) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to 50.103(1)*"c"*(3)"3" shall contain the following information:

a. The name of the solicitor;

b. The name of the investment adviser;

c. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

d. A statement that the solicitor will be compensated for the solicitor's solicitation services by the investment adviser;

e. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

f. The amount, if any, the client will be charged for the cost of obtaining the client's account in addition to the advisory fee, and the differential, if any, among clients, with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(1) Nothing in this rule shall be deemed to relieve any person of any fiduciary duty or other obligation to which such person may be subject under any law.

(2) For the purposes of this rule:

1. "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

2. "Client" includes any prospective client.

3. "Impersonal advisory services" means investment advisory services provided solely by means of written materials or oral statements which do not purport to meet the objectives or needs of the specific client, statistical information containing no expressions of opinions as to the investment merits of particular securities, or any combination of the foregoing services.

(3) The investment adviser shall retain a copy of each written agreement required by this rule as a part of the records required to be kept under Iowa Code chapter 502 and the rules promulgated thereunder.

(4) The investment adviser shall retain a copy of each acknowledgment and solicitor disclosure document referred to in this rule as part of the records required to be kept under Iowa Code chapter 502 and the rules promulgated thereunder.

(5) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirements of 50.103(2)*"f"*(3) or 50.103(2)*"f"*(4) if such investment adviser:

1. Is registered or licensed as an investment adviser in the state in which the adviser maintains the adviser's principal place of business;

2. Is in compliance with the applicable books and records requirements of the state in which the adviser maintains the adviser's principal place of business; and

3. The provisions of this rule would require the investment adviser to maintain books or records in addition to those required by the laws of the state in which the investment adviser maintains the adviser's principal place of business.

(6) As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

This rule is intended to implement Iowa Code chapter 502.

191—50.104(502) Unethical business practices of investment advisers, and investment adviser representatives, or fraudulent or deceptive conduct by federal covered advisers.

50.104(1) A person who is an investment adviser, an investment adviser representative, or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the adviser's clients. The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise not permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of each relationship and the circumstances of each case, an investment adviser and an investment adviser representative shall not engage in unethical business practices, and a federal covered adviser shall not engage in fraudulent or deceptive conduct, including the following:

a. Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

b. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

c. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if the adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

d. Placing an order to purchase or sell a security for the account of a client without authority to do so.

e. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

f. Borrowing money or securities from a client unless the client is a member of the investment adviser's or investment adviser representative's immediate family.

g. Loaning money to a client unless the client is a member of the investment adviser's or investment adviser representative's immediate family.

h. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser or investment adviser representative, or misrepresenting the nature of the advisory services being offered or the fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made.

i. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

j. Charging a client an advisory fee that is unreasonable. The following nonexclusive list of factors may be considered in determining whether a fee is unreasonable: the type(s) of services to be provided, the experience of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

k. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of the adviser's employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or the adviser's employees.

l. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

m. Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

n. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

o. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940.

p. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

q. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

r. Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under Iowa Code chapter 502 notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

s. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of Iowa Code chapter 502 or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940.

t. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

u. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder.

50.104(2) The conduct set forth in subrule 50.104(1) is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives, and federal covered advisers to the extent permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290).

This rule is intended to implement Iowa Code chapter 502.

191—50.105(502) Custody of client funds or securities.

50.105(1) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client unless:

a. The investment adviser notifies the administrator in writing that the investment adviser has or may have custody;

b. The securities of each client are segregated, marked to identify the particular client having the beneficial interest in those securities, and held in safekeeping in a place free from risk of destruction or other loss;

c. All client funds are deposited as follows:

(1) In one or more bank accounts containing only clients' funds;

(2) The account or accounts are maintained in the name of the investment adviser as agent or trustee for the clients; and

(3) The investment adviser maintains a separate record for each account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the accounts, and the exact amount of each client's beneficial interest in the account;

d. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place and manner in which the funds and securities will be maintained and, subsequently, if or when there is a change in the place or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client;

e. At least once every three months, the investment adviser sends to each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits and transactions in the client's account during that period; and

f. At least once every calendar year, an independent certified public accountant verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser. A report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the administrator within 30 days after each examination. The effective date of this paragraph shall be June 9, 2000.

g. For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

50.105(2) Reserved.

This rule is intended to implement Iowa Code chapter 502.

191—50.106 and **50.107** Reserved.

191—50.108(502) Record-keeping requirements for investment advisers.

50.108(1) Except as otherwise provided in subrule 50.108(12) for out-of-state investment advisers, every investment adviser registered or required to be registered under Iowa Code chapter 502 shall make and keep true, accurate and current the following books, ledgers and records:

a. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

b. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

c. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

d. All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

e. All bills or statements (or copies of all bills or statements), paid or unpaid, relating to the investment adviser's business as an investment adviser.

f. All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this rule, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation.

g. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

(1) Any recommendation made or proposed to be made and any advice given or proposed to be given,

(2) Any receipt, disbursement or delivery of funds or securities, or

(3) The placing or execution of any order to purchase or sell any security.

The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser. If the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

h. A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

i. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

j. A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

k. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

l. A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)*"l,"* "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations: any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of an affiliated person.

(4) For the purposes of 50.108(1)*"l,"* "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(5) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)*"l"* because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

m. Notwithstanding the provisions of 50.108(1)*"l,"* when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)*"m,"* an investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of the adviser's most recent three fiscal years or for the period of time since organization, whichever is the lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of the adviser's total sales and revenues, and the adviser's income or loss before income taxes and extraordinary items, from such other business or businesses.

(4) For purposes of 50.108(1)*"m,"* "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

1. Any person in a control relationship to the investment adviser;
2. Any affiliated person of a controlling person; and
3. Any affiliated person of an affiliated person.

(5) For the purposes of 50.108(1)*"m,"* "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(6) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)*"m"* because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

n. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Iowa Code chapter 502 and these rules, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

o. For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(1) Evidence of a written agreement as required by 50.103(1)*"b"* to which the adviser is a party related to the payment of such fee;

(2) A signed and dated acknowledgment of receipt from the client as required by 50.103(1)*"c"*(3)"2" that evidences the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(3) A copy of the solicitor's written disclosure statement as required by 50.103(1)*"c"*(3)"1." The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 206(4)-3 of the Investment Advisers Act of 1940.

(4) For purposes of 50.108(1)*"o,"* the term "solicitor" shall mean any person or entity that, for compensation, acts as an agent of an investment adviser in referring potential clients.

p. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

q. A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

r. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

s. Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

t. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in 50.108(1)*"l"*(3), which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

50.108(2) If an investment adviser subject to subrule 50.108(1) has custody or possession of securities or funds of any client, the records required to be made and kept under subrule 50.108(1) shall include:

a. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

b. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

c. Copies of confirmations of all transactions effected by or for the account of any client.

d. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

50.108(3) Every investment adviser subject to subrule 50.108(1) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

a. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

b. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

50.108(4) Any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

50.108(5) Every investment adviser subject to subrule 50.108(1) shall preserve the following records in the manner prescribed:

a. All books and records required to be made under the provisions of paragraphs 50.108(1)*"a"* to 50.108(3)*"a,"* inclusive, except for books and records required to be made under the provisions of 50.108(1)*"k"* and 50.108(1)*"p,"* shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

b. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

c. Books and records required to be made under the provisions of 50.108(1)*"k"* and 50.108(1)*"p"* shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media).

d. Books and records required to be made under the provisions of 50.108(1)*"q"* to *"t,"* inclusive, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

e. Notwithstanding other record preservation requirements of this rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(1) Records required to be preserved under 50.108(1)*"c," "g"* to *"j," "n"* to *"o,"* and *"q"* to *"s,"* subrule 50.108(2) and subrule 50.108(3), and

(2) The records or copies required under the provisions of 50.108(1)*"k"* and 50.108(1)*"p,"* which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in 50.108(5)*"c."*

50.108(6) An investment adviser subject to subrule 50.108(1), before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule, and shall notify the administrator in writing on Form ADV-W of the exact address where the books and records will be maintained during the period.

50.108(7) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced by photographic film or, as provided in subrule 50.108(8), on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the administrator through the administrator's examiners or other representatives may request;

c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available for the administrator's examination the adviser's records, pursuant to Iowa Code section 502.303, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

50.108(8) Pursuant to subrule 50.108(7), an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

50.108(9) For purposes of this rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

50.108(10) For purposes of this rule, "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

50.108(11) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3 (1998)) and 17a-4 (17 CFR 240.17a-4 (1998)) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

50.108(12) Every investment adviser that is registered or required to be registered in this state and that has the adviser's principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with such state's record-keeping requirements, if any.

This rule is intended to implement Iowa Code chapter 502.

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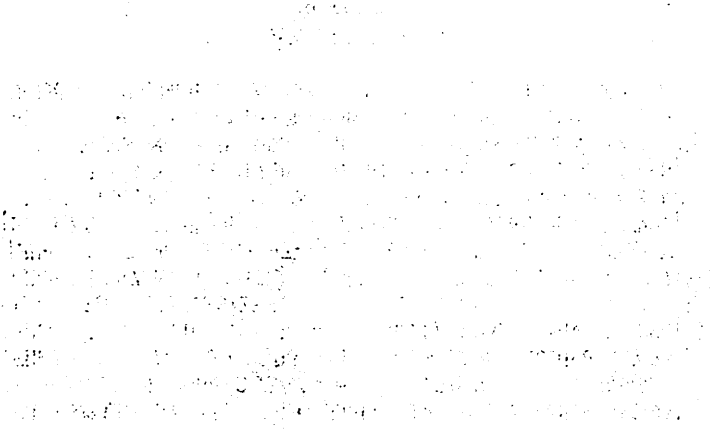
CHAPTERS 51 to 53
Reserved



ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

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

CHAPTER 1
ADMINISTRATION

IAC Supp. 8/14/85
[Rules 1.5 to 1.13 were either rescinded or renumbered and new rules added, see IAB 8/14/85]
[Prior to 6/1/88, see Engineering and Land Surveying Examiners, Board of [390] Ch 1]
[Rules 1.10 to 1.29 were amended and transferred to 193C—Chapter 4, IAC Supplement 11/27/91]

193C—1.1(542B) General statement. The practice of engineering and land surveying affects the life, health, and property of the people in Iowa. The Iowa engineering and land surveying examining board exists for this reason, and the board's principal mandate is the protection of the public interest.

1.1(1) *Administration.* Administration of the board has not been separated into panels, divisions, or departments. While the expertise of a board member may be called upon to frame special examinations and evaluate applications for licensing in a specialized engineering branch, the board functions in a unified capacity on all matters which may come before it. The board maintains an office in Ankeny, Iowa, and requests or submissions may be directed to the secretary of the board at that location.

1.1(2) *Meetings.* Regular meetings of the board generally are held each month. The board currently administers two-day licensing examinations twice each year. Information concerning the location and dates for meetings and examinations may be obtained from the board's office.

1.1(3) *Practice of engineering.* The practice of engineering means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences, such as consultation, investigation, evaluation, planning, design, and design coordination of engineering works and systems, planning the use of land and water, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications, any of which embraces such services or creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products of a mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property and including such other professional services as may be necessary to the planning, progress, and completion of the services identified in this subrule. "Design coordination" includes the review and coordination of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers, architects, landscape architects, land surveyors, and other professionals working under the direction of the engineer. "Engineering surveys" includes all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land system. The practice of engineering includes the environmental engineering activities which may be involved in developing plans, reports, or actions to remediate an environmentally hazardous site.

This rule is intended to implement Iowa Code section 542B.2.

193C—1.2(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ENGINEERING AND LAND SURVEYING EXAMINING BOARD

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.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions the 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.
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 directed 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 petitioner to be affected by, or interested in, the questions in the petition.
8. Any request by petitioner for a meeting provided for by subrule 1.2(6).

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.

1.2(1) *Notice of petition.* Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to subrule 1.2(5) to whom notice is required by any provision of law. The board may also give notice to any other persons.

1.2(2) *Intervention.*

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. 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 board.

c. A petition for intervention shall be filed at the board's offices. Such a petition is deemed filed when it is received by that office. The board will 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 must substantially conform to the following form:

ENGINEERING AND LAND SURVEYING EXAMINING BOARD

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 in 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 intervenor's representative, and a statement indicating the person to whom communications should be directed.

1.2(3) *Briefs.* The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

1.2(4) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the executive secretary of the board at the board's offices.

1.2(5) *Service and filing of petitions and other papers.*

a. When service required. 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 upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention 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.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board's offices. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by subrule 4.24(5).

1.2(6) *Board consideration.* Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

1.2(7) *Action on petition.* Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by 1998 Iowa Acts, chapter 1202, section 13(5). The date of issuance of an order or of a refusal to issue an order is as defined in rule 193C—4.2(17A).

1.2(8) *Refusal to issue order.* The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.

e. 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.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. 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 board decision already made.

i. 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.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the 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 refusal to issue a ruling.

1.2(9) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner, and all intervenors, the specific statutes, rules, policies, decisions, 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.

1.2(10) *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.

1.2(11) *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 board, the petitioner and any intervenors 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 board. The issuance of a declaratory order constitutes final board action on the petition.

193C—1.3(17A) Petition for rule making. Any person or board may file a petition for rule making with the board at 1918 S.E. Hulsizer, Ankeny, Iowa 50021. A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board with an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

IOWA ENGINEERING AND LAND SURVEYING EXAMINING BOARD

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

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 board'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 as provided for by subrule 1.3(3).

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.

The board may deny a petition because it does not substantially conform to the required form.

1.3(1) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

1.3(2) *Inquiries.* Inquiries concerning the status of a petition for rule making may be made to the Engineering and Land Surveying Examining Board, Executive Secretary, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

1.3(3) *Board consideration.* Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board 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 board by any person.

Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, 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 board mails or delivers the required notification to petitioner.

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 board's rejection of the petition.

193C—1.4(542B) Licensing. A person requesting to be licensed as a professional engineer or land surveyor shall submit a completed application, under oath, on proper forms which may be obtained from the board's office. At the time of the examination application cutoff date, the application is considered current if it has been one year, or less, since it was signed and notarized.

1. *Academic transcripts.* Completion of post-high school education shall be evidenced by receipt of an applicant's transcripts directly from the office of the registrar of each institution attended. Under the Foreign Engineering Education Evaluation Program of the National Council of Examiners for Engineering and Surveying, transcripts from institutions located outside the boundaries of the United States of America shall be evaluated for authenticity and substantial equivalency with ABET/EAC accredited engineering programs. Such authentication shall be at the expense of the applicant.

2. *Work project description.* An applicant for an initial licensure as a professional engineer or land surveyor must include with the application a statement of approximately 200 words describing a significant project on which the applicant worked closely during the last 12 months. The statement shall describe the applicant's degree of responsibility for the project; it shall identify the project's owner and its location. The statement shall be signed and dated. Criteria the board shall use in evaluating the acceptability of the project as qualifying experience for the applicant shall include but not be limited to the following: (1) the degree to which the project and the experience described has progressed from assignments typical of initial assignments to those more nearly expected of a licensed professional; (2) the scope and quality of the professional tutelage experienced by the applicant; (3) the technical decisions required of the applicant in the project; and (4) the professional decisions required of the applicant. The board reserves the right to contact the employer and the person providing tutelage on the project for information about the project experience presented to the applicant.

3. *Requirements for examination.* The specific requirements for initial licensing in Iowa are established in Iowa Code section 542B.14, and it is the board's policy to issue initial licensures only when those requirements are satisfied chronologically in the order set forth in the statute. Thus, an applicant first must satisfy the practical experience or educational requirements; secondly, the Fundamentals Examination, the Engineer Intern requirements or Land Surveyor Intern requirements as appropriate, and the professional experience; and thirdly, the Professional Examination. A Fundamentals Examination may be taken anytime after satisfying the practical experience or educational requirements, but it must be taken prior to the Professional Examination: College seniors studying an Accreditation Board of Engineering and Technology (ABET) or Canadian Engineering Accreditation Board (CEAB) approved curriculum may take the appropriate Fundamentals Examination during the final academic year; applicants will be permitted to submit for examination during the testing period which most closely precedes anticipated graduation. However, a certified transcript showing that the applicant was graduated must be sent by the registrar to the board before an applicant's examination results will be considered. Applicants who were graduated from a satisfactory engineering or land surveying program and have 25 years or more of work experience satisfactory to the board shall not be required to take the Fundamentals Examination.

An applicant who has earned a Doctor of Philosophy degree from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar doctoral degree in a discipline approved by the board, shall not be required to take the Fundamentals Examination.

An applicant for the professional examination shall have a minimum of one year's practical experience in the United States of America or a territory under its jurisdiction.

4. *Verification of experience.* An applicant for a Principles and Practice Examination who has had professional experience under more than one employer shall provide names and addresses of individuals with knowledge of the work performed under a minimum of two employers. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

5. *References.* An applicant for a Principles and Practice Examination or for licensure by comity shall submit five references, at least three of which shall be from licensed professional engineers or land surveyors as appropriate on forms provided by the board. At least two of the references shall be from a supervisor of the applicant.

1.4(1) *Education and experience prerequisites.* The board generally will require the minimum number of years set forth below before an applicant will be permitted to take either the Fundamentals or the Professional Examination. Only engineering programs accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET), programs that have been evaluated by an agency or body acceptable to the board as substantially equivalent, or engineering programs that are strongly associated with and related to EAC/ABET-accredited programs may be considered as qualifying education for licensure as a professional engineer. Engineering technology or other technology programs are not qualifying education for licensure as a professional engineer.

Only experience preceding the cutoff date for the examination application will be considered in the evaluation of applications for examinations.

EXPERIENCE REQUIREMENTS FOR ENGINEERING APPLICANTS
Effective July 1, 1991

Educational Level	1 Minimum additional years experience prior to taking Fundamentals Examination	2* Minimum additional years experience prior to taking Professional Examination
Mathematics or Physical Sciences		
4-year Bachelor's Degree plus Master's Degree in Engineering**	0	4
All Engineering Technology Programs and Architecture		
4-year Bachelor's Degree, Technology or Architecture plus Master's Degree in Engineering**	0	4
Engineering Program Nonaccredited		
4-year Bachelor's Degree	1	4
4-year Bachelor's Degree plus Master's Degree in Engineering**	0	4
Engineering Program Accredited***		
4-year Bachelor's Degree	0	4

*NOTE: Column 1 indicates the years of practical experience required for the Fundamentals Examination in addition to the completion of the stated educational level. In order to determine the total years of practical experience required before taking the Professional Examination, column 2 must be added to column 1.

**The Master's Degree in engineering must be from an institution in the United States of America with an accredited Bachelor's Degree in the same curriculum, and the Master's Degree candidate must be required to fulfill the requirements for the Bachelor's Degree in the same area of specialization.

***Accredited shall mean an engineering program accredited by the Accreditation Board for Engineering Technology, Inc. (ABET) or the Canadian Engineering Accreditation Board (CEAB) or another accrediting body accepted by the National Council of Examiners for Engineering and Surveying (NCEES).

Teaching of engineering or surveying and mapping subjects at the level of assistant professor or higher in an accredited engineering or surveying and mapping program or research may be considered as experience, provided the applicant's immediate supervisor is a licensed professional engineer or land surveyor as applicable in the jurisdiction in which the college or university is located. If the applicant's immediate supervisor is not a licensed professional, a program of mentoring or peer review by a licensed engineer or land surveyor acceptable to the board must be demonstrated. Applicants using teaching or research as experience must have a minimum of four years of acceptable experience obtained in research, industry, consulting or land surveying. At least one year of that acceptable experience must be full-time professional level engineering or land surveying experience outside academic employment. The board shall consider the length of time in each assignment, the complexity of the project(s) presented, the degree of responsibility of the applicant within the project, and the correspondence of the experience presented outside academic employment with respect to typical professional practice and other factors the board deems relevant. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

e. Joint applications. Applicants requesting licensure both as professional engineers and land surveyors must submit a history of professional experience in both fields. Such histories will be considered separately on a case-by-case basis, and it is the board's general practice not to allow full credit for concurrent experience in both professions.

1.4(3) *Branch licensure.* A list of engineering branches in which licensure currently is being granted can be obtained from the board's office. Branches conform to those branches generally included in a collegiate curricula.

An applicant for licensure in Iowa shall be licensed first in the branch or branches indicated by the applicant's education and experience.

A minimum of 50 percent of the required practical experience in which the individual is to be examined shall have been in that same branch of engineering.

1.4(4) *Examination.* The board prepares and grades the Iowa State Specific Examination administered to land surveyor applicants and, in special cases, the examination for licensure in engineering. All other examinations are uniform examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES). The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants shall pay examination fees directly to the service.

a. Fundamentals examinations. The Fundamentals of Engineering Examination is a written, eight-hour examination; it covers general engineering principles and other subjects commonly taught in accredited engineering programs. The Fundamentals of Land Surveying Examination is a written, eight-hour examination and covers general land surveying principles.

b. Professional engineering examinations. The Professional Engineering Examination is a written, eight-hour examination designed to determine proficiency and qualification to engage in the practice of professional engineering only in a specific branch. A separate examination shall be required for each branch in which licensure is desired.

c. Professional land surveying examinations. The Professional Land Surveying Examination shall consist of two examinations. The first is a six-hour examination designed to determine general proficiency and qualification to engage in the practice of land surveying. The second is a two-hour Iowa State Specific Examination, which is designed to determine an applicant's proficiency and qualifications to practice land surveying specifically in Iowa. Each of the two examinations shall be scored separately. One or more of the land surveyor members of the board must conduct an oral interview with each applicant for the Professional Land Surveying Examination prior to the examination. An applicant will not be permitted to write the examination without successfully passing the oral examination. This interview is to verify the applicant's knowledge and experience in the principles and practice of land surveying in Iowa. The applicant is required to bring to the oral interview samples of the applicant's work which include surveying plats, subdivision plats, acquisition plats, corner certificates, and related field notes. The applicant is expected to have knowledge in the following: conduct of original surveys, restoration of obliterated corners, reestablishing of lost corners, retracement work and how to use evidence in restoration of obliterated land lines as well as corners, laws governing riparian rights, accretions, adverse possession, acquiescence, and Iowa laws regarding minimum standards for surveying, platting and corner certification.

d. Passing scores. The board reviews test scores for each examination and determines what level shall constitute a minimum passing score for that examination. In making its determination, the board generally is guided by the passing score recommended by the NCEES. Although a 70 percent score on examinations prepared and graded locally has been the score which the board historically has regarded as passing, the board fixes the passing score for each examination at a level which it concludes is a reasonable indication of minimally acceptable professional competence.

e. Reexamination. Applicants who fail an examination may request reexamination at the next examination period. An applicant who fails an examination twice is not permitted to appear for another examination until the applicant can demonstrate two additional years of satisfactory education or work experience. The aforementioned two years of satisfactory education or work experience shall apply only if the applicant has failed an examination twice within a time span of less than one and one-quarter years. Applicants who have completed the aforementioned two additional years of satisfactory education or work experience and applicants that have failed one examination more than one and one-quarter years before must completely reapply to the board for reexamination; such applicants will be processed as an applicant applying to take the examination for the first time.

(1) Applicants who have failed one or both parts of the Professional Land Surveying Examination twice and have fulfilled at least two additional years of satisfactory education or work experience and submitted a complete application to the board for reexamination must be interviewed by one of the land surveyor members of the board prior to the examination in order to be approved to write the examination. The applicant is required to bring samples of the applicant's survey work to the oral interview as described above in subrule 1.4(4), paragraph *"c,"* and documentation of any classwork or land surveying workshops or seminars attended during the two-year period.

(2) Applicants failing one or both parts of the Professional Land Surveying Examination will be required to retake only the failed portions. An applicant successful in passing one portion of the land surveying examination need not be reexamined for that portion regardless of how much time elapses between the successfully passed portion and any future appearance to retake the failed portion of the examination. A satisfactory score must be obtained on each portion of the examination before the board will grant licensure as a land surveyor.

f. Failure to appear. An applicant who fails to appear for an examination may sit for the examination the next time it is offered upon payment of a fee set by the board, provided the application will not be more than one year old at the time of the application cutoff date for the examination.

g. Iowa State Specific Examination. An applicant for licensure as a land surveyor in Iowa (by comity or examination) that need only be examined for the state specific portion of the Professional Land Surveying Examination may take the examination at the board office by appointment in accordance with all other requirements.

h. Materials permitted in examination room. For security reasons, applicants shall adhere to the list of items that may be taken into an examination room. Applicants shall refrain from taking items which are identified as being not permitted in the examination room.

(1) Battery-operated, silent, nonprinting calculators are permitted. If a calculator has the capability to have interchangeable modules, once the examination begins no applicant shall insert, remove, or exchange any module. Any calculator that has a memory unit that retains stored information when the calculator is turned off must have the memory erased prior to the applicant's leaving the examination room. All calculators must be turned off before the applicant leaves the examination room.

(2) Computers, laptop computers, and notebook computers are not permitted.

(3) Devices that may compromise the security of the examination or the examination process are not permitted. Wireless facsimile machines, cellular telephones, or any device which receives any radio or wireless communication is not permitted. External communication channels of any kind are prohibited.

(4) Any device which requires a cord connection to electric power is not permitted.

(5) For open-book examination, an applicant may take into the examination room for personal use only handbooks, textbooks, and bound reference materials, provided that the materials remain bound in a cover during the entire examination. Materials are considered bound if they are stitched or glued permanently or fastened securely in their covers by fasteners which penetrate all papers such as ring binders, spiral binders, plastic snap binders, brads, and screw posts. Applicants are not permitted to exchange any reference materials. Writing tablets, unbound tables or unbound notes are not permitted.

1.30(5) The information requested in each certification block must be typed or legibly printed in permanent ink except the signature which shall be an original signature in contrasting ink color on each official copy. The seal implies responsibility for the entire submission unless the area of responsibility is clearly identified in the information accompanying the seal.

1.30(6) It shall be the responsibility of the licensee to forward copies of all revisions to the submission, which shall become a part of the official copy of the submission. Such revisions shall be identified as applicable on a certification block or blocks with professional seals applied so as to clearly establish professional responsibility for the revisions.

1.30(7) The licensee is responsible for the custody and proper use of the seal. Improper use of the seal shall be grounds for disciplinary action.

1.30(8) Computer-generated seals may be used on final original drawings provided that a handwritten signature is placed adjacent to the seal and the date is written next to the signature on the official copy or copies. Computer-generated signatures and dates are not acceptable.

This rule is intended to implement Iowa Code section 542B.16.

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CHAPTER 2
MINIMUM STANDARDS FOR PROPERTY SURVEYS

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

193C—2.1(542B) Scope. Each land surveyor is required to meet the minimum standards for property surveys described by statute or administrative rule. The minimum standards of this rule shall apply to all property surveys performed in this state except those done for acquisition plats as described in Iowa Code chapter 354.

193C—2.2(542B) Definitions.

"Plat" shall mean both plats of survey and subdivision plats as defined in Iowa Code section 355.1.

"Property survey" shall mean any land survey performed for the purpose of describing, monumenting, retracing and establishing boundary lines, dividing, subdividing, or platting one or more parcels of land.

"Retrace" shall mean following along a previously established line to logical termini monumented by corners that are found or placed by the surveyor.

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

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

193C—2.5(542B) Plats. A plat shall be drawn for every property survey performed showing information developed by the survey and including the following elements:

2.5(1) The plat shall be drawn to a convenient scale which shall be clearly stated and graphically illustrated by a bar scale on every plat sheet.

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

2.5(3) The plat shall show and identify all monuments necessary for the location of the parcel and shall indicate whether such monuments were found or placed and shall include an accurate description of each monument consisting of size, shape, material type, capped with license number, and color as applicable.

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

2.5(5) The plat shall show that record title boundaries, centerlines, and other boundary lines were retraced to monuments found or placed by the surveyor. The surveyor shall retrace those exterior lines of a section which divide a metes and bounds described parcel to determine acreage for assessment and taxation purposes.

2.5(6) The plat shall show that the survey is tied to a physically monumented land line which is identified by two United States public land survey system corners or by two physically monumented corners of a recorded subdivision. The plat shall show a distance relationship measured by the surveyor between the two corners on the physically monumented land line. The physically monumented land line shall be germane to the survey of the lot, parcel, or tract.

2.5(7) The plat shall bear the signature of the land surveyor, a statement certifying that the work was done by the surveyor or under the surveyor's direct personal supervision, and the surveyor's Iowa licensure number and legible seal as provided in rule 193C—1.30(542B).

2.5(8) The surveyor shall record every plat and description with the county recorder no later than 30 days after signature on the plat by the surveyor. The 30-day requirement shall not apply to subdivision plats.

193C—2.6(542B) Measurements.

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

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

2.6(3) The unadjusted closure for all surveys shall be not greater than 1 in 5,000 and, for subdivisions, 1 in 10,000.

2.6(4) In a closed traverse the sum of the measured angles shall agree with the theoretical sum by a difference not greater than 30 seconds times the square root of the number of angles.

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

193C—2.7(542B) Monuments. Permanent monuments shall be constructed of reasonably permanent material solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment. The licensed land surveyor shall affix a cap of reasonably inert material bearing an embossed or stencil cut marking of the Iowa licensure number of the licensed land surveyor to the top of each monument set by the surveyor. Monuments or marks placed in pavements need not be capped. See rule 2.3(542B).

These rules are intended to implement Iowa Code sections 355.3 and 542B.2.

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CHAPTER 4
DISCIPLINE AND PROFESSIONAL CONDUCT OF LICENSEES

[Prior to 6/1/88, see Engineering and Land Surveying Examiners, Board of[390] Ch 4]
[Prior to 11/27/91, for disciplinary rules see 193C—1.10(114) to 193C—1.29(114)]
[Rules 4.7(542B) to 4.28(542B) renumbered as 4.8(542B) to 4.29(542B) IAC 11/23/94]

193C—4.1(542B) General statement. Protection of the life, health or property of the people in Iowa requires that the board deal with cases involving malpractice or violation of Iowa Code chapter 542B.

193C—4.2(17A) Definitions.

"Issuance" means the date of mailing of a decision or order or the date of delivery if service is by other means unless another date is specified in the order.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order on a contested case in which the board did not preside.

193C—4.3(542B) Reprimands, probation, license suspension or license revocation. Acts or omissions on the part of a licensee that are grounds for a reprimand, period of probation, license suspension or license revocation are as follows:

4.3(1) Acts or offenses defined in Iowa Code section 542B.21.

4.3(2) Acts or omissions which constitute negligence or carelessness that licensees must report to the board as defined in rule 4.4(542B).

4.3(3) Unethical conduct including, but not limited to, violation of the code of professional conduct in rule 4.8(542B).

4.3(4) Failure to respond within 30 days to written communications from the board and to make available any relevant records with respect to an inquiry or complaint about the licensee's unprofessional conduct. The period of 30 days shall commence on the date when such communication was sent from the board by registered or certified mail with return receipt requested to the address appearing in the last licensure.

4.3(5) Failure to comply with a warning from the board with respect to licensee behavior.

This rule is intended to implement Iowa Code section 542B.21.

193C—4.4(542B) Reporting of acts or omissions. Licensees shall report acts or omissions by a licensee which constitute negligence or carelessness. For the purposes of this rule, negligence or carelessness shall mean demonstrated unreasonable lack of skill in the performance of engineering or land surveying services by failure of a licensee to maintain a reasonable standard of care in the licensee's practice of engineering or land surveying. In the evaluation of reported acts or omissions, the board shall determine if the engineer or land surveyor has applied learning, skill and ability in a manner consistent with the standards of the professions ordinarily possessed and practiced in the same profession at the same time. Standards referred to in the immediately preceding sentence shall include any minimum standards adopted by this board and any standards adopted by recognized national or state engineering or land surveying organizations.

193C—4.5(542B) Peer review committees. The board may appoint a peer review committee for the investigation of a complaint about the acts or omissions of one or more licensees.

4.5(1) *Membership.* A committee shall consist of one or more licensed engineers or licensed land surveyors or both, as determined by the board, who are selected for their knowledge and experience in the type of engineering or land surveying involved in the complaint. The following are ineligible for membership:

a. Members of the engineering and land surveying examining board.

b. Relatives of the respondent or complainant.

c. Individuals employed by the same firm or governmental unit as the respondent or complainant.

4.5(2) *Authority.* The committee's investigation may include activities such as interviewing the complainant, the respondent, individuals with knowledge of the alleged violation, and individuals with knowledge of the respondent's reputation in the community; gathering documents; site visits; and independent analyses as deemed necessary.

The committee may not hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

4.5(3) *Compensation.* Committee members may receive per diem compensation equal to that received by board members for performing board duties. Committee members may be paid reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties within established budget limitations.

4.5(4) *Reports.* Each peer review committee shall submit a written report to the board within a reasonable period of time. The report shall recommend dismissal of the complaint, further investigation or disciplinary proceedings. If further investigation or disciplinary proceedings are recommended, supporting information shall be submitted to the secretary.

The peer review committee may be discharged at the pleasure of the board. The board may dismiss individual members of a committee or add new members at any time. Committee members may be required to testify in the event of formal disciplinary proceedings.

4.5(5) *Investigator.* In addition to or as an alternative to a peer review committee, the board may hire one or more investigators.

193C—4.6(542B) Disputes between licensees and clients. Reports from the insurance commissioner or other agencies on the results of judgments or settlements of disputes arising from malpractice claims or other actions between professional engineers or land surveyors and their clients may be referred to an investigator or peer review committee. The investigator or peer review committee shall investigate the report for violation of the statutes or rules governing the practice or conduct of the licensee. The investigator or peer review committee shall advise the board of any probable violations.

193C—4.7(542B) Practice of engineering or land surveying by firms. A firm shall not directly or by implication offer professional engineering services to the public unless it is owned or managed by, or regularly employs, one or more licensed professional engineers who directly control and personally supervise all professional engineering work performed by the firm.

A firm shall not directly or by implication offer land surveying services to the public unless it is owned or managed by, or regularly employs, one or more licensed land surveyors who directly control and personally supervise all land surveying work performed by the firm.

A firm may not satisfy these requirements by hiring a licensed professional engineer or land surveyor on an as-needed, occasional, or consulting basis, whether an employee or independent contractor.

"To offer" shall mean to advertise in any medium, or to infer in writing or orally that these services are being performed by owners or permanent employees of that firm. Nothing in this rule is intended to prevent a firm from truthfully offering services as a project manager, administrator, or coordinator of a multidisciplined project.

For purposes of this rule, the term "firm" includes regular corporations, professional corporations, registered limited liability partnerships, partnerships, limited liability companies, private practitioners employing others, persons or entities using fictitious or assumed names, or other business entities.

This rule is intended to implement Iowa Code section 542B.26.

193C—4.8(542B) Code of professional conduct. In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, or property of the public, the following code of professional conduct shall be binding upon every person holding a certificate of licensure as a professional engineer or land surveyor in this state.

The code of professional conduct as promulgated herein is an exercise of the police power vested in the board by virtue of the Acts of the legislature, and as such the board is authorized to establish conduct, policy, and practices.

All persons licensed under Iowa Code chapter 542B are charged with having knowledge of the existence of this code of professional conduct and shall be deemed to be familiar with its several provisions and to understand them. Such knowledge shall encompass the understanding that the practices of engineering and land surveying are a privilege, as opposed to a right, and the licensee shall be forthright and candid in statements or written response to the board or its representatives on matters pertaining to professional conduct.

4.8(1) *Responsibility to the public.* Licensees shall at all times conduct their professional practices in a manner that will protect life, health and property and enhance the public welfare. If their professional judgment is overruled under circumstances where life, health and property of the public are endangered, they shall inform their employer or client of the possible consequences, shall notify such other proper authority as may be appropriate, and shall withdraw from further services on the project.

Licensees shall neither approve nor certify engineering or land surveying documents that may be harmful to the public life, health and property and that are not in conformity with accepted engineering or land surveying standards.

4.8(2) *Competency for assignments.* Licensees shall undertake to perform engineering or land surveying assignments only when qualified by education and experience in the specific technical field of professional engineering or land surveying involved. Licensees shall engage or advise engaging experts and specialists whenever the client or employer's interests are best served by such service.

Licensees may accept an assignment on a project requiring education or experience outside their field of competence, but only to the extent that their services are restricted to those phases of the project in which they are qualified. All other phases of such projects shall be under the responsible charge of qualified associates, consultants or employees holding a valid Iowa license.

4.8(3) *Truth in reports and testimony.* Licensees, when serving as expert or technical witnesses before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of their testimony. Under these circumstances, should knowledge be inadequate, the licensee must so state.

Licensees shall be objective and truthful in all professional reports, statements or testimony. All relevant and pertinent information shall be included in such reports, statements or testimony.

4.8(4) *Conflicts of interest.* Licensees shall not issue statements, criticisms or arguments on engineering or land surveying matters connected with public policy which are influenced or paid for by an interested party, or parties, unless they have prefaced their comments by explicitly identifying themselves, by disclosing the identities of the party or parties on whose behalf they are speaking, and by revealing the existence of any pecuniary interest.

Licensees shall avoid all known conflicts of interest with their employers or clients and, when unforeseen conflicts arise, shall promptly inform their employers or clients of any business association, interest, or circumstances which could influence judgment or the quality of services.

Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

Licensees shall act in professional matters for each employer or client as faithful agents or trustees and shall maintain full confidentiality on all matters in which the welfare of the public is not endangered.

4.8(5) *Unethical or illegal conduct.* Licensees shall not pay or offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing positions through employment agencies.

Licensees, as employers, shall refrain from engaging in any discriminatory practice prohibited by law and shall, in the conduct of their business, employ personnel upon the basis of merit.

Licensees shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

Licensees shall not solicit or accept an engineering or land surveying contract from a governmental body when a principal or officer of their organization serves as a member.

Licensees shall not associate with or permit the use of their names or firms in a business venture by any person or firm which they know, or have reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.

Licensees shall not use association with nonengineers, corporations or partnerships as "cloaks" for unethical acts. Licensees shall not violate any local, state or federal criminal law in the conduct of professional practice.

Licensees shall not violate licensure laws of any state or territory.

Licensees shall not represent themselves as licensed land surveyors or professional engineers and shall not place firm name, logo or title block on a Real Property Inspection Report.

4.8(6) *Standards of integrity.* Licensees shall answer all questions of a duly constituted investigative body of the state of Iowa concerning alleged violations by another person or firm.

Licensees shall admit and accept their own errors when proven wrong and shall refrain from distorting or altering the facts to justify their own decisions.

If licensees have knowledge or reason to believe that another person or firm may be in violation of any Iowa regulations regarding conduct of professional engineering or land surveying practice, they shall present such information to the engineering and land surveying examining board in writing and shall cooperate with the board in furnishing further information or assistance required by the board.

Licensees shall not assist in the application of an individual known by the licensee to be unqualified for licensure by reason of education, experience or character.

193C—4.9(542B) Complaints and investigations.

4.9(1) *Complaints.* The board shall, upon receipt of a complaint in writing, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which reasonably constitute cause under applicable law or administrative rule for licensee discipline.

4.9(2) *Form and content.* A written complaint should include the following facts:

a. The full name, address, and telephone number of complainant.

b. The full name, address, and telephone number of respondent.

c. A statement of the facts concerning the alleged acts or omissions.

d. Identification of the statutes and administrative rules allegedly violated.

e. Evidentiary supporting documentation.

The written complaint may be delivered personally or by mail to the secretary of the board. The current office address is 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

4.9(3) *Investigation of allegations.* In order to determine if probable cause exists for a hearing on the complaint, the board may cause an investigation to be made into the allegations of the complaint. It may refer the complaint to a peer review committee or an investigator for investigation, review and report to the board.

4.9(4) *Informal discussion.* If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The licensee may be represented by legal counsel at the informal discussion. The licensee is not required to attend the informal discussion. By electing to attend, the licensee waives the right to seek disqualification, based upon personal investigation of a board member or staff, from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

193C—4.10(542B) Informal settlement. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the assistant attorney general, the respondent, or the board. The board may designate a board member with authority to negotiate on behalf of the board. Negotiation shall be limited to the parties and the board's designee until presentation of a final, written form to the full board for approval.

4.10(1) *Informal settlement—waiver of notice and opportunity to be heard.* Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board's designee.

4.10(2) *Informal settlement—board approval.* All informal settlements are subject to approval of a majority of the full board. No informal settlement shall be presented to the board for approval except in final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

4.10(3) *Informal settlement—disqualification of designee.* A board member who is designated to act in negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.11(542B) Ruling on the initial inquiry.

4.11(1) *Dismissal.* If a determination is made by the board that a complaint is without grounds or merit, the complaint shall be dismissed. A letter of explanation concerning the decision of the board shall be sent to the respondent and the complainant.

4.11(2) *Requirement of further inquiry.* If determination is made by the board to order further inquiry, the complaint and initial recommendations shall be provided to the investigator(s) along with a statement specifying the information deemed necessary.

4.11(3) *Acceptance of the case.* If a determination is made by the board to initiate disciplinary action, the board may enter into an informal settlement or recommend formal disciplinary proceedings.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.12(542B,272C) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated, and shall be in sufficient detail to enable the preparation of the respondent's defense.

193C—4.13(17A) Time requirements.

4.13(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.13(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

193C—4.14(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

The request for a contested case proceeding shall state the name and address of the requester; identify the specific board action which is disputed and, where the requester is represented by counsel, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

193C—4.15(542B,272C) Notice of hearing. The board's notice of hearing shall fix the time and place for hearing and shall contain those items specified in Iowa Code section 17A.12(2). The notice shall also contain the following:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matters asserted. If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
5. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and identification of parties' counsel where known;
6. Reference to the procedural rules governing conduct of the contested case proceeding;
7. Reference to the procedural rules governing informal settlement;
8. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (i.e., the board, a panel of the board, or an administrative law judge from the department of inspections and appeals); and
9. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 4.18(17A), that the presiding officer be an administrative law judge.
10. A statement requiring the respondent to submit an answer of the type specified in rule 4.16(542B,272C) within 20 days after receipt of the notice of hearing.

193C—4.16(542B,272C) Form of answer. The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information which the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

193C—4.17(542B,272C) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

193C—4.18(17A) Presiding officer.

4.18(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board or a panel of the board.

4.18(2) The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

4.18(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

4.18(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.18(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

193C—4.19(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193C—4.20(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

193C—4.21(17A) Disqualification.

4.21(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.21(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrule 4.38(9).

4.21(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.21(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.21(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 4.40(17A) and seek a stay under rule 4.43(17A).

193C—4.22(17A) Consolidation—severance.

4.22(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.22(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193C—4.23(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

193C—4.24(17A) Service and filing of pleadings and other papers.

4.24(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the board, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.24(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.24(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

4.24(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.24(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Engineering and Land Surveying Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

_____ _____

(Date) (Signature)

193C—4.25(17A) Discovery.

4.25(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.25(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.25(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.25(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193C—4.26(17A) Subpoenas. In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). After service of the notice of hearing under rule 4.15(542B,272C), the following procedures are available to the parties in order to obtain relevant and material evidence.

4.26(1) Board subpoenas for books, papers, records, and other real evidence will be issued to a party upon request. Subpoenas for witnesses may also be obtained. The executive secretary shall issue all subpoenas for both parties upon request. The request, which may be verbal or written, must specify the documents sought to be obtained and the names of the witnesses whose testimony is sought.

4.26(2) The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

4.26(3) In the event of a refusal to obey a subpoena, either party or the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

193C—4.27(17A) Motions.

4.27(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.27(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.27(3) The presiding officer may schedule oral argument on any motion.

4.27(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

4.27(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 4.42(17A) and appeal pursuant to rule 4.41(17A).

193C—4.28(17A) Prehearing conference.

4.28(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

4.28(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.28(3) In addition to the requirements of subrule 4.28(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.28(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

193C—4.29(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.29(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

4.29(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

193C—4.30(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board rules. Unless otherwise provided, a withdrawal shall be with prejudice.

193C—4.31(17A) Intervention.

4.31(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.31(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.31(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.31(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

193C—4.32(542B) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electrical means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with the board and maintained for at least five years from the date of decision. Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.33(542B) Hearings.

4.33(1) A hearing shall be conducted before the board or before a three-member hearing panel appointed by the board chairperson in accordance with Iowa Code section 272C.6(1). An administrative law judge may sit with the board or hearing panel to conduct the hearing. The administrative law judge shall be in control of the proceedings and shall have the power to administer oaths, to admit or execute testimony or other evidence, and to rule on all motions and objections.

4.33(2) When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice of the profession when holding disciplinary hearings, the board may appoint a panel of not less than three specialists not having a conflict of interest to make findings of fact and to report to the board. The findings shall not include any recommendation for or against licensee discipline.

4.33(3) The presiding officer and board members have the right to conduct a direct examination at the outset of a witness's testimony or at a later stage thereof. Direct examination and cross-examination by board members are subject to objections properly raised in accordance with the rules of evidence.

4.33(4) The hearing shall be open to the public unless the licensee or the licensee's attorney requests that the hearing be closed to the public.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.34(542B) Order of proceedings. Before testimony is presented, the record shall show the identity of any board members present, hearing panel, or administrative law judge, and the identity of the primary parties and their representatives, and the fact that all testimony is being recorded.

Hearings shall generally follow the order established by these rules, subject to modification at the discretion of the board or of the panel of the board conducting the proceedings.

1. The presiding officer or designee shall read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing. The respondent may waive the reading of the specification of charges.
2. The state's counsel representing the public interest before the board shall make an opening statement.
3. The respondent or respondents shall each be offered the opportunity to make an opening statement. A respondent may elect to reserve an opening statement until just prior to the presentation of evidence by the respondent.

4. The presentation of evidence on behalf of the state.
5. The presentation of evidence on behalf of the respondent(s).
6. Rebuttal evidence on behalf of the state.
7. Rebuttal evidence on behalf of the respondent(s).
8. Closing arguments first on behalf of the state, then on behalf of the respondent, and then on behalf of the state.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.35(542B) Rules of evidence—documentary evidence—official notice.

4.35(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.35(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.35(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.35(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy with the original, if available. Copies of documents shall be provided to opposing parties. Copies may also be furnished to members of the board.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.35(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision. Motions and offers to amend the pleadings may also be made at hearing and shall be noted in the record together with the rulings thereon.

4.35(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

4.35(7) Subject to the above requirements, if a witness is unavailable, and if a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be submitted in verified written form with both parties' consent.

4.35(8) Official notice may be taken of all facts of which judicial notice may be taken.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.36(542B) Decisions. When five or more members of the board preside over the reception of the evidence at the hearing, their decision is a final decision if that decision receives the affirmative vote of five or more members of the board.

4.36(1) When a panel of three specialists presides over the reception of the evidence at the hearing, a transcript of the proceedings, together with exhibits presented and the findings of fact of the panel, shall be considered by the board at the earliest practicable time. The respondent or the respondent's attorney, upon notice prescribed by the board, shall have the opportunity to appear personally to present the respondent's position and arguments to the board. The decision of the board is a final decision.

4.36(2) When the hearing is conducted by a three-member panel of the board, their decision is a proposed decision and subject to the review provisions of rule 4.41(542B).

4.36(3) A proposed or final decision shall be in writing and shall consist of the following parts:

a. A concise statement of the facts as presented by the parties.

b. Findings of fact.

c. Conclusions of law which shall be supported by cited authority or reasoned opinion.

d. The decision or order which sets forth the action to be taken or the disposition of the case.

4.36(4) The decision may include one or more of the following:

a. Exoneration of respondent.

b. Revocation of license.

c. Suspension of license until further order of the board or for a specified period.

d. Nonrenewal of license.

e. Prohibition, until further order of the board or for a specific period, of engaging in specified procedures, methods or acts.

f. Probation.

g. Requirement of additional education or training.

h. Requirement of reexamination.

i. Issuance of a reprimand.

j. Imposition of civil penalties.

k. Issuance of citation and warning.

l. Other sanctions allowed by law as may be appropriate.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.37(17A) Default.

4.37(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.37(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.37(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 4.41(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

4.37(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.37(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.37(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

4.37(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 4.40(17A).

4.37(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

4.37(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

4.37(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 4.43(17A).

193C—4.38(17A) Ex parte communication.

4.38(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.21(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.38(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

4.38(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.38(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 4.24(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.38(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.38(6) The executive officer or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 4.38(1).

4.38(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 4.29(17A).

4.38(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.38(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.38(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the division administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193C—4.39(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

193C—4.40(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193C—4.41(17A) Appeals and review.

4.41(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

4.41(2) *Review.* The board may initiate review of a proposed decision on its motion at any time within 30 days following the issuance of such a decision.

4.41(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order which is being appealed;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

4.41(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.41(5) *Scheduling.* The board shall issue a schedule for consideration of the appeal.

4.41(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

193C—4.42(17A) Applications for rehearing.

4.42(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.42(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.41(4), the applicant requests an opportunity to submit additional evidence.

4.42(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

4.42(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the certificate of service on all parties.

4.42(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

193C—4.43(17A) Stays of board actions.

4.43(1) *When available.*

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

4.43(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

4.43(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

193C—4.44(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

193C—4.45(17A) Emergency adjudicative proceedings.

4.45(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order the board shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

4.45(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the board;

(3) Certified mail to the last address on file with the board;

(4) First-class mail to the last address on file with the board; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

4.45(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.45(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

193C—4.46(542B,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

193C—4.47(542B) Confidentiality. At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.48(542B) Notification of decision. All parties to a proceeding shall be promptly furnished a copy of any final or proposed decision or order either in person or by first-class mail, or by telephone if necessary to ensure that the parties learn of the decision or order first.

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.49(542B) Reinstatement. Any person whose license to practice professional engineering or land surveying has been revoked, or suspended by the board, may appeal to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

4.49(1) If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the secretary's order or the date of voluntary surrender.

4.49(2) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

4.49(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

4.49(4) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law, and must be based upon the affirmative vote of not fewer than five members of the board. This order will be published as provided for in rule 4.50(542B).

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—4.50(542B) Publication of decisions. Following suspension of a land surveyor's license, the county recorders and county auditors of the county of residence and immediately adjacent counties in Iowa shall be notified of the suspension by mail. Following revocation of a land surveyor's license, all county auditors in Iowa and the county recorders in the county of residence and immediately adjacent counties shall be notified by mail.

Other boards of examiners for engineers and land surveyors under the jurisdiction of the government of the United States of America shall be notified of the suspension or revocation of the license of a professional engineer or land surveyor. This notification may be through the National Council of Examiners for Engineering and Surveying or other national organizations recognized by the board. In addition, if the licensee is known to be registered in another nation in North America, the appropriate board(s) shall be notified of the action.

Information regarding informal settlements and disciplinary actions may be supplied to publications for widespread circulation in the state of Iowa and to appropriate engineering and land surveying publications that circulate within the state of Iowa.

193C—4.51(272C) Disciplinary hearings—fees and costs.

4.51(1) The board may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the professional licensing and regulation division as provided in subrule 4.51(8).

4.51(2) In addition to this fee, the board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable.

4.51(3) Transcript.

a. The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

b. In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

4.51(4) Witness fees and expenses.

a. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing.

b. The board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa.

c. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

d. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

e. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

f. The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under department of revenue and finance guidelines in effect on January 1, 1994.

4.51(5) Depositions.

a. The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

b. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

c. If the deposition is of an expert witness, the deposition cost includes a reasonable expert witness fee. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such depositions, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

4.51(6) Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the designated staff person shall certify any reimbursable costs to the board. The designated staff person shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of filing.

4.51(7) A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed $75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

a. A party must file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection must be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application will be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

4.51(8) All fees and costs assessed pursuant to this chapter shall be in the form of a check or money order made payable to the State of Iowa and delivered by the licensee to the professional licensing and regulation division.

4.51(9) Failure of a licensee to pay a fee and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

193C—4.52(252J) Certificates of noncompliance. The board shall suspend or revoke a certificate of licensure upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

4.52(1) The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the licensee may accept service personally or through authorized counsel.

4.52(2) The effective date of revocation or suspension of a certificate of licensure, as specified in the notice required by section 252J.8, shall be 60 days following service of the notice upon the licensee.

4.52(3) The board's executive secretary is authorized to prepare and serve the notice required by section 252J.8 and is directed to notify the licensee that the certificate of licensure will be suspended, unless the license is already suspended on other grounds. In the event a license is on suspension, the executive secretary shall notify the licensee of the board's intent to revoke the certificate of licensure.

4.52(4) Licensees shall keep the board informed of all court actions, and all child support recovery unit actions taken under or in connection with chapter 252J, and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

4.52(5) All board fees for license renewal or reinstatement must be paid by licensees before a certificate of licensure will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 252J.

4.52(6) In the event a licensee files a timely district court action following service of a board notice pursuant to sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of suspension or revocation of a certificate of licensure, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

4.52(7) The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of licensure, and shall similarly notify the licensee or applicant when the certificate of licensure is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code chapter 252J.

193C—4.53(261) Suspension or revocation of a certificate of licensure—student loan. The board shall suspend or revoke a certificate of licensure upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

4.53(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

4.53(2) The effective date of revocation or suspension of a certificate of licensure, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee.

4.53(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126, and is directed to notify the licensee that the certificate of licensure will be suspended, unless the certificate of licensure is already suspended on other grounds. In the event a certificate of licensure is on suspension, the executive secretary shall notify the licensee of the board's intention to revoke the certificate of licensure.

4.53(4) Licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

4.53(5) All board fees required for license renewal or license reinstatement must be paid by licensees and all continuing education requirements must be met before a certificate of licensure will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

4.53(6) In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a certificate of licensure, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

4.53(7) The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of licensure, and shall similarly notify the licensee when the certificate of licensure is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code chapters 17A, 252J, 272C, and Iowa Code sections 261.126 and 261.127.

193C—4.54(272C) Impaired licensee review committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the engineering and land surveying examining board establishes the impaired licensee review committee.

4.54(1) *Definitions.* The following definitions are applicable wherever such terminology is used in the rules regarding the impaired licensee review committee.

"Committee" means the impaired licensee review committee.

"Contract" means the written document establishing the terms for participation in the impaired licensee program prepared by the committee.

"Impairment" means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

"Licensee" means a person licensed under Iowa Code chapter 542B.

"Self-report" means the licensee's providing written or oral notification to the board that the practitioner has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging the same from a second party.

4.54(2) *Purpose.* The impaired licensee review committee evaluates, assists, monitors and, as necessary, makes reports to the board on the recovery or rehabilitation of licensees who self-report impairments.

4.54(3) *Composition of the committee.* The chairperson of the board shall appoint the members of the committee. The membership of the committee includes, but is not limited to:

a. One licensee, licensed under Iowa Code chapter 542B;

b. One public member of the engineering and land surveying examining board;

c. One licensed professional with expertise in substance abuse/addiction treatment programs.

4.54(4) *Eligibility.* To be eligible for participation in the impaired licensee recovery program, a licensee must meet all of the following criteria:

a. The licensee must self-report an impairment or suspected impairment directly to the office of the board;

b. The licensee must not have engaged in the unlawful diversion or distribution of controlled substances, or illegal substances;

c. At the time of the self-report, the licensee must not already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;

d. The licensee has not caused harm or injury to a client;

e. There is currently no board investigation of the licensee that the committee determines concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

f. The licensee has not been subject to a civil or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of engineering;

g. The licensee has provided truthful information and fully cooperated with the board or committee.

4.54(5) *Meetings.* The committee shall meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring.

4.54(6) *Terms of participation.* A licensee shall agree to comply with the terms for participation in the impaired licensee program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensee in writing.

4.54(7) *Noncompliance.* Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for the purpose of disciplinary action.

4.54(8) *Practice restrictions.* The committee may impose restrictions on the licensee's practice as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

4.54(9) *Limitations.* The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired licensee program. Participation in the program under the auspices of the committee shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the board for appropriate action.

4.54(10) *Confidentiality.* The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the impaired licensee program under the auspices of the committee is not a matter of public record.

This rule is intended to implement Iowa Code chapter 272C.

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TITLE I
GENERAL INFORMATION—DEPARTMENT OPERATIONS

CHAPTER 2
AGENCY PROCEDURE FOR RULE MAKING AND PETITIONS FOR RULE MAKING

281—2.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

281—2.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency 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 agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

281—2.3(17A) Public rule-making docket.

2.3(1) *Docket maintained.* The agency shall maintain a current public rule-making docket.

2.3(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 for internal discussion within the agency. 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 director for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

2.3(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 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 agency determinations with respect thereto;

h. Any known timetable for agency 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; and

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

281—2.4(17A) Notice of proposed rule making.

2.4(1) *Contents.* At least 35 days before the adoption of a rule the agency 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; and

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 agency 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 agency for the resolution of each of those issues.

2.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 2.12(2) of this chapter.

2.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of ten days.

281—2.5(17A) Public participation.

2.5(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, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Department of Education, Legal Consultant's Office, Grimes State Office Building, Des Moines, Iowa 50319-0146, or the person designated in the Notice of Intended Action.

2.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency 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 agency by the administrative rules review committee, a governmental subdivision, an 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 an 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.

2.5(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 this chapter.

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. The agency, a member of the agency, or another person designated by the agency who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

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 such a proceeding are encouraged to notify the agency 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 may 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 agency 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) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted 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. Such submissions become the property of the agency.

(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.

2.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

2.5(5) *Accessibility.* The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Legal Consultant's Office, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or telephone (515)281-5295 in advance to arrange access or other needed services.

281—2.6(17A) Regulatory analysis.

2.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

2.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to Legal Consultant's Office, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. 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 desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency 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 agency 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 will 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.

2.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail 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 agency 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.

2.6(4) *Qualified requesters for regulatory analysis—economic impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

a. The administrative rules coordinator;

b. The administrative rules review committee.

2.6(5) *Qualified requesters for regulatory analysis—business impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), 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.

2.6(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(4).

2.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

2.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

2.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

2.6(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(2a), unless a written request expressly waives one or more of the items listed in the section.

2.6(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(2b).

281—2.7(17A,25B) Fiscal impact statement.

2.7(1) A proposed 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.

2.7(2) If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

281—2.8(17A) Time and manner of rule adoption.

2.8(1) *Time of adoption.* The agency 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 agency 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.

2.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

2.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

281—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

2.9(1) The agency 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 and 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.

2.9(2) 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 agency 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; and

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.

2.9(3) The agency 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 agency 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.

2.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

281—2.10(17A) Exemptions from public rule-making procedures.

2.10(1) *Omission of notice and comment.* To the extent the agency 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 agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.10(2) *Public proceedings on rules adopted without them.* The agency 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 2.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(1). Such a 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 such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

281—2.11(17A) Concise statement of reasons.

2.11(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 agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Legal Consultant's Office, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

2.11(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 such change;

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

2.11(3) *Time of issuance.* After a proper request, the agency 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.

281—2.12(17A) Contents, style, and form of rule.

2.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency adopted the rule;

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

g. The effective date of the rule.

2.12(2) *Incorporation by reference.* The agency may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

2.12(3) *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 agency 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 agency. The agency will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

2.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

281—2.13(17A) Agency rule-making record.

2.13(1) *Requirement.* The agency 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 must be available for public inspection.

2.13(2) *Contents.* The agency rule-making record shall contain:

a. Copies of 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 agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the agency, 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 agency and considered by the director, 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 agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency 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 section 17A.4(4), and any agency response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

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

2.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

2.13(4) *Maintenance of record.* The agency 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, the date of the Notice of Intended Action, or the date of any written criticism as described in 2.13(2)*"g," "h," "i," or "j."*

281—2.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must 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 note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

281—2.15(17A) Effectiveness of rules prior to publication.

2.15(1) *Grounds.* The agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.15(2) *Special notice.* When the agency 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 agency 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 agency 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 agency 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 2.15(2).

281—2.16(17A) General statements of policy.

2.16(1) *Compilation, indexing, public inspection.* The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)*"a," "c," "f," "g," "h," "k."* Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

2.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 2.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

281—2.17(17A) Review by agency of rules.

2.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency 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 agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

2.17(2) In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency'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 petitions for waiver of the rule received by the agency or granted by the agency. 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 agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

281—2.18(17A) Petition for rule making. In lieu of the words "(designate office)", insert "the Department of Education, Grimes State Office Building, Second Floor". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

"DEPARTMENT OF EDUCATION"

281—2.19(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Legal Consultant, Grimes State Office Building, Des Moines, Iowa 50319-0146.

These rules are intended to implement Iowa Code section 256.7(3) and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 3
DECLARATORY ORDERS

[Prior to 9/7/88, see Public Instruction Department[670] Ch 53]

281—3.1(17A) Petition for declaratory order. Any person may file a petition with the department of education for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Department of Education, at the Grimes State Office Building, Second Floor, Des Moines, Iowa 50319-0146. A petition is deemed filed when it is received by that office. The department of education shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF EDUCATION

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.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, 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.
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 petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 3.7(17A).

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.

281—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department of education shall give notice of the petition to all persons not served by the petitioner pursuant to 3.6(17A) to whom notice is required by any provision of law. The department of education may also give notice to any other persons.

281—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order (after time for notice under 3.2(17A) and before 30-day time for agency action under 3.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) 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 of education.

3.3(3) A petition for intervention shall be filed at the Office of the Director, Grimes State Office Building, Des Moines, Iowa 50319-0146. Such a petition is deemed filed when it is received by that office. The department of education will 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 must substantially conform to the following form:

DEPARTMENT OF EDUCATION

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 in 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 intervenor's representative, and a statement indicating the person to whom communications should be directed.

281—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of education may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

281—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Legal Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50139-0146.

281—3.6(17A) Service and filing of petitions and other papers.

3.6(1) *When service required.* 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 upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention 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.

3.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Legal Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department of education.

3.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 281—6.17(17A).

281—3.7(17A) Consideration. Upon request by petitioner, the department of education must schedule a brief and informal meeting between the original petitioner, all intervenors, and the department of education, a member of the department, or a member of the staff of the department, to discuss the questions raised. The department of education 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.

281—3.8(17A) Action on petition.

3.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the director of the department of education or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 281—6.2(290,17A).

281—3.9(17A) Refusal to issue order.

3.9(1) The department of education shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(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 of education to issue an order.
3. The department of education 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 agency 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 an agency 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 of education to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

3.9(3) 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 refusal to issue a ruling.

281—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, 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.

281—3.11(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.

281—3.12(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 of education, 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 of education. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 256.7(3) and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

[Prior to 9/7/88, see Public Instruction Department[670] Ch 52]
Rescinded IAB 5/5/99, effective 6/9/99

CHAPTER 6
APPEAL PROCEDURES
[Prior to 9/7/88, see Public Instruction Department[670] Ch 51]

281—6.1(290) Scope of appeal. The rules of this chapter are applicable to all hearing requests seeking appellate review by the state board of education, the director of education, or the department of education.

281—6.2(256,290,17A) Definitions.

"Appellant," as used in this chapter, shall refer to a party bringing an appeal to the state board of education, the director of education or the department of education.

"Appellee," as used in this chapter, shall refer to the party in a matter against whom an appeal is taken, or the party whose interest is adverse to the reversal of a prior decision now on appeal to the state board of education, the director of education or the department of education.

"Board," as used in this chapter, shall refer to the state board of education.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Default" means a dismissal of the appeal due to nonappearance at the hearing, either telephonically or in person, or for failure to request a continuance of the appeal hearing. Exceptions may be granted at the discretion of the presiding officer.

"Department" means the department of education.

"Director," as used in this chapter, shall refer to the director of education.

"Hearing panel," as used in this chapter, shall refer to the director of education, or the director's designee, sitting as the administrative law judge and two members of the department of education staff designated by the administrative law judge to hear the presentation of evidence or oral arguments concerning appeals which are unusual or which present issues of first impression.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the director of the department of education or the designated administrative law judge.

281—6.3(290,17A) Manner of appeal.

6.3(1) An appeal shall be made in the form of an affidavit, unless an affidavit is not required by the statute establishing the right of appeal, which shall set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner, and which shall be signed by the appellant and delivered to the office of the director by United States Postal Service, facsimile (fax), or personal service. The affidavit shall be considered as filed with the agency on the date of the United States Postal Service postmark, the date of arrival of the facsimile, or the date personal service is made. Time shall be computed as provided in Iowa Code subsection 4.1(34).

6.3(2) The director or designee shall, within five days after the filing of such affidavit, notify the proper officer in writing of the taking of an appeal, and the officer shall, within ten days, file with the board a complete certified transcript of the record and proceedings related to the decision appealed. A certified copy of the minutes of the meeting of the governmental body making the decision appealed shall satisfy this requirement.

6.3(3) The director or designee shall send written notice by certified mail, return receipt requested, at least ten days prior to the hearing, unless the ten-day period is waived by all parties, to all persons known to be interested. Such notice shall include the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. A copy of the appeal hearing rules shall be included with the notice.

The notice of hearing shall contain the following information: identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known; reference to the procedural rules governing conduct of the contested case proceeding; reference to the procedural rules governing informal settlement; and identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., director of the department or administrative law judge from the department of inspections and appeals).

6.3(4) and **6.3(5)** Rescinded IAB 5/5/99, effective 6/9/99.

6.3(6) An amendment to the affidavit of appeal may be made by the appellant up to ten working days prior to the hearing. With the agreement of all parties, an amendment may be made until the hearing is closed to the receipt of evidence.

281—6.4(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.4(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

6.4(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

281—6.5(17A) Intervention.

6.5(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.5(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

6.5(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

6.5(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

281—6.6(17A) Motions.

6.6(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.6(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.6(3) The presiding officer may schedule oral argument on any motion.

6.6(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

6.6(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 6.20(17A) and appeal pursuant to rule 6.21(17A).

281—6.7(17A) Disqualification.

6.7(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.7(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.7(3) and 6.14(9).

6.7(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.7(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.7(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect.

281—6.8(290) Subpoena of witnesses and costs.

6.8(1) The director, on behalf of the board, has the power to issue subpoenas for witnesses, to compel the attendance of those witnesses, and the giving of evidence by them, in the same manner and to the same extent as the district court may do. An agency subpoena shall be issued to a party on written request made at least ten days prior to the hearing. Parties are responsible for obtaining service of their own subpoenas.

6.8(2) Witnesses and serving officers may be allowed the same compensation as is paid for like attendance or service in district court. The witness's fees and mileage are considered costs of the appeal under Iowa Code section 290.4; costs are assigned to the nonprevailing party. The witness's fees and expenses for hearings brought under other statutes and rules are the responsibility of the party requesting or subpoenaing the witness.

6.8(3) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

6.8(4) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

281—6.9(17A) Discovery. Discovery procedures applicable to civil actions are available to all parties in contested cases before the department. Evidence obtained in discovery may be used in the hearing before the department if that evidence would otherwise be admissible in the hearing.

Any deviations from the time periods established for compliance with discovery in the Iowa Rules of Civil Procedure shall be determined by the administrative law judge upon opportunity for all parties to be heard.

281—6.10(17A) Consolidation—severance.

6.10(1) *Consolidation.* The administrative law judge may consolidate any or all matters at issue in two or more appeals where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties of those proceedings.

6.10(2) *Severance.* The administrative law judge may, for good cause shown, order any contested case proceedings or portions thereof severed.

281—6.11(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

281—6.12(17A) Appeal hearing.

6.12(1) *On stipulated record.* Upon the written agreement of the parties, the transcript of the record and proceedings as certified by the proper official and any other documents mutually stipulated may become the evidentiary basis for the hearing on appeal. In the event that the hearing is to be conducted on the stipulated record, the following procedures shall be followed:

a. At the established time, the name and nature of the case are announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

b. When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the hearing may proceed. When any absent party has been properly notified, this fact shall be entered into the record. When notice to an absent party has been sent by certified mail, return requested, the return shall be placed in the record. If the notice was sent in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

c. The appeal hearing on stipulated record is nonevidentiary in nature. No witnesses will be heard nor evidence received. The controversy will be decided on the basis of the stipulated record and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceedings.

d. Illustrative materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

e. Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

f. The appellant shall present the first argument. The appellee shall follow with argument and rebuttal of the appellant's argument. A third party who was a party in the initial proceeding but not either appellant or appellee may, at the discretion of the administrative law judge, be allowed to make remarks. The appellant may then rebut the proceeding arguments but may not introduce new arguments.

g. Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit for argument shall be established by the administrative law judge and shall in most instances be limited to 30 minutes for each party.

h. At the conclusion of arguments, each party shall have the opportunity to submit written briefs or arguments, or additional written briefs if they have already done so. Any party submitting a written brief or argument must deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by any party and shall be entered into the record.

i. The appeal hearing is then closed upon order of the administrative law judge.

6.12(2) *Evidentiary hearing.* When the parties do not agree to a stipulated record, the following procedure shall be followed:

a. The appellant may begin by giving an opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence the appellant proposes to introduce and the conclusions which the appellant believes the evidence will substantiate.

b. With the permission of the administrative law judge, a third party directly involved in the original proceeding but neither appellant nor appellee may make an opening statement of a general nature.

c. The appellee may present an opening statement of a general nature which may include the type and nature of evidence proposed to be introduced and the conclusions which the appellee believes the evidence will substantiate. The appellee may present an opening statement following the appellant's opening statement, if any, or may reserve opening for immediately prior to its case-in-chief.

d. The appellant may then call witnesses and present other evidence.

e. Each witness shall be administered an oath by the administrative law judge. The oath shall be in the following form: "Do you solemnly swear or affirm that the testimony or evidence which you are about to give in the proceeding now in hearing shall be the truth, the whole truth, and nothing but the truth?"

f. The appellee may cross-examine all witnesses and may examine and question all other evidence.

g. Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

h. The hearing panel members may address questions to each witness at the conclusion of questioning by the appellant and the appellee.

i. At the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

j. The appellant shall make a final argument for a length of time established by the administrative law judge, in which the appellant may review the evidence presented, the conclusions which the appellant believes most logically follow from the evidence and a recommendation of action to the hearing panel.

k. The appellee may make a final argument for a period of time equal to that granted to the appellant in which the appellee may review the evidence presented, the conclusions which the appellee believes most logically follow from the evidence and a recommendation of action to the hearing panel.

l. At the discretion of the administrative law judge, a third party directly involved in the original proceeding but neither the appellant nor appellee may make a final argument.

m. At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

n. Any party may submit written briefs. Written briefs by nonparties may be accepted at the discretion of the administrative law judge. Any party submitting a written brief or argument shall deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief or argument at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by a party and the waiver shall be entered into the record.

o. Rules of evidence.

(1) Because the administrative law judge must decide each case correctly as to the parties before the panel and the administrative law judge must also decide what is in the public's best interest, it is necessary to allow for the reception of all relevant evidence which will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative, and relevant.

(2) Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The hearing panel shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

(3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(4) Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

(5) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the hearing panel. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced.

(6) The hearing panel's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(7) No decision shall be made except upon consideration of the whole record or portions that may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

6.12(3) *Telephone hearings.* Upon agreement of the parties, a hearing may take place by telephone conference call.

281—6.13 Reserved.

281—6.14(17A) Ex parte communication.

6.14(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.7(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.14(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.14(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

6.14(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

6.14(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.14(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.14(1).

6.14(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 6.4(17A).

6.14(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.14(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.14(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the legal consultant for the department of education for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

281—6.15(17A) Record.

6.15(1) Upon the request of any party, oral proceedings in whole or in part shall be either transcribed, if recorded by certified shorthand reporters, or copied if recorded by mechanical means, with the expense for the transcription of copies charged to the requesting party.

6.15(2) All recordings, stenographic notes or transcriptions of oral proceedings shall be maintained and preserved by the department for at least five years from the date of a decision.

6.15(3) The record of a hearing under these rules shall include:

a. All pleadings, motions and intermediate rulings.
b. All evidence received or considered and all other submissions.
c. A statement of matters officially noticed.
d. All questions and offers of proof, objections, and rulings thereon.
e. All proposed findings of fact and conclusions of law.
f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—6.16(17A) Recording costs. Upon request, the department of education shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

281—6.17(290,17A) Decision and review.

6.17(1) The presiding officer, after due consideration of the record and the arguments presented, and with the advice and counsel of the staff members, shall make a decision on the appeal. Unless the parties are eligible to and agree to waive their right to a written decision approved by the director or state board of education pursuant to subrule 6.17(7), the proposed decision shall be mailed to the parties or their representatives by regular mail.

6.17(2) The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.

6.17(3) The decision of the presiding officer shall be placed on the agenda of the next regular board meeting for review of the record and decision unless the decision is issued orally at hearing under subrule 6.17(7) or unless the decision is within the province of the director to make.

6.17(4) The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee.

6.17(5) Copies of the final decision shall be sent to the parties or their representatives by regular mail within five days after state board action, if required, on the proposed decision.

6.17(6) No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case, or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction, or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing, or a pending related matter involving the same parties.

6.17(7) In an appeal from the denial of a parent's or guardian's request for open enrollment, where the denial was for missing the deadline for filing for open enrollment without good cause for being late, the parties to the appeal may request that the presiding officer issue an oral decision on the merits of the case at the conclusion of the hearing. An agreement by the parties to waive their right to a written decision reviewed by the director or state board in favor of an oral decision after the hearing may be rescinded by either party if a request is submitted in writing and mailed or delivered in person to the presiding officer with 30 days following the hearing. A written decision will not be expedited but will be issued at a later date in sequence with other written decisions in the order in which the case was heard.

A request to waive a written decision shall not be granted by the presiding officer if the issue in the case is an issue of first impression or is not substantially similar to the issue decided by the state board or director which serves as precedent to the presiding officer.

281—6.18(290) Finality of decision. The decision is final upon board approval of the presiding officer's decision.

281—6.19(17A) Default.

6.19(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.19(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.19(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.19(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.19(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.19(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

6.19(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

6.19(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.19(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

6.19(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately.

281—6.20(17A) Application for rehearing of final decision. Any party may file an application for rehearing with the presiding officer stating the specific grounds therefor, and the relief sought, within 20 days after the issuance of any final decision by the board. A copy of the application shall be timely mailed by the department to all parties of record not joining therein. Such application for rehearing shall be deemed to have been denied unless the board or the presiding officer grants the application within 20 days of the filing. A rehearing shall not be granted unless it is necessary to correct a mistake of law or fact, or for other good cause.

281—6.21(17A) Rehearing.

6.21(1) In the event a rehearing is granted, the presiding officer, in arriving at a subsequent decision, may either review the record and arguments or may proceed with either a full or partial hearing under the appeal hearing provisions of this chapter.

6.21(2) Following the rehearing, the presiding officer shall place the proposed decision on the agenda of the next regular board meeting for review of the record and decision as provided for in 6.17(290,17A).

281—6.22(17A) Emergency adjudicative proceedings.

6.22(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order the department shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

6.22(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the department;

(3) Certified mail to the last address on file with the department;

(4) First-class mail to the last address on file with the department; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.22(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.22(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which departmental proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code sections 256.7(6), 275.16, 282.18, 282.18(5), 282.32, 285.12, and Iowa Code chapter 290 and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 14
ISSUANCE OF PRACTITIONER'S LICENSES AND ENDORSEMENTS

[Prior to 9/7/88, see Public Instruction Department(670) Ch 70]
[Prior to 10/3/90, see Education Department(281) Ch 73]
[282—14.25 to 14.29 transferred from 281—84.18 to 84.22, IAB 1/9/91, effective 12/21/90]

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 or administrative preparation program from a recognized Iowa institution shall have the recommendation for 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 the board.

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

Applicants whose preparation was completed through a nontraditional program or through an accumulation of credits from several institutions shall file all transcripts with the board of educational examiners 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 or administrative 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.

To add an endorsement, the applicant must follow one of these options:

Option 1. Identify with a recognized Iowa teacher preparing institution and 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.

Option 3. Identify with a recognized teacher education institution and receive a statement that based on the institution's evaluation of the individual's preparation the applicant has completed all of the Iowa requirements for the endorsement sought.

Appeal: If an applicant cannot obtain an equivalent statement from an institution and if the applicant believes the Iowa requirements have been met, the applicant may file the transcripts for review. The rejection from the institution must be in writing. In this situation, the staff in the board of educational examiners will review the preparation in terms of the Iowa requirements.

282—14.7(272) Correcting licenses. If at the time of the original issuance or renewal of a certificate, a person does not receive an endorsement for which eligible, a corrected license will be issued. Also, if a person receives an endorsement for which not eligible, a corrected license will be issued.

282—14.8(272) Duplicate licenses. Upon application and fee, duplicate licenses will be issued. The fee for the duplicate license is set out in subrule 14.31(3).

282—14.9(272) Fraud in procurement or renewal of licenses. Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

282—14.10(272) Licenses. These licenses will be issued effective October 1, 1988.

Provisional
Educational
Professional Teacher
Professional Administrator
Conditional
Substitute
Area Education Agency Administrator

282—14.11(272) Requirements for a provisional license.

1. Baccalaureate degree from a regionally accredited institution.
2. Completion of an approved teacher education program.
3. Completion of an approved human relations component.
4. Completion of requirements for one of the teaching endorsements listed under 282—14.18(272), the special education teaching endorsements in 282—Chapter 15, or the secondary level occupational endorsements listed in rule 282—16.1(272).
5. Meet the recency requirement of 14.15"3."

The provisional license is valid for two years and may be renewed under certain prescribed conditions listed in 282—17.8(272).

282—14.12(272) Requirements for an educational license.

1. Completion of items 1, 2, 3, 4 listed under 14.11(272).
2. Evidence of two years' successful teaching experience based on a local evaluation process.
3. Meet the recency requirement of 14.15"3."

The educational license is valid for five years and may be renewed by meeting requirements listed in 282—17.5(272).

282—14.13(272) Requirements for a professional teacher's license.

1. Holder of or eligible for an educational license.
2. Five years of teaching experience.
3. Master's degree in an instructional endorsement area, or in an area of educational or instructional improvement or school curriculum; the master's degree must be related to school-based programming.

The professional teacher's license is valid for five years and may be renewed by meeting requirements listed in 282—17.6(272).

282—14.14(272) Requirements for a professional administrator's license.

1. Holder of or eligible for an educational license.
2. Five years of teaching experience.
3. Completion of an area of endorsement as listed in 282—14.23(272).
4. Meet the requirements for the evaluator approval.

The professional administrator's license is valid for five years and may be renewed by meeting requirements listed in 282—17.7(272).

282—14.15(272) Requirements for a one-year conditional license. A conditional license valid for one year may be issued to an individual under the following conditions:

1. Has not completed all the required courses in the professional core from 14.19(3)*"a"* through *"k."*
2. Has not completed an approved human relations component.
3. Recency—Meets the requirement(s) for a valid license but has had less than 160 days of teaching experience during the five-year period immediately preceding the date of application or has not completed six semester hours of college credit from a recognized institution within the five-year period.

To obtain the desired license, the applicant must complete recent credit, and where recent credits are required, these credits shall be taken in professional education or in the applicant's endorsement area(s).

4. Degree not granted until next regular commencement. An applicant who meets the requirements for a license, with the exception of the degree but whose degree will not be granted until the next regular commencement, may be issued a one-year conditional license.
5. Based on an expired Iowa certificate or license, exclusive of a conditional license. The holder of an expired Iowa license, exclusive of a conditional license or a temporary certificate shall be eligible to receive a conditional license upon application. This license shall be endorsed for the type of service authorized by the expired license on which it is based.
6. Based on an administrative decision. The bureau of practitioner preparation and licensure is authorized to issue a conditional license to applicants whose services are needed to fill positions in unique need circumstances.

The conditional license is valid for one year and not renewable.

For a one-year conditional license with a special education endorsement, see 282—Chapter 15.

282—14.16(272) Requirements for a two-year conditional license. A conditional license valid for two years may be issued to an individual under the following conditions:

If a person is the holder of a valid license and is the holder of one or more endorsements, but is seeking to obtain some other endorsement, a two-year conditional license may be issued if requested by an employer and the individual seeking this endorsement has completed at least two-thirds of the content requirements or one-half of the content requirements in a state-designated shortage area, leading to completion of all requirements for that endorsement.

If teaching experience is a requirement of the endorsement sought, a maximum of one year of teaching experience may be earned within the term of the conditional license by teaching a minimum of one hour per day for a minimum of 160 days per year in a classroom for which the applicant holds the proper endorsement. For the superintendent's endorsement, all experience requirements must have been met prior to applying for the conditional license.

A school district administrator may file a written request with the board for an exception to the minimum content requirements on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

This license is not renewable.

282—14.17(272) Requirements for a substitute teacher's license.

14.17(1) A substitute teacher's license may be issued to an individual who has met the following:

a. Has been the holder of, or presently holds, a license in Iowa; or holds or held a regular teacher's license or certificate in another state, exclusive of temporary, emergency, substitute certificate or license, or a certificate based on an alternative certification program.

b. Has successfully completed all requirements of an approved teacher education program and is eligible for the provisional license, but has not applied for and been issued this license, or who meets all requirements for the provisional license with the exception of the degree but whose degree will be granted at the next regular commencement.

14.17(2) A substitute license is valid for five years and for not more than 90 days of teaching in any one assignment during any one school year.

A school district administrator may file a written request with the board for an extension of the 90-day limit in one assignment on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

14.17(3) The holder of a substitute license is authorized to teach in any school system in any position in which a regularly licensed teacher was employed to begin the school year.

In addition to the authority inherent in the provisional, educational, professional teacher, and permanent professional licenses and the endorsement(s) held, the holder of one of these regular licenses may substitute on the same basis as the holder of a substitute license while the regular license is in effect.

This license may be renewed by meeting requirements listed in 282—17.9(272).

282—14.18(272) Areas and grade levels of teaching endorsements.

1. Teaching—Subject areas.

Endorsements	Grade Levels	
	K-6*	7-12**
Agriculture		X
Art	X	X
Business — General		X
Business — Office and Business — Marketing/Management		X
Driver and Safety Education		X
English/Language Arts	X	X
Foreign Language	X	X
Health	X	X
Home Economics		X
Industrial Technology		X
Journalism		X
Mathematics	X	X
Music	X	X
Physical Education	X	X
Reading	X	X

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations component.

(3) Completion of the professional education core. See 14.19(3).

(4) Content:

1. Child growth and development with emphasis on the emotional, physical and mental characteristics of elementary age children, unless completed as part of the professional education core. See 14.19(3).
2. Methods and materials of teaching elementary language arts.
3. Methods and materials of teaching elementary reading.
4. Elementary curriculum (methods and materials).
5. Methods and materials of teaching elementary mathematics.
6. Methods and materials of teaching elementary science.
7. Children's literature.
8. Methods and materials of teaching elementary social studies.
9. Methods and materials in two of the following areas:
   Methods and materials of teaching elementary health.
   Methods and materials of teaching elementary physical education.
   Methods and materials of teaching elementary art.
   Methods and materials of teaching elementary music.
10. Pre-student teaching field experience in at least two different grades.
11. A field of specialization in a single discipline or a formal interdisciplinary program of at least twelve semester hours.

14.20(3) *Teacher—prekindergarten-kindergarten.*

a. Authorization. The holder of this endorsement is authorized to teach at the prekindergarten-kindergarten level.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 14.19(3).

(4) Content:

1. Human growth and development: infancy and early childhood, unless completed as part of the professional education core. See 14.19(3).
2. Curriculum development and methodology for young children.
3. Child-family-school-community relationships (community agencies).
4. Guidance of young children three to six years of age.
5. Organization of prekindergarten-kindergarten programs.
6. Child and family nutrition.
7. Language development and learning.
8. Kindergarten: programs and curriculum development.

14.20(4) *ESL.* K-12.

a. Authorization. The holder of this endorsement is authorized to teach English as a second language in kindergarten and grades one through twelve.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 14.19(3).

(4) Content. Completion of 24 semester hours of coursework in English as a second language to include the following:

1. Teaching English as a second language.
2. Applied linguistics.
3. Language in culture.
4. Bilingual education.
5. Nature of language.
6. Process of language acquisition.

14.20(5) *Elementary counselor.*

a. Authorization. The holder of this endorsement is authorized to serve as a counselor in kindergarten and grades one through 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. Human development (career, personal and social development of children and youth).
2. Elementary school guidance.
3. Theory of counseling.
4. Individual and group appraisal.
5. Group methods in guidance and counseling.
6. Educational psychology/learning theory/elementary curriculum.
7. Social, philosophical, or psychological foundations.
8. Child developmental studies.
9. Practicum in elementary school counseling.

c. Other.

(1) Have had one year of successful teaching experience.

(2) Be the holder of or eligible for one other teaching endorsement listed in 14.18(272).

14.20(6) *Secondary counselor.*

a. Authorization. The holder of this endorsement is authorized to serve as a counselor 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. Human development (career, personal and social development of children and youth).
2. Secondary school guidance.
3. Theory of counseling.
4. Individual and group appraisal.
5. Group methods in guidance and counseling.

(4) Content:

1. Organization and administration of school nurse services including the appraisal of the health needs of children and youth.

2. School-community relationships and resources/coordination of school and community resources to serve the health needs of children and youth.

3. Knowledge and understanding of the health needs of exceptional children.

4. Health education.

c. Other. Hold a license as a registered nurse issued by the board of nursing.

NOTE: Although the school nurse endorsement does not authorize general classroom teaching, it does authorize the holder to teach health at all grade levels.

14.20(12) *Teacher—prekindergarten through grade three.*

a. Authorization. The holder of this endorsement is authorized to teach children from birth through grade three.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 14.19(3).

(4) Content:

1. Child growth and development with emphasis on cognitive, language, physical, social, and emotional development, both typical and atypical, for infants and toddlers, preprimary, and primary school children (grades one through three), unless combined as part of the professional education core. See 14.19(3) of the licensure rules for the professional core.

2. Historical, philosophical, and social foundations of early childhood education.

3. Developmentally appropriate curriculum with emphasis on integrated multicultural and nonsexist content including language, mathematics, science, social studies, health, safety, nutrition, visual and expressive arts, social skills, higher-thinking skills, and developmentally appropriate methodology, including adaptations for individual needs, for infants and toddlers, preprimary, and primary school children.

4. Characteristics of play and creativity, and their contributions to the cognitive, language, physical, social and emotional development and learning of infants and toddlers, preprimary, and primary school children.

5. Classroom organization and individual interactions to create positive learning environments for infants and toddlers, preprimary, and primary school children based on child development theory emphasizing guidance techniques.

6. Observation and application of developmentally appropriate assessments for infants and toddlers, preprimary, and primary school children recognizing, referring, and making adaptations for children who are at risk or who have exceptional educational needs and talents.

7. Home-school-community relationships and interactions designed to promote and support parent, family and community involvement, and interagency collaboration.

8. Family systems, cultural diversity, and factors which place families at risk.

9. Child and family health and nutrition.

10. Advocacy, legislation, and public policy as they affect children and families.

11. Administration of child care programs to include staff and program development and supervision and evaluation of support staff.

12. Pre-student teaching field experience with three age levels in infant and toddler, preprimary, and primary programs, with no less than 100 clock hours, and in different settings, such as rural and urban, socioeconomic status, cultural diversity, program types, and program sponsorship.

(5) Student teaching experiences with two different age levels, one before kindergarten and one from kindergarten through grade three.

14.20(13) *Talented and gifted teacher-coordinator.*

a. Authorization. The holder of this endorsement is authorized to serve as a teacher or a coordinator of programs for the gifted and talented from the prekindergarten level through grade twelve. This authorization does not permit general classroom teaching at any level except that level or area for which the holder is eligible or holds the specific endorsement.

b. Program requirements—content. Completion of 12 graduate semester hours of coursework in the area of the gifted and talented to include the following:

(1) Psychology of the gifted.
(2) Programming for the gifted.
(3) Administration and supervision of gifted programs.
(4) Practicum experience in gifted programs.

NOTE: Teachers in specific subject areas will not be required to hold this endorsement if they teach gifted students in their respective endorsement areas.

Practitioners licensed and employed after August 31, 1995, and assigned as teachers or coordinators in programs for the talented and gifted will be required to hold this endorsement.

14.20(14) *American Sign Language endorsement.*

a. Authorization. The holder of this endorsement is authorized to teach American Sign Language in kindergarten and grades one through twelve.

b. Program requirements.

(1) Degree—baccalaureate.
(2) Completion of an approved human relations program.
(3) Completion of the professional education core.
(4) Content. Completion of 18 semester hours of coursework in American Sign Language to include the following:

1. Second language acquisition.
2. Sociology of the deaf community.
3. Linguistic structure of American Sign Language.
4. Language teaching methodology specific to American Sign Language.
5. Teaching the culture of deaf people.
6. Assessment of students in an American Sign Language program.

c. Other. Be the holder of or eligible for one other teaching endorsement listed in rule 14.18(272).

14.20(15) *Middle school endorsement.*

a. Authorization. The holder of this endorsement is authorized to teach all subjects in grades five through eight with the exception of art, industrial arts, music, reading, physical education and special education.

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.

k. *All social sciences.* 7-12. Effective July 1, 2000, completion of 51 semester hours in the social sciences to include 9 semester hours in each of American and world history, 9 semester hours in government, 6 semester hours in sociology, 6 semester hours in psychology other than educational psychology, 6 semester hours in geography, and 6 semester hours in economics.

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.

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◊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.

(3) Two strategy courses chosen from the following list:
1. A methods course for mental disabilities.
2. A methods course for learning disabilities.
3. A methods course for behavioral disorders.
4. A course in remedial reading.
5. A course in remedial mathematics.

(4) A course of a general survey nature in the area of exceptional children.

(5) A course or courses in the collection and use of academic and behavioral data for the educational diagnosis, assessment, and evaluation of special education pupils which should include:
1. Norm-referenced instruments (including behavioral rating measures).
2. Criterion-referenced instruments.
3. Ecological assessment techniques.
4. Systematic observation.
5. Individual trait or personality assessments.
6. Social functioning data.
7. Application of assessment results to individualized program development and management.

(6) Coursework or evidence of competency in:
1. Individual behavioral management, behavioral change strategies, and classroom management.
2. Methods and strategies for working with parents, support services personnel, regular classroom teachers, paraprofessionals, and other individuals involved in the educational program.

(7) Student teaching in a K-6 multicategorical resource room—mildly handicapped.

b. 7-12 multicategorical resource.

(1) The holder of this endorsement must meet the requirements to serve as a teacher of the nonhandicapped. See rule 282—14.18(272).

(2) Same as K-6 except that student teaching and the instructional strategies course for the multicategorical resource room must be 7-12 instead of K-6.

(3) A course in career-vocational programming for special education students.

15.2(9) *Early childhood—special education.*

a. A course of a general survey nature in the area of exceptional children.

b. Coursework specifically focused on special education children from conception to age three which should include:
(1) Development.
(2) Screening, assessment, and evaluation.
(3) Service delivery models.
(4) Curriculum, including behavior management.
(5) Working with adult learners.
(6) Pre-student teaching field experience in home instruction programs.

c. Coursework specifically focused on special education children from age three to six which should include:
(1) Development.
(2) Screening, assessment, and evaluation.
(3) Service delivery models.
(4) Curriculum, including behavior and classroom management.
(5) Pre-student teaching field experience to include severely or multiply handicapped.

d. A course which focuses on specific strategies for working with adult learners and family systems.

e. A course specific to communication development and information on alternative communication systems for special education children.

f. A course specific to methods and materials for working with young children with severe/profound or multiple disabilities to include medical issues, exercises in problem solving specific to adaptations of materials, equipment and programs, and utilization of human resources.

g. A course which focuses on working with others which explores in depth the myriad of related service agencies at the federal, state, and local levels which may be needed to appropriately serve young children and their families who may be categorized as medically fragile, disadvantaged, handicapped, in need of respite services, or from single-parent families.

h. A course in cardiopulmonary resuscitation and first-aid training.

i. Adequate preparation in methods and techniques for working with the medically fragile and technologically dependent children.

j. A student teaching experience in an early childhood special education program.

15.2(10) *Multicategorical special class with integration.*

a. Prekindergarten-kindergarten multicategorical special class with integration. Meet the requirements for the following endorsement: early childhood—special education. Refer to 15.2(9).

b. K-6 multicategorical special class with integration. Meet the requirements for two of the following endorsements:

(1) K-6 behavioral disorders.

(2) K-6 mental disabilities.

1. Mild/moderate, or
2. Moderate/severe/profound.

(3) K-6 learning disabilities.

(4) One of the endorsements may include:

1. K-6 physically handicapped.
2. K-6 hearing impaired.
3. K-6 visually impaired.

c. 7-12 multicategorical special class with integration. Same as K-6 except the grade level must be 7-12.

If all of the requirements for two endorsements are met with the exception of the student teaching experiences, one student teaching experience in a multicategorical special class with integration program may be completed.

15.2(11) *Speech and language teacher.* Reserved.

15.2(12) *Instructional endorsement.* Applicants for a special education instructional endorsement may present evidence of three years' successful teaching experience in the type of assignment authorized by the endorsement to appear on the license sought in lieu of the credits in student teaching required for the endorsement, provided the following three conditions are met:

a. The three years of experience to be substituted for student teaching shall have been gained on a valid license or certificate other than a temporary or emergency certificate or license.

b. A corresponding number of semester hours of credit is presented in other special education courses, and

c. The institution recommending the applicant for such endorsement agrees to the substitution.

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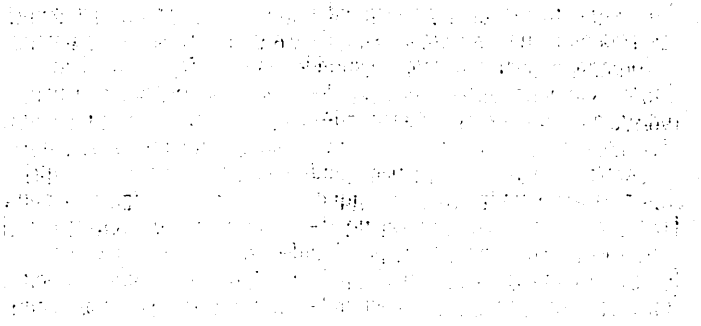
◊Two ARCs
*Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held September 9, 1992; delay lifted by the Committee October 14, 1992, effective October 15, 1992.



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 7, July 1973 IDR Supplement, renumbered as Ch 81]
[Prior to 7/1/83, Social Services[770] Ch 7]
[Prior to 2/11/87, Human Services[498]]

PREAMBLE

This chapter applies to contested case proceedings conducted by or on behalf of the department.

441—7.1(17A) Definitions.

"Administrative law judge" means an employee of the department of inspections and appeals who conducts appeal hearings.

"Agency" means the Iowa department of human services, including any of its local, district, institutional, or central administrative offices.

An *"aggrieved person"* is one who meets any of the following conditions:

1. Whose claim for financial assistance, Medicaid, or services has been denied.
2. Whose application has not been acted upon with reasonable promptness.
3. Who has been notified that there will be a suspension, reduction, or discontinuation of assistance, Medicaid, or services.
4. Who has been aggrieved by a failure to take account of appellant's choice in assignment to a program.
5. For whom it is determined that protective or vendor payment will be established.
6. For whom it is determined that the individual must participate in a service program.
7. Who, as provided under rule 441—95.13(17A):

- Is determined not to be entitled to a support rebate in full or in part because of the date of collection.
- Is determined not to be entitled to a support payment in full or in part because of the date of collection.
- Has not had a dispute based on the date of collection acted upon within 30 days.

8. Whose license, certification, approval, or accreditation has been denied or revoked.

A vendor, payee, parent of child(ren) in foster home or group care, adoptive applicant, an applicant for state community mental health and mental retardation services funds, and a person who has been denied expungement for correction of child abuse registry information may be an aggrieved person in certain situations.

A PROMISE JOBS participant who alleges acts of discrimination on the basis of race, sex, national origin, religion, age or handicapping condition may be an aggrieved person in certain situations.

A person who claims displacement by a PROMISE JOBS participant and who is dissatisfied with the results of informal grievance resolution procedures or who fails or refuses to receive informal grievance resolution procedures may be an aggrieved person in certain situations.

A person who has requested a specific rehabilitative treatment service as defined in rule 441—185.1(234) may be an aggrieved person if the referral worker does not make a referral to the review organization for the services requested or if the person is dissatisfied with the necessity, amount, duration, or scope of services as authorized by the review organization. Providers and referral workers who are dissatisfied with the amount, duration or scope of rehabilitative treatment services authorized shall not be considered an aggrieved person.

9. Who is contesting a claim, offset, or setoff as provided in 441—subrule 95.6(3), 95.7(8), or 98.81(3) by alleging a mistake of fact. Mistake of fact means a mistake in the identity of the obligor, or whether the delinquency meets the criteria for referral or submission. The issue on appeal shall be limited to a mistake of fact. Any other issue may only be determined by a court of competent jurisdiction.

"Appeal" denotes a review and hearing request made by an appellant of a decision made by the agency or its designee. An appeal shall be considered a contested case within the meaning of Iowa Code chapter 17A.

"Appeals advisory committee" means a committee consisting of central office staff who represent the department in the screening of proposed decisions for the director.

"Appellant" denotes the person who claims or asserts a right or demand or the party who takes an appeal from a hearing to an Iowa district court.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Department" means the Iowa department of human services.

"Department of inspections and appeals" means the state agency which contracts with the department to conduct appeal hearings.

"Due process" denotes the rights of a person affected by an agency decision to present a complaint at an appeal hearing and to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the questions of the person's rights in the matter involved without undue delay or hindrance.

"In person or face-to-face hearing" means an appeal hearing conducted by an administrative law judge who is physically present in the same location as the appellant.

"Issues of fact or judgment" denotes disputed issues of facts or of the application of state or federal law or policy to the facts of the individual's personal situation.

"Issues of policy" denotes issues of the legality, fairness, equity, or constitutionality of state or federal law or agency policy where the facts and applicability of the law or policy are undisputed.

"Joint or group hearings" denotes an opportunity for several persons to present their case jointly when all have the same complaint against agency policy.

"Local office" means the county, institution or district office of the department of human services.

"Presumption" denotes an inference drawn from a particular fact or facts or from particular evidence, which stands until the truth of the inference is disposed.

"PROMISE JOBS discrimination complaint" means any written complaint filed in accordance with the provisions of rule 441—7.8(17A) by a PROMISE JOBS participant or the participant's representative which alleges that an adverse action was taken against the participant on the basis of race, sex, national origin, religion, age or a handicapping condition.

"PROMISE JOBS displacement grievance" means any written complaint filed with a PROMISE JOBS contractee by regular employees or their representatives which alleges that the work assignment of an individual under the PROMISE JOBS program violates any of the prohibitions against displacement of regular workers described in subrule 93.21(3).

"Teleconference hearing" means an appeal hearing conducted by an administrative law judge over the telephone.

"Timely notice period" is the time from the date a notice is mailed to the effective date of action. That period of time shall be at least ten calendar days, except in the case of probable fraud of the appellant. When probable fraud of the appellant exists, "timely notice period" shall be at least five calendar days from the date a notice is sent by certified mail. When a license, approval, or certification issued by the department is to be revoked, timely notice period is 30 calendar days from the date a notice is mailed.

"Vendor" means a provider of health care under the medical assistance program or a provider of services under a service program.

441—7.2(17A) Application of rules. Appeals and hearings for the food stamp program are governed by rules 7.10(17A) and 7.21(17A). FIP disqualification hearings are governed by rule 7.22(17A). All other appeals and hearings are governed by rules 7.1(17A) to 7.20(17A).

441—7.3(17A) The administrative law judge. Appeal hearings shall be conducted by an administrative law judge appointed by the department of inspections and appeals pursuant to 1998 Iowa Acts, chapter 1202, section 3. The administrative law judge shall not be connected in any way with the previous actions or decisions on which the appeal is made. Nor shall the administrative law judge be subject to the authority, direction, or discretion of any person who has prosecuted or advocated in connection with that case, the specific controversy underlying that case, or pending factually related contested case or controversy, involving the same parties.

441—7.4(17A) Publication and distribution of hearing procedures. Hearing procedures shall be published and widely distributed in the form of rules or a clearly stated pamphlet, and shall be made available to all applicants, recipients, appellants, and other interested groups and individuals.

441—7.5(17A) The right to appeal. Any person or group of persons may file an appeal with the department concerning any issue. The department shall determine whether a hearing shall be granted.

7.5(1) *When a hearing is granted.* A hearing shall be granted to any appellant when the right to a hearing is granted by state or federal law or Constitution, except as limited in subrules 7.5(2) and 7.5(4).

7.5(2) *When a hearing is not granted.* A hearing shall not be granted when:

a. One of the following issues is appealed:

(1) Services are changed from one plan year to the next in the social service block grant preexpenditure report and as a result the service is no longer available.

(2) Service has been time-limited in the social service block grant preexpenditure report and as a result the service is no longer available.

(3) Payment for a medical claim has been made in accordance with the Medicaid payment schedule for the service billed.

(4) Children have been removed from or placed in a specific foster care setting.

b. Either state or federal law requires automatic grant adjustment for classes of recipients. The director of the department shall decide whether to grant a hearing in these cases. When the reason for an individual appeal is incorrect grant computation in the application of these automatic adjustments, a hearing may be granted.

c. State or federal law or regulation provides for a different forum for appeals.

d. The appeal is filed prematurely as there is no adverse action by the department.

e. Upon review, it is determined that the appellant does not meet the criteria of an aggrieved person as defined in rule 441—7.1(17A).

f. The sole basis for denying, terminating or limiting assistance under 441—Chapter 47, Division I, II or III, or 441—Chapter 58 is that funds for the respective programs have been reduced, exhausted, eliminated or otherwise encumbered.

7.5(3) *Group hearings.* The department may respond to a series of individual requests for hearings by requesting the department of inspections and appeals to conduct a single group hearing in cases in which the sole issue involved is one of state or federal law or policy or changes in state or federal law. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

7.5(4) *Time limit for granting hearing to an appeal.* Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

a. If the appeal is made within 30 days after official notification of an action, or before the effective date of action, a hearing shall be held.

b. When the appeal is made more than 30 days, but less than 90 days after notification, the director shall determine whether a hearing shall be granted. The director may grant a hearing if one or more of the following conditions existed:

(1) There was a serious illness or death of the appellant or a member of the appellant's family.

(2) There was a family emergency or household disaster, such as a fire, flood, or tornado.

(3) The appellant offers a good cause beyond the appellant's control, which can be substantiated.

(4) There was a failure to receive the department's notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant.

c. The time in which to appeal an agency action shall not exceed 90 days. Appeals made more than 90 days after notification shall not be heard.

d. The day after the official notice is mailed is the first day of the time period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

e. PROMISE JOBS displacement and discrimination appeals shall be granted hearing on the following basis:

(1) An appeal of an informal grievance resolution on a PROMISE JOBS displacement grievance shall be made in writing within ten days of issuance (i.e., mailing) of the resolution decision or within 24 days of the filing of the displacement grievance, whichever is the shorter time period, unless good cause for late filing as described in paragraph *"b"* is found.

(2) An appeal of a PROMISE JOBS discrimination complaint shall be made within the time frames provided in paragraphs *"a," "b,"* and *"c"* in relation to the action alleged to have involved discrimination unless good cause for late filing as described in paragraph *"b"* is found.

7.5(5) *Informal settlements.* The time limit for submitting an appeal is not extended while attempts at informal settlement are in progress. Prehearing conferences are provided for at subrules 7.7(4) and 7.8(4).

7.5(6) *Appeals of family investment program (FIP) and refugee cash assistance (RCA) overpayments.* Subject to the time limitations described in subrule 7.5(4), a person's right to appeal the existence, computation, and amount of a FIP or RCA overpayment begins when the person receives the first Form 470-2616, Demand Letter for FIP/RCA Agency Error Overissuance, Form 470-3489, Demand Letter for FIP/RCA Intentional Program Violation Overissuance, or Form 470-3490, Demand Letter for FIP/RCA Client Error Overissuance, from the department of human services, informing the person of the FIP or RCA overpayment. A hearing shall not be held if an appeal is filed in response to a second or subsequent Demand Letter for FIP/RCA Agency Error Overissuance, Demand Letter for FIP/RCA Intentional Program Violation Overissuance, or Demand Letter for FIP/RCA Client Error Overissuance. Subject to the time limitations described in subrule 7.5(4), a person's right to appeal the recovery of an overpayment through benefit reduction, as described at rule 441—46.25(239B), but not the existence, computation, or amount of an overpayment, begins when the person receives Form 470-0486, Notice of Decision, informing the person that benefits will be reduced to recover a FIP or RCA overpayment.

7.5(7) *Appeals of Medicaid and state supplementary assistance (SSA) overpayments.* A person's right to appeal the existence and amount of a Medicaid or SSA overpayment begins when the person receives the first Form 470-2891, Notice of Overpayment, Demand Letter for the Medicaid or State Supplementary Assistance Overpayment, from the department of human services, informing the person of the Medicaid or SSA overpayment, and is subject to the time limitations described in subrule 7.5(4).

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.

441—7.6(17A) 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(17A) 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.

7.7(4) *Conference during the timely notice period.* During the timely notice period, the appellant may have a conference to discuss the situation and the agency shall provide a full explanation of the reasons for the pending action and give the recipient an opportunity to offer facts to support the contention that the pending action is not warranted. The appellant may be accompanied by a representative, legal counsel, friend or other person and this person may represent the appellant when the appellant is not able to be present unless otherwise specified by statute or federal regulation.

7.7(5) *Notification not required.* Notification is not required in the following instances:

a. When services in the social service block grant preexpenditure report are changed from one plan year to the next, or when the plan is amended because funds are no longer available.

b. When service has been time-limited in the social service block grant preexpenditure report, and as a result the service is no longer available.

c. When the placement of a person(s) in foster care is changed.

d. When payment has been in accordance with the Medicaid payment schedule for the service billed because there is no adverse action.

7.7(6) *Reinstatement.* Whenever the county office determines that a previously canceled case must remain canceled for a reason other than that covered by the original notice, timely and adequate notice shall be sent except as specified in subrule 7.7(2). Whenever the county office determines that a previously canceled case is eligible for reinstatement at a lower level of benefits, for a reason other than that covered by the original notice, timely and adequate notice shall be sent except as specified in subrule 7.7(2). Food stamp cases are eligible for reinstatement only in circumstances found in rules 441—65.44(234) and 65.143(234) and 441—subrules 65.19(13) and 65.119(13). FIP cases are eligible for reinstatement only in circumstances found in 441—subrules 40.2(5) and 40.22(5).

441—7.8(17A) Opportunity for hearing.

7.8(1) *Initiating a request.* When a person, or the person's authorized representative, expresses in writing to the local office or the office that took the adverse action, dissatisfaction with any decision, action, or failure to act with reference to the case, the agency shall determine from the nature of the complaint whether the person wishes to appeal and receive an appeal hearing before an administrative law judge.

7.8(2) *Filing the appeal.* The appellant shall be encouraged, but not required, to make written appeal on Form PA-3138-0, part I, Appeal and Hearing Request, and the worker shall provide any instructions or assistance required in completing the form. When the appellant is unwilling to complete or sign this form, nothing in this rule shall be construed to preclude the right to perfect the appeal, as long as the appeal is in writing and has been communicated to the department by the appellant or appellant's representative.

A written appeal is filed on the date postmarked on the envelope sent to the department, or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency. Receipt date of all appeals shall be documented by the office where the appeal is received.

7.8(3) Rescinded IAB 12/13/89, effective 2/1/90.

7.8(4) *Prehearing conference.* When desired by the appellant, a prehearing conference with a representative of the local office or the office which took the action appealed shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the conference, unless precluded by federal rule or state statute.

The purpose of the prehearing conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action, to provide an opportunity for the appellant to explain the appellant's action or position, and to provide an opportunity for the appellant to examine the contents of the case record plus all documents and records to be used by the department at the hearing in accordance with 441—Chapter 9. A conference need not be requested for the appellant to have access to the records as provided in subrule 7.13(1) and 441—Chapter 9.

7.8(5) *Interference.* The conference shall not be used to discourage appellants from proceeding with their appeals. The right of appeal shall not be limited or interfered with in any way, even though the person's complaint may be without basis in fact, or because of the person's own misinterpretation of law, agency policy, or methods of implementing policy.

7.8(6) *Right of the department to deny or dismiss an appeal.* The department or the department of inspections and appeals has the right to deny or dismiss the appeal when:

a. It has been withdrawn by the appellant in writing.

b. The sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients.

c. It has been abandoned.

d. The agency, by written notice, withdraws the action appealed and restores the appellant's status which existed before the action appealed was taken.

e. The agency implements action and issues a notice of decision to correct an error made by the agency which resulted in the appeal.

Abandonment may be deemed to have occurred when the appellant, or the appellant's authorized representative fails, without good cause, to appear at the hearing.

7.8(7) *Denial of due process.* Facts of harassing, threats of prosecution, denial of pertinent information needed by the appellant in preparing the appeal, as a result of the appellant's communicated desire to proceed with the appeal shall be taken into consideration by the administrative law judge in reaching a proposed decision.

7.8(8) *Withdrawal.* When the appellant desires to voluntarily withdraw the appeal, the worker shall request the appellant to sign Form PA-3161-0, Request for Withdrawal of Appeal, if the appellant is in the local office. In all other cases the bureau of policy analysis will request the appellant sign the form or the administrative law judge will secure a statement on the hearing record.

7.8(9) *Department's responsibilities.* Unless the appeal is voluntarily withdrawn, the department worker or agent responsible for representing the department at the hearing shall:

a. Immediately complete part II of Form PA-3138-0, Appeal and Hearing Request, and shall forward that form, the written appeal, and a copy of the notification of the proposed adverse action to the bureau of policy analysis, appeals section. Immediately shall mean within one working day of receipt.

b. Forward a summary and supporting documentation of the worker's factual basis for the proposed action to the bureau of policy analysis, appeals section, within ten days of the receipt of the appeal.

c. Provide copies of all materials sent to the bureau of policy analysis, appeals section, for inclusion in the appeal file to be considered in reaching a decision on the appeal, to the appellant and appellant's representative at the same time.

441—7.9(17A) Continuation of assistance pending a final decision on appeal.

7.9(1) *When assistance continues.* Assistance shall not be suspended, reduced, restricted, discontinued or terminated, nor shall a license or registration be revoked, or other proposed adverse action be taken pending a final decision on an appeal when:

a. An appeal is filed within the timely notice period.

b. The appellant requests a hearing within ten days from the date adequate notice is issued for termination, reduction, or suspension of benefits, food stamps, family investment program or Medicaid, based on the completed monthly report.

If it is determined at a hearing that the issue involves only federal or state law or policy, assistance will be immediately discontinued.

7.9(2) *When assistance does not continue.* The adverse action appealed to suspend, reduce, restrict, discontinue, or terminate assistance, revoke a license or registration, or take other proposed action may be implemented pending a final decision on appeal when:

a. An appeal is not filed within the timely notice period.

b. The appellant does not request a hearing within ten days from the date adequate notice is issued based on the completed monthly report.

c. A food stamp certification ends.

d. A medically needy certification period ends.

e. A transitional child care assistance certification period ends.

f. The appellant directs the worker in writing to proceed with the intended action.

7.9(3) *Recovery of excess assistance paid pending a final decision on appeal.* Continued assistance is subject to recovery by the department if its action is affirmed, except as specified at subrule 7.9(5).

When the department action is sustained, excess assistance paid pending a hearing decision shall be recovered to the date of the decision. This recovery is not an appealable issue. However, appeals may be heard on the computation of excess assistance paid pending a hearing decision.

7.9(4) *Recovery of excess assistance paid when the appellant's benefits are changed prior to a final decision.* Recovery of excess assistance paid will be made to the date of change which affects the improper payment. The recovery shall be made when the appellant's benefits are changed due to one of the following reasons:

a. A determination is made at the hearing that the sole issue is one of state or federal law or policy or change in state or federal law and not one of incorrect grant computation, and the grant is adjusted.

b. A change affecting the appellant's grant occurs while the hearing decision is pending and the appellant fails to request a hearing after notice of the change.

7.9(5) *Recovery of assistance when a new limited benefit plan is established.* Assistance issued pending the final decision of the appeal is not subject to recovery when a new limited benefit plan period is established. A new limited benefit plan period shall be established when the department is affirmed in a timely appeal of the establishment of the limited benefit plan. All of the following conditions shall exist:

a. The appeal is filed within the timely notice period of the notice of decision establishing the beginning date of the LBP.

b. Assistance is continued pending the final decision of the appeal.

c. The department's action is affirmed.

441—7.10(17A) Procedural considerations. Upon receipt of the notice of appeal, the department shall:

7.10(1) *Registration.* Register the appeal.

7.10(2) *Acknowledgment.* Send an acknowledgment of receipt of the appeal to the appellant, representative, or both.

A copy of the acknowledgment of receipt of appeal will be sent to the appropriate departmental office.

7.10(3) *Granting a hearing.* The department shall determine whether an appellant may be granted a hearing and the issues to be discussed at that hearing in accordance with the applicable rules, state statutes, or federal regulations.

a. The appeals of those appellants who are granted a hearing shall be certified to the department of inspections and appeals for the hearing to be conducted. The department shall indicate at the time of certification the issues to be discussed at that hearing.

b. The appeals of those appellants who are denied a hearing shall not be closed until issuance of a letter to the appellant and the appellant's representative, advising of the denial of hearing and the basis upon which that denial is made. Any appellant that disagrees with a denial of hearing may present additional information relative to the reason for denial and request reconsideration by the department or a hearing over the denial.

7.10(4) *Hearing scheduled.* For those records certified for hearing, the department of inspections and appeals shall establish the date, time, method and place of the hearing, with due regard for the convenience of the appellant as set forth in department of inspections and appeals rules 481—Chapter 10 unless otherwise designated by federal or state statute or regulation.

a. In cases involving individual appellants, the hearing shall be held in the appropriate departmental office, provided that when the appellant is incapacitated due to illness or other disability and is housebound, hospitalized, or in a nursing home, the place of the hearing shall be at the convenience of the appellant even to the extent of holding the hearing in the appellant's home except where otherwise restricted.

b. In cases of appeals by vendors or agencies, the hearing shall be scheduled at the most appropriate department office, giving due consideration to the convenience of the vendor or agency and availability of department employees.

c. In cases involving the determination of the community spouse resource allowance, the hearing shall be held within 30 days of the date of the appeal request.

7.10(5) *Method of hearing.* The department of inspections and appeals shall determine whether the appeal hearing is to be conducted in person or by teleconference call. Any appellant is entitled to an in-person hearing if desired. All parties shall be granted the same rights during a teleconference hearing as specified in 441—7.13(17A).

7.10(6) *Reschedule requests.* Requests by the appellant or the department to set another date, time, method or place of hearing shall be made to the department of inspections and appeals directly except as otherwise noted. The granting of the requests will be at the discretion of the department of inspections and appeals.

a. The appellant may request that the teleconference hearing be rescheduled as an in-person hearing. All requests made to the department or to the department of inspections and appeals for a teleconference hearing to be rescheduled as an in-person hearing shall be granted. Any appellant request for an in-person hearing made to the department shall be communicated to the department of inspections and appeals immediately.

b. All other requests concerning the scheduling of a hearing shall be made to the department of inspections and appeals directly.

7.10(7) *Notification.* For those appeals certified for hearing, the department of inspections and appeals shall send a notice to the appellant at least ten calendar days in advance of the hearing date. The notice, as prescribed in Iowa Code section 17A.12(2), shall set forth the date, time, method and place of the hearing, that evidence may be presented orally or documented to establish pertinent facts, and that the appellant may question or refute any testimony, may bring witnesses of the appellant's choice and may be represented by others, including an attorney, subject to federal law and state statute.

a. A copy of this notice shall be forwarded to the local administrator, the district office, and other persons when circumstances peculiar to the case indicate that the notification may be desirable.

b. The notice may be served upon the appellant by personal service as in civil actions, or by certified mail, return receipt requested, or by first-class mail, postage prepaid, addressed to the appellant at the last known address.

441—7.11(17A) Information and referral for legal services. The local office shall advise persons appealing any agency decision of legal services in the community that are willing to assist them.

441—7.12(17A) Subpoenas. The department shall have all subpoena power conferred upon it by statute. Departmental subpoenas shall be issued to a party on request or will be served by the department when requested at least one week in advance of the hearing date.

441—7.13(17A) Rights of appellants during hearings.

7.13(1) *Examination of the evidence.* The department shall provide the appellant, or representative, opportunity prior to, as well as during, the hearing, to examine all materials permitted under rule 9.1(17A,22) or to be offered as evidence. Off the record, or confidential information which the appellant or representative does not have the opportunity to examine shall not be included in the record of the proceedings or considered in reaching a decision.

7.13(2) *Conduct of hearing.* The hearing shall be conducted by an administrative law judge designated by the department of inspections and appeals. It shall be an informal rather than a formal judicial procedure, and shall be designed to serve the best interest of the appellant. The appellant shall have the right to introduce any evidence on points at issue believed necessary, and to challenge and cross-examine any statement made by others, and to present evidence in rebuttal. A verbatim record shall be kept of the evidence presented.

7.13(3) *Opportunity for response.* Opportunity shall be afforded all parties to respond and present evidence and arguments on all issues involved and to be represented by counsel at their own expense.

7.13(4) *Default.* If a party to the appeal fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a proposed decision on the merits in the absence of the defaulting party.

a. Where appropriate and not contrary to law, any party may move for a default decision or for a hearing and a proposed decision on the merits in the absence of a defaulting party.

b. A default decision or a proposed decision on the merits in the absence of the defaulting party may award any relief against the defaulting party consistent with the relief requested prior to the default, but the relief awarded against the defaulting party may not exceed the requested relief prior to the default.

c. Proceedings after a default decision are specified in subrule 7.13(5).

d. Proceedings after a hearing and a proposed decision on the merits in the absence of a defaulting party are specified in subrule 7.13(6).

7.13(5) *Proceedings after default decision.*

a. Default decisions become final agency action unless a motion to vacate the decision is filed within the time allowed for an appeal of a proposed decision by subrule 7.16(5).

b. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate at the contested case proceeding and must be filed with the Department of Human Services Appeals Section, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114. The department of human services appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the department to respond to the motion to vacate. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the department. The department of human services appeals section shall certify the motion to vacate to the department of inspections and appeals for the presiding officer to review the motion, hold any additional proceedings, as appropriate, and determine if good cause exists for the default.

c. Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party.

d. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

e. Upon determining whether good cause exists, the presiding officer shall issue a proposed decision on the motion to vacate, which shall be subject to review by the director pursuant to rule 441—7.16(17A).

f. Upon a final decision granting a motion to vacate, the contested case hearing shall proceed accordingly, after proper service of notice to all parties. The situation shall be treated as the filing of a new appeal for purposes of calculating time limits, with the filing date being the date the decision granting the motion to vacate became final.

g. Upon a final decision denying a motion to vacate, the default decision becomes final agency action.

7.13(6) *Proceedings after hearing and proposed decision on the merits in the absence of a defaulting party.*

a. Proposed decisions on the merits after a party has failed to appear or participate in a contested case become final agency action unless:

(1) A motion to vacate the proposed decision is filed by the defaulting party based on good cause for the failure to appear or participate, within the time allowed for an appeal of a proposed decision by subrule 7.16(5); or

(2) Any party requests review on the merits by the director pursuant to rule 441—7.16(17A).

b. If a motion to vacate and a request for review on the merits are both made in a timely manner after a proposed decision on the merits in the absence of a defaulting party, the review by the director on the merits of the appeal shall be stayed pending the outcome of the motion to vacate.

c. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate at the contested case proceeding and must be filed with the Department of Human Services Appeals Section, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114. The department of human services appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the department to respond to the motion to vacate. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the department. The department of human services appeals section shall certify the motion to vacate to the department of inspections and appeals for the presiding officer to review the motion, hold any additional proceedings, as appropriate, and determine if good cause exists for the default.

d. Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party.

e. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

f. Upon determining whether good cause exists, the presiding officer shall issue a proposed decision on the motion to vacate, which shall be subject to review by the director pursuant to rule 441—7.16(17A).

g. Upon a final decision granting a motion to vacate, a new contested case hearing shall be held after proper service of notice to all parties. The situation shall be treated as the filing of a new appeal for purposes of calculating time limits, with the filing date being the date the decision granting the motion to vacate became final.

h. Upon a final decision denying a motion to vacate, the proposed decision on the merits in the absence of a defaulting party becomes final unless there is request for review on the merits by the director made pursuant to paragraph 7.13(6)*"a"* or *"j."*

i. Any review on the merits by the director requested pursuant to paragraph 7.13(6)*"a"* and stayed pursuant to paragraph 7.13(6)*"b"* pending a decision on a motion to vacate shall be conducted upon a final decision denying the motion to vacate.

j. Upon a final decision denying a motion to vacate a proposed decision issued in the absence of a defaulting party, any party to the contested case proceeding may request a review on the merits by the director pursuant to rule 441—7.16(17A), treating the date that the denial of the motion to vacate became final as the date of the proposed decision.

441—7.14(17A) Limitation of persons attending. The hearing shall be limited in attendance to the following persons, unless otherwise specified by statute or federal regulations: appellant, appellant's representative, agency employees, agency's legal representatives, other persons present for the purpose of offering testimony pertinent to the issues in controversy, and others upon mutual agreement of the parties. The administrative law judge may sequester witnesses during the hearing.

Nothing in this rule shall be construed to allow members of the press, news media, or any other citizens' group to attend the hearing without the written consent of the appellant.

441—7.15(17A) Medical examination. When the hearing involves medical issues, a medical assessment or examination by a person or physician other than the one involved in the decision under question shall be obtained and the report made a part of the hearing record when the administrative law judge or appellant considers it necessary. Any medical examination required shall be performed by a physician satisfactory to the appellant and the department at agency expense.

Forms PA-5113-0, Authorization for Examination and Claim for Payment, and PA-2126-5, Report on Incapacity, shall be utilized in obtaining medical information to be used in the appeal and to authorize payment for the examination.

441—7.16(17A) The appeal decision.

7.16(1) *Record.* The record in a contested case shall include, in addition to those materials specified in Iowa Code section 17A.12(6):

a. The notice of appeal.

b. All evidence received or considered and all other submissions, including the verbatim record of the hearing.

7.16(2) *Findings of fact.* Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record. The findings of fact and conclusions of law in the proposed or final decision shall be limited to contested issues of fact or policy.

7.16(3) *Proposed decision.* Following the reception of evidence, the administrative law judge shall issue a proposed decision, consisting of findings of fact and conclusions of law, separately stated.

7.16(4) *Appeal of the proposed decision.* After issuing a proposed decision the administrative law judge shall submit it to the department with copies to the appeals advisory committee.

The appellant, appellant's representative, or the department may appeal for the director's review of the proposed decision.

When the appellant or the department has not appealed the proposed decision or an appeal for the director's review of the proposed decision is not granted, the proposed decision shall become the final decision.

The director's review on appeal of the proposed decision shall be on the basis of the record as defined in subrule 7.16(1), except that the director need not listen to the verbatim record of the hearing in a review or appeal. The review or appeal shall be limited to issues raised prior to that time and specified by the party requesting the appeal or review. The director may designate another to act on the director's behalf in making final decisions.

7.16(5) *Time limit for appeal of a proposed decision.* Appeal for the director's review of the proposed decision must be made in writing to the director within ten calendar days of the date on which the proposed decision was signed and mailed. The day after the proposed decision is mailed is the first day of the time period within which a request for review must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

7.16(6) *Appeal of the proposed decision by the department.* The appeals advisory committee acts as an initial screening device for the director and may recommend that the director review a proposed decision. That recommendation is not binding upon the director, and the director may decide to review a proposed decision without that committee's recommendation.

When a review of a proposed decision on the department's appeal is granted by the director, the appellant and appellant's representative shall be notified of the review and the department's basis for requesting the review. The appellant or appellant's representative shall be provided ten calendar days from the date of notification to file exceptions, present briefs, and submit further written arguments or objections for consideration upon review.

The day after the notification is mailed is the first day of the time period within which a response to the department's request for review must be filed. When the time limit for responding falls on a holiday or a weekend, the time will be extended to the next workday.

7.16(7) *Appeal of the proposed decision by the appellant.* When a review of a proposed decision on the appellant's or appellant's representative's appeal is granted by the director, the appellant and appellant's representative shall be so notified.

7.16(8) *Opportunity for oral presentation of appeal of the proposed decision.* In cases where there is an appeal of a proposed decision each party shall be afforded an opportunity to present oral arguments with the consent of the director. Any party wishing oral argument shall specifically request it. When granted, all parties shall be notified of the time and place.

7.16(9) *Time limit.* Prompt, definite and final administrative action to carry out the decision rendered shall be taken within 90 days from the date of the appeal on all decisions except food stamps and vendors. Food stamp-only decisions shall be rendered in 60 days. Vendor decisions shall be rendered in 120 days. PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee.

a. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.

b. Immediately upon receipt of a copy of the final decision, the local office shall take the action required by the decision. A report of that action shall be submitted to the bureau of policy analysis, appeals section, within seven calendar days of the date of the final decision. When the final decision is favorable to the appellant, or when the agency decides in favor of the appellant prior to the hearing, correct payments retroactive to the date of the incorrect action shall be made.

441—7.17(17A) Exhausting administrative remedies. To have exhausted all adequate administrative remedies, a party need not request a rehearing under Iowa Code section 17A.16(2) where the party accepts the findings of fact as prepared by the administrative law judge, but wishes to challenge the conclusions of law, or departmental policy.

441—7.18(17A) Ex parte communication.

7.18(1) *Prohibited communication.* Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. For purposes of this rule, the term "personally investigating" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

7.18(2) *Commencement of prohibition.* Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

7.18(3) *When communication is ex parte.* Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

7.18(4) *Avoidance of ex parte communication.* To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Written communications shall be provided to all parties to the appeal.

7.18(5) *Communications not prohibited.* Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

7.18(6) *Disclosure of prohibited communications.* A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified from the case. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of communication.

7.18(7) *Disclosure of prior receipt of information through ex parte communication.* Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

7.18(8) *Imposition of sanctions.* The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by department personnel shall be reported to the department for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

441—7.19(17A) Accessibility of hearing decisions. Summary reports of all hearing decisions shall be made available to local offices and the public. The information shall be presented in a manner consistent with requirements for safeguarding personal information concerning applicants and recipients.

441—7.20(17A) Right of judicial review and stays of agency action.

7.20(1) *Right of judicial review.* If a director's review is requested, the final decision shall advise the appellant of the right to judicial review by the district court. When the appellant is dissatisfied with the final decision, and appeals the decision to the district court, the department shall furnish copies of the documents or supporting papers which the appellant and legal representative may need in order to perfect the appeal to district court, including a written transcript of the hearing. An appeal of the final decision to district court does not itself stay execution or enforcement of an agency action.

7.20(2) *Stays of agency action.*

a. Any party to a contested case proceeding may petition the director for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

b. In determining whether to grant a stay pending judicial review, the director shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

c. A stay may be vacated by the director pending judicial review upon application of the department or any other party.

441—7.21(17A) Food stamp hearings and appeals.

7.21(1) All appeal hearings in the food stamp program shall be conducted in accordance with federal regulation, Title 7, Section 273.15, as amended to February 15, 1983.

7.21(2) All administrative disqualification hearings shall be conducted in accordance with federal regulation, Title 7, Section 273.16, as amended to February 15, 1983.

a. Hearings over disqualification for intentional program violation shall be conducted by an administrative law judge.

b. The department of inspections and appeals shall send a form letter, Notice of Intentional Program Violation Hearing, 427-0364 by certified mail 30 calendar days prior to the initial hearing date.

c. The hearing may be scheduled as an in-person hearing or as a teleconference hearing. If the respondent appears at a teleconference hearing, the respondent must sign Form 427-0415, Agreement for Telephone Hearing, for the hearing to proceed by telephone.

441—7.22(17A) FIP disqualification hearings. This rule applies to family investment program overpayments except for PROMISE JOBS expense allowance overpayments described at rules 441—93.51(249C) and 93.151(249C).

7.22(1) *Scheduling the hearing.* The department of inspections and appeals shall send Form 427-0364, Notice of Intentional Program Violation Hearing, by certified mail 30 calendar days prior to the initial hearing.

The hearing may be scheduled as an in-person hearing or as a teleconference hearing. If the respondent appears at a teleconference hearing, the respondent must sign Form 427-0415, Agreement for Telephone Hearing, for the hearing to proceed by telephone.

7.22(2) *Conducting the hearing.* Hearings over disqualifications for intentional program violation shall be conducted by an administrative law judge of the department of inspections and appeals.

Administrative disqualification hearings as described at rules 441—46.8(239) and 441—46.28(239) shall be conducted in accordance with rules 7.10(17A) to 7.15(17A) except as otherwise specified. The hearings shall consider each assistance program listed in the referral for intentional program violation.

At the administrative disqualification hearing, the administrative law judge shall advise the assistance unit member or the person's representative of the right to refuse to answer questions during the hearing and that the information may be used in a civil or criminal action by the state or federal government.

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(17A) 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.

441—7.23(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs, and oral argument should be submitted to the presiding officer for approval as soon as practicable.

441—7.24(17A) Emergency adjudicative proceedings.

7.24(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the United States Constitution and the Iowa Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 as amended by 1998 Iowa Acts, chapter 1202, section 20(3), to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

a. Whether there has been sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information.

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing.

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare.

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare.

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

7.24(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger and the department's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by using one or more of the following procedures:

(1) Personal delivery.

(2) Certified mail, return receipt requested, to the last address on file with the department.

(3) Certified mail to the last address on file with the department.

(4) First-class mail to the last address on file with the department.

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

7.24(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

7.24(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger. Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

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

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◊Two ARCs

CHAPTER 13
PROGRAM EVALUATION

PREAMBLE

The purpose of this chapter is to define the methods and procedures used by the department to provide a systematic method for measuring the validity of the eligibility determinations in the aid to dependent children (ADC), food stamp, and Medicaid programs; to provide a basis for establishing state agency liability for errors that exceed the national standard and state agency eligibility for enhanced funding; and to provide program information which can be used by the department in determining a corrective action plan to ensure the rules and regulations are implemented in accordance with the ADC, food stamp and Medicaid rules.

441—13.1(234,239,249A) Definitions.

"Active case" means a case that was receiving assistance for the month of review.

"Case record" means the record used to establish a client's eligibility.

"Client" means a current or former applicant or recipient of aid to dependent children, food stamps, or Medicaid.

"Collateral contact" means a source of information which can be used to verify the client's circumstances.

"Department" means the Iowa department of human services.

"Field investigation" means a contact involving the public or other agencies to obtain information about the client's circumstances for the appropriate month of review.

"Local agency" means the local or district office of the department.

"Month of review" means the specific calendar or fiscal month for which the assistance under review is received.

"Negative case" means a case that was terminated or denied assistance for the month of review.

"Public assistance programs" means those programs involving federal funds, i.e., aid to dependent children, food stamps, Medicaid.

"Random sample" means a systematic (or every nth unit) sample drawn monthly for which each item in the universe has an equal probability of being selected. Sample size is determined by federal guidelines.

"State policies" means the rules and regulations used by the local agency to administer the aid to dependent children, food stamp, and Medicaid programs.

This rule is intended to implement Iowa Code sections 234.12, 239.6, and 249A.4.

441—13.2(234,239,249A) Review of public assistance records by the department.

13.2(1) Authorized representatives of the department shall have the right to review case records to determine the following:

a. If the client has provided complete, correct and accurate information to the local agency to be used in the determination of the assistance benefits.

b. If the local agency has correctly administered the state policies in determination of assistance for the public assistance programs.

c. Whether overpayments or underpayments have been made correctly to the public assistance client during the month of review.

d. If there is indication of fraudulent practice or abuse of the public assistance programs by either the client or local agency.

13.2(2) All pertinent case records within the department may be used by the reviewer to assist in substantiating an accurate reflection as to the correctness of the assistance paid to the client.

This rule is intended to implement Iowa Code sections 234.12, 239.6 and 249A.4.

441—13.3(234,239,249A) Who shall be reviewed. Any active or negative public assistance case may be reviewed at any time at the discretion of the department based upon a random sample to:

13.3(1) Ensure federal and state requirements for quality control are met.

13.3(2) Detect error prone case issues to assist in corrective action.

13.3(3) Maintain public assistance program integrity.

This rule is intended to implement Iowa Code sections 234.12, 239.6, and 249A.4.

441—13.4(234,239,249A) Notification of review. On positive case actions, clients shall be notified, either orally or in writing, that their case has been selected for review. The client will be contacted in a negative case only if a discrepancy exists which cannot be resolved from the case record.

This rule is intended to implement Iowa Code sections 234.12, 239.6, and 249A.4.

441—13.5(234,239,249A) Review procedure. The department will select the appropriate method of conducting the review. Review procedures may include, but are not limited to, the following:

13.5(1) A random sampling of active and negative case actions shall be used to determine the case records to be studied.

13.5(2) The case record shall be analyzed for discrepancies, correct application of policies and procedures and shall be used as the basis for a field investigation.

13.5(3) Client interviews shall be required as follows:

a. Personal interviews are required on all active aid to dependent children and food stamp reviews. Form 470-1065, Appointment Confirmation, may be sent to the client requesting written confirmation of the appointment time.

b. In lieu of the personal interview, Medicaid clients or their representatives are required to provide all information requested on Form 470-1633, Medicaid Questionnaire.

c. Client contacts are only required in negative case reviews when there is a discrepancy which cannot be resolved from the case record.

13.5(4) Collateral contacts are required whenever the client is unable to furnish information needed or the reviewer needs additional information to establish the correctness of eligibility and payment. The following forms shall be used to contact the collateral source in order to verify information specified below. The collateral contact shall complete the requested information and return the form to the reviewer.

a. The client shall not be required to give written permission of the following collateral contacts:

(1) Absent Parent Questionnaire, Form 470-0457, sent to the absent parent in order to determine whether or not the absent parent had provided any income to or had any resources for the client or children which would have affected the review month.

(2) Grandparent Questionnaire, Form 470-1643, sent to the child(ren)'s grandparents to determine whether or not the grandparents had provided any income or had any resources for the client or child(ren) which would have affected the review month.

(3) Motor Vehicle Information Request, Form 470-1634, used to determine whether or not the client had any registered vehicles.

(4) Property Verification Request, Form 470-1641, used to determine whether or not the client had any recorded property.

(5) Application for Confidential Verification of Vital Statistics, Form 470-0474, used to verify birth, death, and marital status when the event took place in Iowa.

(6) Address Information Request, Form 470-0176, used to contact the post office to determine a person's mailing address.

(7) Facility Questionnaire, Form 470-0100, used in Medicaid cases to determine information concerning a client's stay in a facility.

(8) Parent Questionnaire for Foster Children, Form 470-2014, used to contact the natural parents of the foster care child to determine the resources and income of the child.

(9) Foster Parent Questionnaire, Form 470-2013, used to contact the foster parents of the foster child to determine any resources and income of the child.

(10) Child Support Verification Request, Form 470-2009, used to contact the clerk of court or the friend of court in order to determine if child support or alimony was paid.

b. The client shall be required to sign the following specified release of information forms whenever necessary to verify information essential to the determination of eligibility and payment:

(1) Household Member Questionnaire, Form 470-1630, used to obtain information concerning a client's household composition.

(2) Landlord Questionnaire, Form 470-1632, used to contact the client's landlord.

(3) Financial Institution Questionnaire, Form 470-1631, used to verify information from a financial institution.

(4) Request for School Verification, Form 470-1638, used to verify information in the child(ren)'s school records.

(5) Earned Income Verification, Form 470-1639, used to verify information concerning a client's employment.

(6) Verification of Educational Financial Aid, Form 470-1640, used to verify information from an institution of higher learning.

(7) Authorization for Release of Information, Form PA-2206-0, used whenever it is necessary to verify information which is not covered by a specific release in order to establish the correctness of eligibility and payment.

c. Should the client refuse to authorize the department to contact an informant to verify information that is necessary for the completion of the review, collateral contacts shall still be made through use of the general release statement contained in the Public Assistance Application, Form PA-2207-0 or PA-2230-0 (Spanish version); Form PA-1107-0, Application for Medical Assistance or State Supplementary Assistance; Public Assistance Eligibility Report, Form PA-2140-0; or Application for Food Stamps, Form FP-2101-0 or FP-2101-1 (Spanish version).

13.5(5) On aid to dependent children and Medicaid reviews, the quality control reviewer shall seek to identify potential third-party payment resources for health services in noncasualty situations, and to identify accidents that occurred prior to or during the review month.

This rule is intended to implement Iowa Code sections 234.12, 239.6 and 249A.4.

441—13.6(234,239,249A) Failure to cooperate. Client cooperation with quality control is a program eligibility requirement as set forth in 441—subrule 40.7(4), paragraph *"d,"* and rules 441—65.3(234) and 441—76.8(249A). When quality control determines that the client has refused to cooperate with the review process, the client is no longer eligible for the program benefits and will not be eligible for the program benefits until the client has cooperated.

This rule is intended to implement Iowa Code sections 234.12, 239.6 and 249A.4.

441—13.7(234,239,249A) Report of findings. The quality control review findings are utilized by the department in the following ways:

13.7(1) The local agency will use the findings in taking the appropriate case actions where an overpayment or underpayment has been found in a client's case record.

13.7(2) The department will use the overall findings to identify error prone program issues to be used in planning their corrective action plan.

13.7(3) The department will use the findings of the overall sample period to determine the error rate used to establish state agency liability or enhanced funding.

This rule is intended to implement Iowa Code sections 234.12, 239.6 and 249A.4.

441—13.8(234,239,249A) Federal rereview. A sample of the cases selected by the department for review will also be reviewed by the applicable federal agency to determine the correctness of the department's review of the case.

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CHAPTER 14
OFFSET OF COUNTY DEBTS OWED DEPARTMENT

PREAMBLE

These rules provide a process for the department (1) to identify counties that owe liabilities to the department and (2) to cooperate with the department of revenue and finance for offsetting the counties' claims against state agencies with the liabilities which those counties owe the department. The process for identifying counties that owe liabilities and the process for offset each include notice and opportunity to be heard.

441—14.1(234) Definitions.

"Department" means the Iowa department of human services.

"Director" is the director of the Iowa department of human services.

"Liability" or *"debt"* means any liquidated sum due and owing to the department which has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum. Before setoff, the amount of a county's liability to the department shall be at least $50.

"Offset" shall mean to set off or compensate the department which has a legal claim against a county where there exists a county's valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a county's claims on a state agency shall be at least $50.

441—14.2(234) Identifying counties with liabilities.

14.2(1) *Notice to county regarding liability.* When a bill to the county remains unpaid 60 calendar days following the date of the bill, the county shall be given written notice by the department. This notice shall:

a. State the amount due.

b. State the department's intent to use the offset program as provided in department of revenue and finance rules 701—Chapter 150.

c. Require the county to send a written response to the bureau of finance within 20 calendar days of the date of notification.

14.2(2) *Response from county regarding debt.* The written response from the county to the bureau of finance shall state the position of the county regarding the amount due.

a. The response from the county shall constitute an appeal if the county provides a written response within 20 calendar days and states why the county disagrees with the amount owed. The county shall provide any relevant legal citations, client identifiers, and any additional information supporting the county's position.

b. The county's right to appeal shall be considered waived if the county fails to pay the full amount due or respond within 20 calendar days of the date of the notification.

14.2(3) *Review of county response regarding debt.* The bureau of finance shall review within ten calendar days of receipt of the written response the basis for the bill and the county's position as stated in the written response.

a. The bureau of finance shall make the necessary adjustments to subsequent billings sent to the county when the bureau of finance agrees with the county's position regarding the liability and shall so notify the county.

b. The bureau of finance shall forward to the appropriate departmental division all information regarding the basis for the bill and the county's written response when the bureau of finance disagrees with the county's position.

(1) The division shall establish the department's final decision regarding the amount owed in accordance with established procedures.

(2) The division shall notify the county and the bureau of finance within 30 calendar days of receipt of the appeal by the division of the department's final decision regarding the amount owed.

(3) The bureau of finance shall make the necessary adjustments to subsequent billings sent to the county regarding the liability and shall so notify the county.

441—14.3(234) List of counties with amounts owed.

14.3(1) *Notification to department of revenue and finance.* The bureau of finance shall provide to the department of revenue and finance a list of the counties with amounts owed as established through rule 441—14.2(234). This list shall be maintained by the department of revenue and finance in a liability file.

14.3(2) *Notification of change.* The bureau of finance shall notify the department of revenue and finance of any change in the status of a debt in the liability file within 30 calendar days from the occurrence of the change.

14.3(3) *Certification of file.* The bureau of finance shall certify the file to the department of revenue and finance semiannually in a manner prescribed by the department of revenue and finance.

441—14.4(234) Notification to county regarding offset.

14.4(1) *Notice.* The bureau of finance shall send notification to the county within ten calendar days from the date the bureau of finance is notified by the department of revenue and finance of a potential offset. This notification shall include:

a. The department's right to the payment in question.

b. The department's right to recover the payment through this offset procedure.

c. The basis of the department's case in regard to the debt.

d. The right of the county to request the split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.

e. The county's right to appeal the offset. The procedure the county follows for appeal is:

(1) The county shall send a written response to the bureau of finance within 20 calendar days of the date of the notification.

(2) The county shall include in the written response any relevant legal citations and any additional information supporting the county's position.

f. The county shall waive any right to appeal if the county fails to respond within 20 calendar days of the date of the notification.

g. The bureau of finance telephone number for the county to contact in the case of questions.

14.4(2) *Copy of notice.* The department of revenue and finance may require a copy of this notice be sent to it.

441—14.5(234) Review of county response regarding offset. The bureau of finance shall review within ten calendar days of receipt of the written response the basis for the offset and the county's position as stated in the written appeal.

14.5(1) *Agreement with county.* The bureau of finance shall not respond to the department of revenue and finance if the bureau of finance agrees with the county's position. The amount of the payment shall be released to the county by the department of revenue and finance as prescribed in department of revenue and finance rule 701—150.5(421).

14.5(2) *Disagreement with county.* The bureau of finance shall certify to the department of revenue and finance that the requirements of Iowa Code section 421.17 have been met.

441—14.6(234) Offset completed.

14.6(1) *Offset implemented.* The offset shall be made by the department of revenue and finance as prescribed in department of revenue and finance rules 701—150.6(421) and 150.7(421).

14.6(2) *Notification to county.* Once the offset has been completed, the bureau of finance shall notify the county of the action taken along with the balance, if any, still due to the department.

14.6(3) *Duty of the department.* The department shall pay to the county any payment offset by the department of revenue and finance to which the department is not entitled, in accordance with established procedures.

These rules are intended to implement Iowa Code section 234.6.

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TITLE II
Reserved

CHAPTERS 15 to 21
Reserved

TITLE III
MENTAL HEALTH

CHAPTER 22
STANDARDS FOR SERVICES TO PERSONS WITH MENTAL ILLNESS, CHRONIC MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, OR BRAIN INJURY

PREAMBLE

Iowa Code section 225C.27 requires the division of mental health, mental retardation, and developmental disabilities to adopt rules to implement the purposes of Iowa Code sections 225C.25 to 225C.28. Those purposes include:

1. Promoting human dignity and protecting the constitutional and statutory rights of persons with mental retardation, developmental disabilities, or chronic mental illness.
2. Encouraging the development of the ability and potential of each person with mental retardation, developmental disabilities, or chronic mental illness in the state to the fullest extent possible.
3. Ensuring that the recipients of services shall not be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Iowa or the Constitution of the United States solely on account of the receipt of the services.

The standards are divided into the following sections:

1. Definitions.
2. Identification of principles which serve as a guide to the provision of services in accordance with the concept of normalization which encompasses the concepts of least restrictive environment and age-appropriate services.
3. The establishment of guidelines related to the delivery of services, including guidelines for personnel providing services, confidentiality, and informed consent.
4. The identification and definition of services which may be utilized to meet the needs of persons with mental retardation, developmental disabilities, or chronic mental illness. These standards include guidelines for the delivery of those services.
5. Procedures governing compliance review proceedings.

The standards represent what the commission believes the service system should strive to achieve. In addition to the concepts contained in the standards, it is the hope of the commission that the service system can be developed in such a way that:

1. People with mental retardation, a developmental disability, or chronic mental illness can be served in their home communities or as near as possible, if they so desire.
2. People with disabilities and their families can be involved in the development, operation, and monitoring of community programs.
3. Community living arrangements can be located in residential neighborhoods where the majority of people are nonhandicapped and the arrangements are similar in size and appearance to other residences in the neighborhood.
4. Services foster relationships with others in the community and support people in regular homes, jobs, and recreational and educational activities.

441—22.1(225C) Definitions.

"Administrative law judge" means an employee of the Iowa department of inspections and appeals who conducts compliance hearings.

"Administrative remedy" or *"administrative review process"* means the procedures of any agency or organization which are designed to provide a person affected by actions of that agency or organization with a mechanism for resolving conflict between the person and the agency or organization.

"Age-appropriate" refers to activities, settings, personal appearance and possessions commensurate with the person's chronological age.

"Aggrieved party" means a person with mental retardation, a developmental disability, or chronic mental illness who has been receiving services and who believes that those services have not been delivered in accordance with the standards adopted by the commission pursuant to Iowa Code section 225C.27.

"Authorized representative" means the aggrieved party's legal representative or designee.

"Commission" means the mental health and mental retardation commission.

"Compliance hearing" means the process for determining if services have been delivered in accordance with the guidelines established in the standards in this chapter.

"Department" means the Iowa department of human services.

"Director" refers to the director of the Iowa department of human services.

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

"Individualization" means promoting self-expression and differentiation from others.

"Individual program plan" means a written plan for the provision of services to the person and, when appropriate, to the person's family, that is developed and implemented, using an interdisciplinary process, and which identifies a person's and, when appropriate, the person's family's functional status, strengths and needs, and service activities designed to enable a person to maintain or move toward independent functioning. The plan identifies anticipated outcomes for services and the steps necessary to achieve those outcomes.

"Informed consent" means an agreement by a person, or by the person's legally authorized representative, to participate in an activity based upon an understanding of:

1. A full explanation of the procedures to be followed, including an identification of those that are experimental.
2. A description of the attendant discomforts and risks.
3. A description of the benefits to be expected.
4. A disclosure of appropriate alternative procedures that would be advantageous for the person.

"Interdisciplinary process" means an approach to assessment, individual program planning, and service implementation in which planning participants function as a team. Each participant, utilizing the skills, competencies, insights, and perspectives provided by the participant's training and experience, focuses on identifying the strengths and the service needs of the person and the person's family. The purpose of the process is for participants to review and discuss, face-to-face, all information and recommendations and to reach decisions as a team. Participants share all information and recommendations, and develop as a team, a single integrated individual program plan to meet the person's and, when appropriate, the person's family's needs.

"Interdisciplinary team" means the group of persons who develop a single, integrated individual program plan to meet the person's needs for services. (See 22.4(9)*"h"*(1).)

"Issues of fact" means disputed issues of facts or of the application of state or federal law or policy to the facts of the person's individual situation.

"Issues of law or policy" means issues of the legality, fairness, equity, or constitutionality of state or federal law or agency policy where the facts and applicability of the law or policy are undisputed.

"Least restrictive environment" means the environment in which the interventions in the lives of people with mental retardation, developmental disabilities, or chronic mental illness can be carried out with a minimum of limitation, intrusion, disruption, and departure from commonly accepted patterns of living.

It is the environment which allows persons to participate to the fullest extent possible for each person in everyday life and to have control over the decisions that affect them. It is the environment that provides needed supports in such a way that they do not unduly interfere with personal liberty and a person's access to the normal events of life.

"Level of functioning" means a person's current physiological and psychological status and current academic, community living, self-care, and vocational skills.

"Mental health problem" means an emotional symptom, situational reaction or problem in living. These are difficulties in adjusting to stress or new situations.

"Normalization" means a process of helping persons, in accordance with their needs and preferences, to achieve a lifestyle that is consistent with the norms and patterns of general society and in ways which incorporate the principles of age-appropriate services and least restrictive environment.

"Personnel training" means an organized program to prepare all personnel to perform assigned duties competently and maintain and improve the competencies of all personnel.

"Persons with a brain injury" means persons 21 years of age and over with clinically evident brain damage or spinal cord injury resulting from trauma which permanently impairs the individual's physical or cognitive functions and causes the individual to meet the federal criteria for a person with a developmental disability except for age of onset of the disability.

"Persons with a mental illness" means persons who meet the criteria for a diagnosis of a mental illness as defined in the Diagnostic and Statistical Manual, Third Edition—Revised (DSM III-R). Diagnoses which fall into this category include, but are not limited to, the following: schizophrenia, major depression, manic depressive (bipolar) disorder, adjustment disorder, and personality disorder. Also included are organic disorders such as dementias, substance-induced disorders, and other organic disorders which include physical disorders such as brain tumors. Persons with certain DSM III-R diagnoses as follows are not considered to have a mental illness.

1. Persons with a V Code diagnosis only. This diagnosis includes conditions that are not a mental disorder but are a focus of treatment, such as marital problems, occupational problems, parent-child problems, or other "phase of life" problems.
2. Persons with a psychoactive substance use disorder diagnosis only.
3. Persons with a developmental disorder diagnosis only. This includes mental retardation, autism, and academic disorders.

"Persons with chronic mental illness" means persons 18 and over, with a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment.

Persons with chronic mental illness typically meet at least one of the following criteria:

1. Have undergone psychiatric treatment more intensive than outpatient care more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization or inpatient hospitalization).
2. Have experienced at least one episode of continuous, structured supportive residential care other than hospitalization.

In addition, these persons typically meet at least two of the following criteria, on a continuing or intermittent basis for at least two years:

1. Are unemployed, or employed in a sheltered setting, or have markedly limited skills and a poor work history.
2. Require financial assistance for out-of-hospital maintenance and may be unable to procure this assistance without help.
3. Show severe inability to establish or maintain a personal social support system.
4. Require help in basic living skills.
5. Exhibit inappropriate social behavior which results in demand for intervention by the mental health or judicial system.

In atypical instances, a person may vary from the above criteria and could still be considered to be a person with chronic mental illness.

(Adapted from the National Institute of Mental Health's Definition and Guiding Principles for Community Support Systems, revised May 1983)

"Persons with developmental disabilities" means persons with a severe, chronic disability which:

1. Is attributable to mental or physical impairment or a combination of mental and physical impairments.
2. Is manifested before the person attains the age of 22.
3. Is likely to continue indefinitely.
4. Results in substantial functional limitations in three or more of the following areas of life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.
5. Reflects the person's need for a combination and sequence of services which are of lifelong or extended duration.

(Adapted from Public Law 99-527, Developmental Disabilities Act of 1984)

"Persons with mental retardation" means persons who meet the following three conditions:

1. Significantly subaverage intellectual functioning: an intelligence quotient (IQ) of approximately 70 or below on an individually administered IQ test (for infants, a clinical judgment of significantly subaverage intellectual functioning) as defined by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, American Psychiatric Association.
2. Concurrent deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for the person's age by the person's cultural group) in at least two of the following areas: communication, self-care, home living, social and interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.
3. The onset is before the age of 18.

(Criteria from "Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV)," 1994 revision, American Psychiatric Association)

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals and objectives for any of the following:

1. Target populations.
2. The population of specified geographic area(s).
3. A specified purpose.
4. A person.

"Service coordinator" (case manager) means the person responsible for ensuring the development and monitoring of the implementation of the person's individual program plan.

"Subject of the hearing" means the individual, agency or organization whose actions are the basis of the request for the compliance hearing.

"Work" means any activity that provides goods or services for wages.

441—22.2(225C) Principles. The following are principles identified by the mental health and mental retardation commission to serve as a guide to the delivery of services in accordance with the principle of normalization. It is the belief of the commission that, if services are provided in accordance with these principles, those services will be age-appropriate and delivered in the least restrictive environment. These principles should be implemented in accordance with the person's strengths, needs and preferences.

22.2(1) Services and settings facilitate physical and social integration with the general society. Factors which may be considered to facilitate integration include, but need not be limited to, access to, use of, and interaction with community professional, social and recreational resources, businesses and public services.

22.2(2) Services and settings promote personal appearance, daily routines and rhythms, forms of address, and rights and privileges consistent with the person's chronological age and cultural environment. Factors which may be considered in determining age and cultural appropriateness include, but need not be limited to, typical schedules for work or school, mealtimes, leisure activities; freedom of choice and movement; typical dress, personal appearance, and personal possessions; and social and sexual behavior.

22.2(3) Services and settings provide opportunities for interaction in groups of size, composition, and nature which are typical for groups in the community. Factors which may be considered in implementation of this requirement include, but need not be limited to, the number of people in a group, the likelihood of the group's being seen by the community as different or negative, and appropriate grouping of individuals by age and areas of interest.

22.2(4) Services and settings ensure that the physical and social environments provide expectations, experiences, and challenges appropriate to the person's developmental level and chronological age and provide the opportunity for personal growth and development. Factors which may be considered in implementing this requirement include, but need not be limited to, use of electrical appliances, cleaning supplies and cooking facilities; appropriate use of protective devices, such as temperature controls on water, alarms, and security systems; use of public transportation; freedom to come and go without supervision; self-administration of medication; and availability of learning opportunities which allow the person to face risks which are a typical part of normal growth and development.

22.2(5) Services and settings promote individualization. Factors which may be considered in implementing this requirement include, but need not be limited to, use of personal belongings; provisions for privacy; allowance for variance in routines and activities; and opportunities for being related to as an individual as opposed to a member of a group.

441—22.3(225C) General guidelines for service delivery. The following are conditions which should be met whenever services are delivered to persons with mental retardation, developmental disabilities, or chronic mental illness.

22.3(1) Services are provided by appropriately and adequately trained personnel.

a. There is a sufficient number of adequately trained and qualified personnel to meet the person's needs and provide services that meet the requirements of these standards.

b. There are ongoing training opportunities for all persons providing services.

c. Each agency or organization ensures that all personnel receive ongoing training.

d. In addition to the training in the skills and knowledge needed to meet specific service responsibilities, all personnel receive training on the concepts and principles identified in Iowa Code sections 225C.25 to 225C.28 and set forth in this chapter.

22.3(2) Personally identifying information is kept confidential. Information is released or disclosed only in accordance with existing federal and state laws and regulations.

a. When consent of the person or the person's legally authorized representative is required, a release of information form is used which specifies to whom the information shall be released, what is to be released, the reason for the release and how the information is to be used, and the period of time for which the release is in effect. The form is signed and dated by the person or the person's legal guardian.

b. Exceptions to obtaining a signed release of information are permitted only for disclosures permitted or required by law; bona fide medical and psychological emergencies; and provider approval, certification, or licensure purposes. When information is released without a signed consent, there is documentation of what information was released, to whom the information was released, and circumstances prompting the release.

c. Services are not contingent upon the person's decision concerning authorization of release of information unless the information is essential to the provision of services in accordance with the provider's professional code of ethics.

d. All recipients of services or their legal representatives have access to the person's record upon request unless otherwise determined by law.

22.3(3) All persons have the right to informed consent. There is documentation that the person has given informed consent.

441—22.4(225C) Services. The following subrules identify, define, and establish guidelines for the delivery of the services which the commission believes should be available within the service system. These services should be made available to a person based on needs identified through a comprehensive evaluation and diagnosis and in accordance with the person's individual program plan. Any one or grouping of these services may be provided in a variety of settings depending on the abilities and needs of the person.

22.4(1) *Advocacy and education services.* Advocacy and education services are services provided to either individuals or groups to advocate for the rights of persons with a mental illness, mental retardation, developmental disability or brain injury including providing them with legal representation; to provide these persons, their family members or service providers with information about the rights or service needs of these persons and, if appropriate, referral to needed services; to provide consultation to public officials, service providers and other persons concerning the rights and service needs of these persons; and to provide information to the public about the rights and service needs of these persons. These services include:

a. Individual advocacy services, including the services of mental health advocates as defined in Iowa Code section 229.19, in which the goal is to assist the person to exercise the rights to which the person is entitled and remove barriers to meeting the person's needs.

b. Legal services which are activities designed to assist the person in exercising constitutional and legislatively enacted rights and which are provided by or under the supervision of a person currently licensed to practice law in the state of Iowa.

c. Information and referral services which are activities designed to provide facts about resources which are available and to assist the person to access those resources.

d. Consultation services which are activities designed to provide professional assistance and information to individuals, groups, and organizations concerning mental health, mental illness, mental retardation, developmental disabilities, and brain injury in order to increase the providers' effectiveness in carrying out their responsibilities for providing services. These activities are provided to a range of individuals and groups which may include, but need not be limited to, health professionals, schools, courts, public welfare agencies, clergy and parents. Consultation services include the following:

(1) Case consultation, which means advisory activities directed to a service provider, advocate or family member to assist in providing services or support to a specific person. Consultation activities may include assisting the provider, advocate or family member to develop skills necessary to teach self-advocacy and to provide specialized services to a person with a mental illness, mental retardation, a developmental disability or a brain injury.

(2) Program consultation, which means advisory activities directed to a service provider to assist the provider in planning, developing, or implementing services or programs or in solving problems or addressing concerns in the provider's own organization.

(3) Community consultation, which means advisory activities directed to community organizations, planning organizations, and citizens' groups to assist them in the planning and development of services.

e. Public education services which are activities provided to persons to increase awareness and understanding of the causes and nature of conditions, situations, or problems which interfere with the functioning in society of persons with a mental illness, mental retardation, a developmental disability or a brain injury.

22.4(2) *Community rehabilitation services.* Community rehabilitation services are activities designed to assist the individual to maintain, gain or regain the practical skills needed to live and socialize in the community. Whenever possible, these services should be taught in natural settings where persons without disabilities live, work, learn and socialize. Community rehabilitation services include:

a. Community living skill education services which are:

(1) Social skill services, which include teaching about self-awareness and social responsiveness, and teaching group participation and interpersonal skills.

(2) Communication skill services, which include teaching expressive and receptive skills of verbal and nonverbal language, including reading and writing.

(3) Independent living skill services, which include teaching those skills necessary to sustain oneself in the physical environment and which are essential to the management of one's personal business and property, including self-advocacy skills.

(4) Self-care skill education services, which include teaching those skills necessary for individuals to care for their physical well-being. These activities focus on personal hygiene, general health maintenance, mobility skills, and other activities of daily living.

(5) Leisure time and recreational skill services, which include teaching persons how to utilize leisure time in a satisfying manner, as well as the specific leisure skills needed to participate in recreational activities.

(6) Parenting skill services, which include teaching persons the skills necessary to meet the needs of the person's child or to provide assistance which helps the person to maintain existing skills.

b. Academic services which include:

(1) Basic education services, which include activities that assist the person to acquire general information and skills that establish the basis for subsequent acquisition and application of knowledge. These services are provided under the auspices of an accredited or approved education institution or under the direction of a certified teacher.

(2) Supported education services, which include activities that provide technical or advanced education with supports or supportive services for persons independently engaged in technical or advanced education programs for individuals who, because of their disabilities, need ongoing support services to participate in and complete the training or course of study.

22.4(3) *Service coordination services.* Service coordination services are activities provided to ensure that the person has received a comprehensive evaluation and diagnosis, to give assistance to the person in obtaining appropriate services and living arrangements, to coordinate the delivery of services, and to provide monitoring to ensure the continued appropriate provision of services and the appropriateness of the living arrangement. This includes:

a. Service coordination services provided in accordance with the following guidelines:

(1) Service coordination services shall be available regardless of whether or not the person is eligible for or receiving other services.

(2) Service coordination services include personal advocacy activities which assist the person to exercise the rights to which the person is entitled and remove barriers to meeting the person's needs.

(3) Service coordination services include outreach, which is a process of systematically reaching into a service area to provide all persons in need with information about services available and how to access them.

(4) Persons providing service coordination services shall meet minimal qualifications which include a bachelor's degree from an accredited college or university in the behavioral sciences, education, health care, human service administration or the social sciences, and one year of postdegree experience in the delivery, planning, coordination or administration of human services; or a high school diploma (or its equivalent) and five years of postdegree experience in the delivery, planning, coordination or administration of human services; or a combination of post-high school experience in the delivery, planning, coordination or administration of human services and post-high school education in the social or behavioral sciences which totals five years. One of the five years must be experience.

Services shall be delivered under the immediate supervision of a person who has at least a bachelor's degree in the behavioral sciences, education, health care, human service administration, or the social sciences, and a minimum of three years of experience in the administration or delivery of human services.

(5) One service coordinator is assigned to each person receiving service coordination services.

(6) The service coordinator assists the person in obtaining a comprehensive evaluation and diagnosis which meets the following requirements:

1. Is adapted to the cultural background, primary language, and ethnic origin of the person.

2. Meets the definitions of diagnosis and evaluation contained in the standard for evaluation services and meets all the requirements of the standard.

3. Identifies the person's level of functioning and provides information necessary to determine the need for services in each of the following areas: community rehabilitation, treatment and vocational.

4. Is completed by persons with education and experience in the area of functioning which is being evaluated.

(7) The service coordinator ensures that there is a social history completed which meets the following requirements:

1. Assesses the social, cultural, and other factors which may affect the person's ability to maintain the current level of functioning or achieve a higher level of functioning. Factors to be assessed include the history of previous living arrangements and services received, relationships with family and other support systems, cultural and ethnic background and religious affiliation, and the person's preferences regarding vocational opportunities and use of leisure time.

2. Is reviewed annually and updated as necessary.

(8) The service coordinator coordinates the development of an individual program plan (IPP) which meets the following requirements:

1. The IPP is developed using an interdisciplinary process. An interdisciplinary team is identified for each person with the composition determined in coordination with the person or the person's legal guardian. The interdisciplinary team includes: the person, the person's legal guardian and the person's family unless the family's participation is contrary to the wishes of the adult person who has not been legally determined to be incompetent, the service coordinator, all current service providers, other persons whose appropriateness may be identified through the comprehensive evaluation and diagnosis or current reevaluation.

2. The person or the person's legal guardian has the ultimate authority to accept or reject the plan unless otherwise determined by a court.

3. The IPP is based on the findings of the comprehensive evaluation and diagnosis or current annual reevaluation.

4. The IPP is in permanent written form dated and signed by the interdisciplinary team members.

5. The IPP is available to the person and all providers of services.

(9) The IPP identifies the following:

1. Individualized goals which are general statements of expected accomplishments to be achieved in meeting the needs identified in the comprehensive evaluation and diagnosis or reevaluation.

2. Objectives, which may be prioritized and which are specific, measurable and time-limited statements of outcome or accomplishments which are necessary for progress toward each goal.

3. Specific service(s) or service activities to be provided to achieve the objectives.

4. The person(s) or agency(ies) responsible for providing the service(s).

5. The date of initiation and anticipated duration of services. The IPP includes identification of the method by which persons or agencies furnishing the service provide to the service coordinator written documentation of the services provided and the person's response to those services.

6. The method by which persons or agencies furnishing the service provide to the service coordinator written documentation, and the rationale for any variation from use of the least restrictive environment.

7. The person legally authorized to act on behalf of the person receiving services, when applicable.

8. Services which are needed but not currently available.

9. Recommendations for guardianship or conservatorship, if applicable.

(10) The service coordinator seeks to determine if service activities identified in the IPP are provided by persons who are appropriately qualified and licensed or certified, when applicable, for the provision of those services. If providers do not appear to meet established qualifications, the service coordinator documents the rationale given for using those providers.

(11) The service coordinator identifies the appropriate composition of the interdisciplinary team.

(12) The service coordinator develops a process for assessing, no less than quarterly, the person's progress toward achieving the goals and objectives identified in the IPP.

(13) The service coordinator coordinates a periodic but at least annual reevaluation and review of the IPP to measure progress and to modify the plan as necessary. The reevaluation and review should meet the following requirements:

1. The reevaluation is conducted by persons with training and skills in the areas being assessed and includes an assessment of the person's current level of functioning and need for services in the following areas: community rehabilitation, treatment and vocational.

2. The interdisciplinary team reviews the current IPP and the findings of the reevaluation.

3. There is a written report of the review which includes, but need not be limited to, a summary of the results of the reevaluation and the person's progress toward the objectives in the IPP, the need for continued services, any recommendations concerning alternative services or living arrangements, and any recommended change in guardianship or conservatorship status, if applicable.

4. The written report reflects those involved in the review and is made available to the person or the person's legal guardian.

b. Evaluation services, which are activities designed to identify the person's current level of functioning and those barriers to maintaining or achieving a higher level of functioning. These activities provide sufficient information to identify appropriate services, service settings, and living arrangements necessary to assist the person to maintain the current level or achieve a higher level of functioning.

(1) Evaluation services focus on the following:

1. Screening, which is the identification of the possible existence of conditions, situations, or problems which are barriers to a person's ability to function.

2. Diagnosis, which is the investigation and analysis of the cause or nature of a person's condition, situation, or problem.

3. Evaluation, which is the determination of the effects of a condition, situation, or problem on a person's level of functioning and the provision of sufficient information to identify the appropriate services, service settings, and living arrangements to assist the person to maintain or achieve a higher level of functioning.

(2) Diagnostic and evaluation activities are performed under the direction of a person with at least a master's degree and two years of post-master's degree experience in evaluation and treatment in the appropriate field and licensed or certified when required by Iowa law. All activities are performed by persons with training and skills in the appropriate fields.

(3) There is a written summary of all screening, diagnosis, and evaluation activities and finding. The summary includes a description of procedures and tests completed and actions taken on completion of the screening, diagnosis, and evaluation activities.

22.4(4) *Personal and environmental supports.* Personal and environmental supports are supports provided to or on behalf of a person in order to allow the person to live in the most integrated situation possible. These supports include:

a. Transportation activities, which are activities designed to assist the person to travel from one place to another to obtain services or carry out life's activities and which meet the requirements of Iowa Code chapter 601J, where applicable.

b. Personal care and property maintenance activities including respite care, homemaker services, and chore services in which the goal is to support the person in the person's living situation.

c. Personal support assistance in the form of financial support, food, clothing, and shelter in which the goal is to support the person in the person's living situation.

22.4(5) *Treatment services.* Treatment services are activities designed to assist the person to maintain or improve physical, emotional and behavioral functioning and to prevent conditions that would present barriers to a person's functioning. Treatment services include physical or physiological treatment and psychotherapeutic treatment.

a. Physical or physiological treatment means activities designed to prevent, halt, control, relieve, or reverse symptoms or conditions which interfere with the physical or physiological functioning of the human body. The activities are provided by or under the supervision of a licensed health care professional.

b. Psychotherapeutic treatment means activities provided to assist a person in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the person's functioning in response to the physical, emotional, and social environment. The activities are provided by or under the supervision of a person who holds a current license when required by Iowa licensure law and who is one of the following:

(1) A psychiatrist, which means a doctor of medicine or osteopathic medicine and surgery who is certified or eligible for certification by the American Board of Psychiatry and Neurology and who is fully licensed to practice medicine in the state of Iowa.

(2) A psychologist, which means a person who is licensed or eligible for licensure to practice psychology in the state of Iowa or who is certified by the Iowa department of education as a school psychologist, or who meets the requirements for eligibility for a license to practice psychology in the state of Iowa as defined in Iowa Code chapter 154B.

(3) A social worker, which means a person who is licensed or eligible for licensure as a social worker in the state of Iowa.

(4) A psychiatric nurse, which means a person who is certified or eligible for certification as a psychiatric mental health nurse practitioner pursuant to the board of nursing rules, 655—Chapter 7.

(5) A mental health counselor, which means a person who is certified or eligible for certification as a mental health counselor by the National Academy of Certified Clinical Mental Health Counselors.

(6) A doctor of medicine or osteopathic medicine or a person with at least a master's degree or its equivalent with coursework focusing on treatment of mental health problems and mental illness, who has two years of supervised experience in providing mental health services.

(7) A person who has less than a master's degree but at least a bachelor's degree and who has sufficient documented training and experience in treatment of persons with mental health problems and mental illness.

22.4(6) *Vocational services.* Vocational services are activities designed to assist persons to understand the meaning, value and demands of work; to learn or reestablish skills, attitudes, personal characteristics, and work behaviors; to develop functional capacities; to provide paid employment with supports for individuals who, because of their disability, need ongoing support services to maintain that employment; or to assist persons to identify, obtain, and maintain employment commensurate with their needs and abilities. Vocational services are provided in accordance with the following guidelines:

a. Whenever possible these services are provided in community workplaces in settings which include people who do not have disabilities.

b. Planned rehabilitation activities enable these persons to regain or attain higher levels of vocational functioning.

c. All applicable wage and hour regulations are met.

d. Persons in work programs are paid wages commensurate with the going rate for comparable work and productivity.

441—22.5(225C) Compliance hearing.

22.5(1) *The right to a compliance hearing.*

a. When a hearing is granted. A hearing shall be granted to any person who meets the definition of an "aggrieved party." A hearing will be granted only after it is determined that the aggrieved party has exhausted all other administrative remedies for correction of the situation prompting the request for a hearing.

b. Time limit for request. A request for a compliance hearing shall be made within 30 calendar days of the finalization of the last action of any previous administrative review process. If there is no other administrative remedy, the request for compliance hearing shall be made within 90 calendar days of the occurrence of the situation or condition prompting the request.

c. Where no hearing is granted. When upon review, it is determined that the party on whose behalf the hearing is requested does not meet the criteria of an aggrieved party or the request is untimely under these rules, no hearing will be granted.

22.5(2) *Opportunity for compliance hearing.*

a. Initiating a request. The aggrieved party or authorized representative shall notify the division in writing that the person wishes to request a compliance hearing. The request shall be sent to:

Division of Mental Health, Mental Retardation, and Developmental Disabilities
Iowa Department of Human Services
Hoover State Office Building, 5th Floor
Des Moines, Iowa 50319-0114

b. Filing the request. The person shall be encouraged to complete the request for a compliance hearing on Form 470-2422, Compliance Hearing Request and Information Sheet, available from the division or from the local offices of the department. When the person is unwilling to complete or sign this form, nothing in this rule shall be construed to preclude the right to a compliance hearing, as long as the desire for a hearing is communicated in writing to the division by the person or the person's authorized representative. A written request for a hearing is filed on the date postmarked on the envelope sent to the division, or on the date the aggrieved party brings the request form to the division.

c. Withdrawal. When the aggrieved party desires to voluntarily withdraw the request, a representative of the division shall request the person to sign Form 470-2423, Request for Withdrawal of Request for Compliance Hearing.

22.5(3) *Procedural considerations.* The division shall submit the request for a hearing to the department of inspections and appeals pursuant to rule 481—10.3(10A). The hearing will be conducted by the department of inspections and appeals pursuant to 481—Chapter 10.

22.5(4) *Limitations on persons attending.* The hearing shall be limited in attendance to the following persons: aggrieved party, aggrieved party's representative, subject of the hearing, the subject's representative, other persons present for the purpose of offering testimony pertinent to the issues in controversy, and others upon mutual agreement of the parties. The administrative law judge may sequester witnesses during the hearing. Nothing in this rule shall be construed to allow members of the press, news media, or any other citizens' group to attend the hearing without the written consent of the aggrieved party and the subject of the review.

a. Appeal of proposed decision. After issuing a proposed decision to the parties, the administrative law judge shall submit it to the director and the division. The proposed decision may be appealed by the aggrieved party. The aggrieved party may appeal the proposed decision to the director within 20 calendar days of the date on which the proposed decision was signed and mailed. When the time limit for filing falls on a holiday or weekend, the time will be extended to the next workday. The day upon which the proposed decision is signed and mailed is the first day of the 20-day period. When the aggrieved party has not appealed the proposed decision, the proposed decision shall become the final decision.

An appeal from or review of the proposed decision shall be on the basis of the record as defined in Iowa Code section 17A.12, subsection 6. The review shall be limited to issues raised prior to that time and specified by the party requesting the review. In cases where there is an appeal from a proposed decision, an opportunity shall be afforded to each party to file exceptions, present briefs, and, with the consent of the director, present oral arguments. A party wishing oral argument shall specifically request it. When granted, all parties shall be notified in advance of the time and place.

b. Time limit. A final decision shall be issued within 90 days from the date of request pursuant to subrule 22.5(2)*"b."* Should the aggrieved party or the subject of the hearing request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time not to exceed 30 days except with the approval of the department of inspections and appeals will be granted and the extra time may be added to the maximum time for the final decision.

c. Limit of findings. The findings of fact and conclusions of law in the proposed or final decision may be limited to contested issues of fact or policy.

22.5(5) *Accessibility of hearing decisions.* Summary reports of all hearing decisions shall be made available to local offices of the department and the public. The information shall be presented in a manner consistent with applicable laws and regulations on confidentiality.

22.5(6) *Right of judicial review.* The hearing decision shall advise the aggrieved party or the subject of the hearing of the right to judicial review by the district court. Either the division, the aggrieved party or the aggrieved party's authorized representative may apply to the Iowa district court for an order to enforce the decision. The division will apply to the district court only upon the request of the aggrieved party or the aggrieved party's authorized representative.

These rules are intended to implement Iowa Code sections 225C.4, 225C.27 and 225C.29.

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CHAPTER 23
MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, AND BRAIN INJURY COMMUNITY SERVICES
Rescinded IAB 5/5/99, effective 7/1/99

*Effective date of definitions of "Division" and "Persons with mental retardation" delayed 70 days by the Administrative Rules Review Committee at its meeting held April 10, 1995.

441—25.53(77GA,HF2545) Methodology for awarding incentive funding. Each county shall report on all performance measures listed in this division, plus any additional performance measures the county has selected, by December 1 of each year.

25.53(1) *Reporting.* Each county shall report performance measure information on forms, or by electronic means, developed for the purpose by the department in consultation with the state county management committee.

25.53(2) *Scoring.* The department shall analyze each county's report to determine the extent to which the county achieved the levels contained in the proposal accepted by the state county management committee. Prior to distribution of incentive funding to counties, results of the analysis shall be shared with the state county management committee.

25.53(3) *County ineligibility.* A county which does not report performance measure data by December 1 will be ineligible to receive incentive funds for that fiscal year. A county may apply for an extension by petitioning the state county management committee prior to December 1. The petition shall describe the circumstances which will cause the report to be delayed and identify the date by which the report will be submitted.

441—25.54(77GA,HF2545) Subsequent year performance factors. For any fiscal year which begins after July 1, 1999, the state county management committee shall not apply any additional performance measures until the county management information system (CoMIS) developed and maintained by the division of mental health and developmental disabilities has been modified, if necessary, to collect and calculate required data elements and performance measures and each county has been given the opportunity to establish baseline measures for those measures.

441—25.55(77GA,HF2545) Phase-in provisions.

25.55(1) *State fiscal year 1999.* For the fiscal year which begins July 1, 1998, each county shall collect data as required above in order to establish a baseline level on all performance measures. A county which collects and reports all required data by December 1, 1999, shall be deemed to have received a 100 percent score on the county's performance indicators.

25.55(2) *State fiscal year 2000.* A county which submits a proposal with its management plan for the fiscal year which begins July 1, 1999, and reports the levels achieved on the selected performance measures by December 1, 2000, shall be deemed to have received a 100 percent score on the county's performance indicators, regardless of the actual levels achieved.

These rules are intended to implement 1998 Iowa Acts, House File 2545, section 8, subsection 2.

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CHAPTER 26
COUNTY MAINTENANCE OF EFFORT CALCULATIONS AND REPORTING
Rescinded IAB 5/5/99, effective 7/1/99

CHAPTER 27
Reserved

CHAPTER 30
STATE HOSPITAL-SCHOOLS
[Prior to 7/1/83, Social Services[770] Ch 30]
[Prior to 2/11/87, Human Services[498]]

441—30.1(218) Visiting.

30.1(1) The visiting hours at the state hospital-schools shall be 9 a.m. to 11 a.m.; 1 p.m. to 4 p.m. for on-ward visit; 8:30 a.m. to 8:30 p.m. for off-campus visit. Visiting hours may be extended at the superintendent's or designee's discretion when visitors are from great distances or when able to make only rare visits.

30.1(2) Persons wishing to visit residents must be approved by the resident's treatment team social worker designee prior to the visit.

30.1(3) The resident shall only be available when the resident is not actively involved in a scheduled treatment activity.

30.1(4) A visit shall be terminated when behavior on the part of the resident or visitor is disruptive to the resident's treatment plan.

30.1(5) Visitors wishing to take a resident off grounds shall obtain prior approval from the resident's treatment team social worker or designee.

This rule is intended to implement Iowa Code section 218.4.

441—30.2(222) Liability for support. The liability of any person, other than the patient, who is legally bound for the support of any patient under 18 years of age shall be determined in the same manner as parent liability in rule 441—156.3(252C), except that the maximum liability shall not exceed the standards for personal allowances established by the department under the family investment program.

This rule is intended to implement Iowa Code section 222.78.

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CHAPTER 31
REIMBURSEMENT TO COUNTIES FOR LOCAL COST OF INPATIENT MENTAL HEALTH TREATMENT
[Prior to 7/1/83 Social Services[770] Ch 31]
[Prior to 2/11/87, Human Services[498]]
Rescinded IAB 5/5/99, effective 7/1/99

CHAPTER 32
STATE COMMUNITY MENTAL HEALTH AND MENTAL RETARDATION SERVICES FUND AND SPECIAL NEEDS GRANTS
[Prior to 7/1/83, Social Services[770] Ch 32]
[Prior to 2/11/87, Human Services[498]]
Rescinded IAB 5/5/99, effective 7/1/99

CHAPTER 33
COMMUNITY MENTAL HEALTH CENTER STANDARDS
Rescinded 9/29/93 IAB, effective 12/1/93; see 441—Chapter 24, Divisions I, III.

CHAPTER 34
ALTERNATIVE DIAGNOSTIC FACILITIES

[Prior to 8/18/82, Mental Health Advisory Council[566] Ch 2]
[Prior to 7/1/83, Social Services[770] Ch 34]
[Prior to 2/11/87, Human Services[498]]

441—34.1(225C) Definitions. Unless otherwise indicated, the following definitions shall apply to the specific terms used in these rules:

"Alternative diagnostic facility" means any organization or individual designated by the county board of supervisors to implement the preliminary diagnostic evaluation policy (Iowa Code section 225C.14) when a county is not served by a community mental health center capable of the diagnostic evaluations. An alternative diagnostic facility may be the outpatient service of a state mental health institute or any organization or individual able to furnish the requisite skills and to meet the standards set forth in this chapter by the mental health and mental retardation commission.

"Mental health professional" means a person who:

1. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling and guidance, nursing and social work; or is a doctor of medicine (M.D.) or doctor of osteopathic medicine and surgery (D.O.); and
2. Holds a current Iowa license when required by Iowa licensure law; and
3. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals and in providing appropriate mental health services for those individuals.

"Preliminary diagnostic evaluation" means an assessment of a person's mental health problems and needs in order to determine the most appropriate service for the person. The evaluation includes, but is not limited to, an assessment of the individual's needs, abilities, disabilities, and relevant environmental factors. Where possible, there is collaboration with the individual's family or significant others as appropriate.

441—34.2(225C) Function. An alternative diagnostic facility shall:

34.2(1) Perform a preliminary diagnostic evaluation of a person who is being considered for admission to a state mental health institute on a voluntary basis pursuant to Iowa Code chapter 229 in order to:

a. Confirm that admission of the person to a state mental health institute is appropriate to the person's mental health needs, and that no suitable alternative method of providing the needed services in a less restrictive setting, in or nearer to the person's home community, is currently available. When results of the evaluation indicate that admission to the mental health institute is appropriate, the evaluator shall inform the institute of the results.

b. Confirm that admission to a state mental health institute is not appropriate to the person's mental health needs. When results of the evaluation indicate that a treatment program, other than that of a state mental health institute, is more appropriate, and the individual agrees, the evaluator shall make arrangements with the alternative program to accept the referral.

34.2(2) Assist the court and, insofar as possible, provide or designate a physician to perform a prehearing examination of a respondent required under Iowa Code section 229.8, subsection 3, paragraph *"b."*

441—34.3(225C) Standards. In order to be designated as an alternative diagnostic facility, a facility shall meet the following standards:

34.3(1) The facility shall have clearly defined lines of authority and accountability so that a contractual agreement may be entered into with a county for the provision of preliminary diagnostic evaluations.

34.3(2) The preliminary diagnostic evaluation shall be performed by a mental health professional within a reasonable time frame, not to exceed 48 hours.

34.3(3) The mental health professional shall be familiar with the mental health institute serving the area and with the treatment resources of the community served.

34.3(4) The facility shall have written procedures for timely reporting of results of evaluations to the selected treatment resource.

34.3(5) The facility shall have written policies and procedures to safeguard the consumer's right to treatment, confidentiality, and freedom of choice. The policies and procedures shall be in conformance with federal and state laws and rules.

34.3(6) The facility shall have written procedures for fees for services.

34.3(7) The facility shall comply with procedures for uniform reporting of statistical data as established by the division of mental health, mental retardation, and developmental disabilities.

34.3(8) The facility shall comply with the standards for the maintenance and operation of public and private facilities offering services to mentally ill persons as adopted by the mental health and mental retardation commission.

These rules are intended to implement Iowa Code sections 225C.4 and 225C.17.

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CHAPTER 35
SUPPLEMENTAL EXPENSE PAYMENT
Rescinded IAB 5/5/99, effective 7/1/99

CHAPTER 36
COMMUNITY SUPERVISED APARTMENT LIVING ARRANGEMENTS
Rescinded 9/29/93 IAB, effective 12/1/93; see 441—Chapter 24, Divisions I, V.

CHAPTER 37
STANDARDS FOR THE CARE OF AND SERVICES TO COUNTY CARE FACILITY RESIDENTS WITH MENTAL ILLNESS AND MENTAL RETARDATION
Rescinded IAB 5/5/99, effective 7/1/99

*As Agency 566—Chapter 2

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 programs.* Assistance shall not be approved when an assistance unit is subject to a period of ineligibility as described at 441—Chapter 47.

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.

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CHAPTER 47
PILOT DIVERSION INITIATIVES

PREAMBLE

This chapter describes the department of human services pilot diversion initiatives. The purpose of these pilot programs is to determine the potential benefits and cost savings of providing immediate, short-term assistance to families in lieu of ongoing assistance under the family investment program (FIP) (applicant diversion), or to meet needs of FIP participants not currently met by existing PROMISE JOBS services (self-sufficiency grants), or to provide supportive services and short-term cash assistance to families in order to prevent the need to return to FIP (post-FIP diversion). Assistance under this chapter is intended to enable families to become or remain self-sufficient by removing barriers to obtaining or retaining employment.

DIVISION I
PILOT FIP-APPLICANT DIVERSION PROGRAM

PREAMBLE

The pilot FIP-applicant diversion program provides a voluntary alternative to ongoing cash assistance to families through the family investment program (FIP) as provided under 441—Chapters 40, 41 and 42. The purpose of the pilot FIP-applicant diversion program is to provide immediate, short-term assistance to a family in lieu of ongoing FIP cash assistance. Assistance under this division may postpone or prevent the need to apply for FIP.

441—47.1(239B) Definitions.

"Approved pilot project" means a pilot proposal meeting the conditions in the request for application or request for renewal that was reviewed, approved and funded by the division administrator. Each approved pilot project shall have a local plan, as described at rule 441—47.6(239B), approved by the division administrator. The project shall be limited to families in a specific geographic area detailed in the local plan.

"Candidate" means anyone expressing an interest in the pilot FIP-applicant diversion program, or identified by a county office having an approved pilot project as likely to meet the criteria for participating in the project, and who is working with the county office to enroll in the program.

"Cash value" means FIP-applicant diversion assistance having direct value to the participant, through cash payment, voucher, or vendor payment. Examples of assistance without direct cash value are mentoring and case management.

"County office" means the county office of the department of human services.

"Department" means the Iowa department of human services.

"Director" means the director of the department.

"Diversion assistance" means any type of assistance provided under this division as described in subrule 47.4(1).

"Division administrator" means the administrator of the division of economic assistance of the department, or the administrator's designee.

"Family" means *"assistance unit"* as defined at rule 441—40.21(239B).

"Family investment program" or *"FIP"* means the cash grant program provided by 441—Chapters 40, 41 and 42, designed to sustain Iowa families.

"Fiscal agent" means that entity provided funds under an agreement with a county office having an approved pilot project. The fiscal agent shall, at the direction of the county office, issue payments for assistance under this division and maintain accounting records as specified by the agreement.

"Human services area administrator (HSAA)" means the person responsible for delivery of income maintenance and social services programs for a county or multicounty area.

"Immediate, short-term assistance" means assistance provided under this division shall be authorized in less time than it would take to process and issue FIP under normal processing standards described at rule 441—40.25(239B), and that it shall not occur on a regular or frequent basis. Participants may receive assistance under this division more than once under the duration of the pilot, but shall not receive assistance so often as to be considered receiving ongoing assistance as under FIP. Time frames and frequency of assistance shall be detailed in the local plan.

"Local plan" means the written policies and procedures and other components for administering an approved pilot project as described at rule 441—47.6(239B).

"Participant" means anyone receiving assistance under this division.

"Pilot proposal" means the project description submitted by the county office prepared within the parameters of a request for application or request for renewal issued by the division administrator. The division administrator shall review, approve, modify and approve, or deny the proposal.

"Request for application" means a request issued by the division administrator to county offices for proposals to implement a pilot project under this division. The request shall provide background information about the purpose, authorization and funding for the pilot FIP-applicant diversion program, as well as general parameters, specific criteria and time frames for submitting a proposal.

"Request for renewal" means a request issued by the division administrator to county offices for proposals to renew an approved pilot project under this division. The request shall provide general parameters, specific criteria and time frames for submitting a renewal proposal.

"Support services" means FIP-applicant diversion assistance having no direct cash value for the participant. Services include, but are not limited to, case management, mentoring, job coaching, skill building, and intervention.

"Temporary assistance for needy families" or *"TANF"* means the program for granting benefits to eligible groups under Title IV-A of the federal Social Security Act as amended by Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This replaced the aid to families with dependent children program.

"Written funding agreement" means that agreement between a county office having an approved pilot project and a fiscal agent. The agreement shall specify the responsibilities of each party to the agreement as well as indicate the amount of FIP-applicant diversion funds allocated to the approved pilot project. The written funding agreement shall be signed by authorized representatives of the department and the fiscal agent.

441—47.2(239B) Availability of program. The pilot FIP-applicant diversion program shall be available only in those counties or other specified areas of the state having an approved pilot project as defined at rule 441—47.1(239B). FIP-applicant diversion assistance shall be provided to those families determined to be likely candidates for success in the program, as determined by the local project staff.

441—47.3(239B) General criteria. Pilot FIP-applicant diversion program candidates shall be otherwise eligible for FIP, as set forth at subrule 47.5(1). Participation in the pilot FIP-applicant diversion program is voluntary and shall be based on an informed decision by the family. Further, candidates must have identifiable barriers to obtaining or retaining employment that can be substantially addressed through the immediate, short-term assistance offered by this division, and according to the local plan.

441—47.4(239B) Assistance available. Diversion assistance shall assist participant families to obtain or retain employment. The means of providing the diversion assistance for each project shall be detailed in the local plans.

47.4(1) *Types of assistance.* Diversion assistance shall be granted through any or all of the following: cash payments, vendor payments, voucher payments, or support services. Specific types of assistance administered by each pilot shall be set forth in the local plans.

47.4(2) *Maximum value of assistance.* For assistance having a cash value to the family, each pilot shall establish a maximum amount each family may receive during the pilot period. Specific maximum values of assistance administered by each pilot shall be set forth in the local plans.

47.4(3) *Frequency of assistance.* Diversion assistance is intended to be of an immediate and short-term nature. While a family may be a candidate more than once, this program shall not be considered ongoing assistance. The frequency of assistance for each approved pilot project shall be set forth in the local plans.

47.4(4) *Supplanting.* FIP-applicant diversion funds shall not be used for services already available through local resources at no cost to the family or to the department. In counties that operate both pilot FIP-applicant and post-FIP diversion projects, cash value assistance shall be paid from the post-FIP diversion funds in the initial 12 months following the effective date of FIP cancellation, if the pilot post-FIP diversion project permits cash value assistance payments, and the candidate is otherwise eligible for post-FIP diversion assistance.

441—47.5(239B) Relationship to the family investment program and TANF.

47.5(1) *Otherwise FIP eligible.* Candidates cannot receive both FIP and assistance under this division in the same calendar month. Candidates for the pilot FIP-applicant diversion program must meet the following FIP eligibility criteria and any other FIP eligibility criteria found in 441—Chapters 40, 41, and 42 included in the local plan of an approved pilot project:

a. Requirements related to a child's age, deprivation and living with specified relative as described at rules 441—41.21(239B), 441—41.22(239B) and 441—42.22(239B).

b. Social security number requirements described at 441—subrule 41.22(13).

c. Residency requirements described at 441—subrule 41.23(1).

d. Citizenship and alien requirements described at 441—subrules 41.23(4) and 41.23(5).

e. Income requirements described at rule 441—41.27(239B). Candidates must pass the 185 percent income test to be considered. Pilot projects may incorporate more restrictive criteria in their local plans, consistent with other income tests for FIP at rule 441—41.27(239B).

f. Family members cannot be in the six-month period of ineligibility applied with a subsequent limited benefit plan as described at 441—subrule 41.24(8).

g. Family members in the indefinite period of ineligibility applied with the limited benefit plan as described at 441—subrule 41.24(8) may receive support services only.

47.5(2) *Offer to participate declined.* Candidates for the pilot FIP-applicant diversion program shall not be denied FIP on the basis that they do not want to participate in the pilot program.

47.5(3) *Period of FIP ineligibility.* Receipt of diversion assistance having a cash value to the family shall result in a period of ineligibility for FIP for that family, including new members moving into the household. Local projects shall have flexibility in determining the period of ineligibility except that the period shall not exceed the number of calendar days arrived at by using the following formula:

$$\text{diversion amount} \div \frac{\text{(payment standard for the family size)}}{30} \times 2$$

For example, if the diversion assistance amount is $500, and the payment standard for the family of three is $426, the period of ineligibility cannot exceed 70 days.

$$\$500 \div \frac{(\$426)}{30} \times 2$$

The period of ineligibility shall include the seven-day wait period as described at rule 441—40.26(239B), when the household applies at least seven days prior to the end of the period of ineligibility. However, there is no eligibility before the period ends, regardless of application date. If the household does not file an application until after the period of ineligibility, the requirements for effective date of eligibility at 441—40.26(239B) apply.

The specific period of ineligibility administered by each pilot shall be set forth in the local plans. These periods of ineligibility are applicable statewide, not limited to the local project area providing the assistance. The period of ineligibility shall not apply to diversion family members moving to other families.

47.5(4) *Exempt as income.* Diversion assistance shall be exempt as income in determining FIP eligibility as described at 441—paragraph 41.27(7)*"ai."*

47.5(5) *Exempt from TANF provisions.* Unless determined otherwise by the U.S. Department of Health and Human Services, receipt of diversion assistance shall not subject the family to the following TANF restrictions:

a. The five-year (60-month) lifetime limit.

b. Work participation rates.

c. Cooperation with child support recovery.

441—47.6(239B) Local plans.

47.6(1) *Written policies and procedures.* Each approved pilot project shall have and maintain written policies and procedures for the project approved by the division administrator. Copies of the plan shall be filed in the county office and with the division administrator. The written policies and procedures shall be available to the public. At a minimum, these policies and procedures shall contain or address the following:

a. What types of services or assistance will be provided, e.g., car repair, licensing fees, and referral to other resources.

b. How determinations will be made that the service or assistance provided meets the program's objective of helping the family obtain or retain employment.

c. How assistance will be provided, e.g., cash payments, vouchers, vendor payments, and procedures for issuing payments.

d. The period of ineligibility for FIP.

e. The maximum (and minimum, if any) values of payments and services.

f. The frequency of receiving assistance.

g. How families most likely to benefit from the program are identified.

h. How families can enroll in the program as a voluntary alternative to FIP. If pilot diversion candidates complete a FIP application, the plan shall include procedures for withdrawing the FIP application. Any forms required to be completed by the family shall be identified by name and form number in the plan.

i. How families will be informed of the availability of the program, its voluntary nature, and how the program works, including periods of ineligibility for FIP.

j. How county offices administering a pilot project will maintain, provide to pilot participants, and otherwise make available, written policies and procedures describing the project.

k. The process used to determine families are "otherwise eligible" for FIP, e.g., having potential project participants complete a standard FIP application.

l. How barriers related to employment are identified.

m. How inquiries will be responded to and assistance provided timely to address barriers to obtaining or retaining employment. The local plans shall specify time frames for taking action steps in administering the pilot project.

47.6(2) *Other components.* The local plan shall also describe or identify:

a. How staff will be trained to use the program.

b. The anticipated results for families in the pilot project following the receipt of diversion assistance.

c. The methods for evaluation.

d. The scope of evaluation (e.g., what other programs may be included).

e. How measurable results shall be determined.

f. Total funds received and available.

g. Any allocation for direct cash payments to families.

h. Any allocation for vouchers.

i. Any allocation for vendor payments.

j. Any allocation for services.

k. Any allocation for staff costs.

l. Any allocation for evaluation.

m. Any allocation for other expenses.

441—47.7(239B) Notification and appeals.

47.7(1) *Notification.* All candidate households or households participating in the pilot diversion program under this division shall receive adequate written notice as described at 441—paragraph 7.7(1)*"b,"* using Form 470-0486, Notice of Decision. The written notice shall:

a. Advise whether assistance under this division shall be provided.

b. Give the reason for the decision, if assistance shall not be provided.

c. Give the type, value (if applicable), and frequency of assistance as described at rule 441—47.4(239B), if assistance shall be provided.

d. Give any period of ineligibility for FIP based on the written policies and procedures of the pilot as required by subrule 47.5(3) and described at rule 441—47.6(239B), if assistance shall be provided.

e. Cite this division as legal authority for the decision.

f. Advise the household of its appeal rights under 441—Chapter 7 and this division.

47.7(2) *Decisions regarding assistance.* All decisions regarding assistance available under this division shall be in accordance with the rules in this division and the written policies and procedures of the approved project as required by rule 441—47.6(239B).

47.7(3) *Appealable actions.* Decisions made by the department affecting clients may be appealed pursuant to 441—Chapter 7. All sections of the local plan applicable to an appeal shall be provided as part of the appeal summary.

47.7(4) *Nonappealable actions.* Households shall not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance under this division is that diversion funds for the approved pilot project have been reduced, exhausted, eliminated or otherwise encumbered.

441—47.8(239B) Funding, rates and method of payment.

47.8(1) *Funded amounts.* The division administrator shall determine the amounts allocated to each approved pilot project based on available funding and the amount requested by each project. The division administrator may reallocate funds between approved pilot projects as necessary to meet the objectives of the program.

47.8(2) *Written funding agreements.* Each approved pilot project shall enter into a written funding agreement with a third party to act as a fiscal agent to disburse money for purposes of providing assistance as described at subrule 47.4(1) and specified by the local plan. The written funding agreement shall stipulate:

a. The department shall be responsible for authorizing individual payments.

b. The fiscal agent shall be responsible for issuing payments.

c. Both the department and the fiscal agent shall keep and reconcile records for accountability and audit purposes.

d. All agreements shall be signed by the fiscal agent and the human services area administrator. Any agreements for $25,000 or more shall also be signed by the director. Other signatures may be required at the discretion of the division administrator.

e. The time frames for the fiscal agent to process payments.

f. Any other responsibilities of the department and the fiscal agent.

g. Provisions customarily required for agreements or contracts entered into by a state agency.

47.8(3) *Rate setting for services not having a cash value.* Rates for diversion assistance in the form of services not having a cash value shall be established in accordance with the following procedures:

a. Rates for diversion assistance services shall be established on an individual basis by the human services area administrator (HSAA) or designee.

b. The HSAA or designee shall evaluate proposed payment rates in approving diversion assistance services. Rates approved for providers with a purchase of service contract or Medicaid agreement with the department shall be similar to payment rates for comparable services provided through the purchase of service or Medicaid agreements. Rates for other types of services or supports shall be comparable to prevailing community standards.

c. Payment rates approved by a HSAA or designee for diversion assistance services on behalf of a family shall remain in effect for the time period authorized unless approval for modification is granted by the HSAA or designee.

47.8(4) *Payment and billing.*

a. The approved pilot project, in accordance with the local plan, shall notify the fiscal agent when diversion assistance payments are approved. This notification shall include a copy of the Authorization for the Department to Release Information, Form 470-2115, signed by the pilot FIP-applicant diversion participant. It shall also include the payee's name, mailing address and authorized amount of payment.

b. The fiscal agent shall issue payments within the time frames set forth in the written agreement.

c. The approved pilot project and the fiscal agent shall periodically reconcile their records.

441—47.9(239B) Termination of pilot projects. The division administrator may immediately terminate an approved pilot project if:

1. The project is not fulfilling the conditions of its pilot proposal.
2. The project is at the conclusion of the authorized approval period, unless a request for renewal has been submitted and approved.
3. Funding is reduced, exhausted, eliminated or otherwise encumbered.

441—47.10(239B) Records and reports.

47.10(1) *Case records.* The provision of diversion assistance shall be documented by the department in the participant's income maintenance case record.

47.10(2) *Records retention.* All persons who contract with the county office shall maintain all records related to the program for five years. They shall allow federal or state officials access to all records upon request.

47.10(3) *Reports.*

a. County offices having approved pilot projects shall provide reports as requested by the division administrator in a manner, format and frequency specified by the administrator.

b. County offices shall be responsible for maintaining records sufficient for audit and tracking purposes.

441—47.11(239B) Renewal of existing approved pilot projects. Contingent on continued authorization and funding, the division administrator may renew existing approved pilot projects. Renewal proposals shall be prepared and submitted within the parameters set forth in the request for renewal issued by the division administrator.

These rules are intended to implement Iowa Code section 239B.11.

441—47.12 to **47.20** Reserved.

DIVISION II
FAMILY SELF-SUFFICIENCY GRANTS PROGRAM

PREAMBLE

These rules define and structure the family self-sufficiency grants program provided through the PROMISE JOBS service delivery regions. The purpose of the program is to provide immediate and short-term assistance to PROMISE JOBS participant families which will remove barriers related to obtaining or retaining employment. Removing the barriers to self-sufficiency might reduce the length of time a family is dependent on the family investment program (FIP). Family self-sufficiency grants shall be available for payment to families or on behalf of specific families.

441—47.21(239B) Definitions.

"Candidate" means anyone expressing an interest in the family self-sufficiency grants program.

"Department" means the Iowa department of human services.

"Department division administrator" means the administrator of the department of human services division of economic assistance, or the administrator's designee.

"Department of workforce development" means the agency that develops and administers employment, placement and training services in Iowa, often referred to as Iowa workforce development, or IWD.

"Family" means "assistance unit" as defined at 441—40.21(239B).

"Family investment program" or *"FIP"* means the cash grant program provided by 441—Chapters 40, 41, and 42, designed to sustain Iowa families.

"Family self-sufficiency grants" means the payments made to specific PROMISE JOBS participants, to vendors on behalf of specific PROMISE JOBS participants, or for services to specific PROMISE JOBS participants.

"Immediate, short-term assistance" means assistance provided under this division shall be authorized upon determination of need and that it shall not occur on a regular basis.

"Iowa workforce development (IWD) division administrator" means the administrator of the department of workforce development's division of workforce development center administration, or the administrator's designee.

"Local plan for family self-sufficiency grants" means the written policies and procedures for administering the grants for families as set forth in the plan developed by the PROMISE JOBS service delivery region as described in rule 441—47.26(239B). The local plan shall be approved by the Iowa workforce development division administrator.

"Participant" means anyone receiving assistance under this division.

"PROMISE JOBS contract" means the agreement between the department and Iowa workforce development regarding delivery of PROMISE JOBS services.

"PROMISE JOBS participant" means any person receiving services through PROMISE JOBS. A PROMISE JOBS participant must be a member of an eligible FIP household.

"PROMISE JOBS service delivery regions" means the PROMISE JOBS service delivery entities which correspond to the 15 Iowa workforce development regions.

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

441—47.22(239B) Availability of the family self-sufficiency grants program. The family self-sufficiency grants program shall be available statewide in each of the 15 PROMISE JOBS service delivery regions. Under the PROMISE JOBS contract, Iowa workforce development (IWD) shall allocate the funds available for authorization to each of the service delivery regions based on the allocation standards used for PROMISE JOBS service delivery purposes. The department actually retains the funds which are released through the PROMISE JOBS expense allowance authorization system.

441—47.23(239B) General criteria. Family self-sufficiency grants candidates shall be PROMISE JOBS participants. Participation in the family self-sufficiency grants program is voluntary and shall be based on an informed decision by the family. Further, candidates must have identifiable barriers to obtaining or retaining employment that can be substantially addressed through the assistance offered by family self-sufficiency grants.

441—47.24(239B) Assistance available in family self-sufficiency grants. Family self-sufficiency grants shall be authorized for removing an identified barrier to self-sufficiency when it can be reasonably anticipated that the assistance will enable participant families to retain employment or obtain employment in the two full calendar months following the date of authorization of payment. For example, if a payment is authorized on August 20, it should be anticipated that the participant can find employment in September or October.

47.24(1) *Employment does not occur.* If employment does not occur in the anticipated two-calendar-month period or if the participant loses employment in spite of the self-sufficiency grant, no penalty is incurred and no overpayment has occurred.

47.24(2) *Types of assistance.* Family self-sufficiency grants are PROMISE JOBS benefits and shall be authorized through the PROMISE JOBS expense allowance system. The PROMISE JOBS service delivery region shall have discretion to determine those barriers to self-sufficiency which can be considered for family self-sufficiency grants such as, but not limited to, auto maintenance or repair, licensing fees, child care, and referral to other resources, including those necessary to address questions of domestic violence. Warrants may be issued to the participants, to a vendor, or for support services provided to the family. The PROMISE JOBS service delivery region shall have discretion in determining method of payment in each case, based on circumstances and needs of the family.

47.24(3) *Limit on assistance.* The total payment limit per family is $1,000 per year. A year for a family shall be the 12 fiscal months following the date of authorization of the initial payment for the family. A fiscal month begins and ends in different calendar months.

47.24(4) *Frequency of assistance.* Family self-sufficiency grants are intended to provide immediate and short-term assistance and must meet the criteria in this rule. While a family may be a candidate more than once and may receive payments in consecutive months in some circumstances, payments shall not be established as regular or ongoing.

47.24(5) *Supplanting.* Family self-sufficiency grants shall not be used for services already available through department, PROMISE JOBS, or other local resources at no cost.

47.24(6) *Relationship to the family investment agreement.* Family self-sufficiency grants are separate from the PROMISE JOBS family investment agreement process. While the family investment agreement must be honored at all times and renegotiated and amended if family circumstances require it, no family shall be considered to be choosing the limited benefit plan if the family chooses not to participate in the family self-sufficiency grant program.

441—47.25(239B) Application, notification, and appeals.

47.25(1) *Application elements.* Each PROMISE JOBS service delivery region shall establish an application form to be completed by the PROMISE JOBS participant and the PROMISE JOBS worker when the participant asks to be a candidate for a family self-sufficiency grant. The application form shall contain the following elements:

a. An explanation of family self-sufficiency grants and the expectations of the program.

b. Identification of the family and the person representing the family.

c. A clear description of the barrier to self-sufficiency to be considered.

d. Demonstration of how removing the barrier is related to retaining or obtaining employment, meeting the criteria from rule 441—47.24(239B).

e. Demonstration of why other department, PROMISE JOBS, or community resources cannot deal with the barrier to self-sufficiency.

f. Anticipated cost of removing the barrier to self-sufficiency.

47.25(2) *Notification process.* PROMISE JOBS shall use Form SS-1104-0, Notice of Decision: Services, to notify the candidate of the PROMISE JOBS decision regarding the family self-sufficiency grant. Decisions shall be in accordance with policies of this division and the local plan.

a. On approval, the form shall indicate the amount of the benefit that will be issued to the candidate or paid to a vendor, or the service that will be provided to the family.

b. On denial, the form shall indicate the reason for denial.

47.25(3) *Appealable actions.* The PROMISE JOBS decisions on family self-sufficiency grants may be appealed pursuant to 441—Chapter 7. Copies of the local plan as described at rule 441—47.26(239B) shall be included with the appeal summary.

47.25(4) *Nonappealable actions.* PROMISE JOBS participants shall not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance from family self-sufficiency grants is that self-sufficiency grant funds have been reduced, exhausted, eliminated, or otherwise encumbered.

441—47.26(239B) Approved local plans for family self-sufficiency grants. Each PROMISE JOBS service delivery region shall create and provide to IWD their written policies and procedures for administering family self-sufficiency grants. The plan shall be reviewed for required elements and quality of service to ensure that it meets the purpose of the program and approved by the department division administrator and the IWD division administrator. The written policies and procedures shall be available to the public at county offices, PROMISE JOBS offices, and at IWD. At a minimum, these policies and procedures shall contain or address the following:

47.26(1) *A plan overview.* The plan overview shall contain a general description detailing:

a. Any types of services or assistance which will be excluded from consideration for family self-sufficiency grants in the PROMISE JOBS service delivery region.

b. How determinations will be made that the service or assistance requested meets the program's objective of helping the family retain employment or obtain employment.

c. How determinations will be made that the proposed family self-sufficiency grant is not supplanting as required at subrule 47.24(5).

d. Services established and any maximum (and minimum, if any) values of payments of the services established by the PROMISE JOBS service delivery region.

e. Verification procedures or standards for documenting barriers, using written notification policies found at rule 441—93.137(239B).

f. The design of the application form.

g. Verification procedures or standards for documenting employment attempts if not already tracked by PROMISE JOBS procedures, using policies found at 441—subrules 93.135(3) and 93.135(4) and at rule 441—93.137(239B).

h. How applications will be processed timely to address barriers to obtaining or retaining employment.

i. Follow-up procedures on participant effort.

j. Procedures for tracking of family self-sufficiency grant authorizations in order to stay within service delivery region allocation.

k. How staff will be trained to administer the program.

47.26(2) *Intake and eligibility determination.* The policies and procedures shall describe:

a. How families most likely to benefit from self-sufficiency grant assistance are identified.

b. How families can apply for self-sufficiency grant assistance.

c. How families will be informed of the availability of self-sufficiency grant assistance, its voluntary nature, and how the program works.

d. How county offices and PROMISE JOBS offices will maintain, provide to pilot participants, and otherwise make available, written policies and procedures describing the project.

e. Which PROMISE JOBS staff shall make decisions regarding identification of barriers and candidate eligibility for payment and what sign-off or approval is required before a payment is authorized.

47.26(3) *A plan for evaluation of family self-sufficiency grants.* The evaluation plan shall:

a. Describe tracking procedures.

b. Describe the plan for evaluation (e.g., what elements will be used to create significant data regarding outcomes).

c. Describe how measurable results will be determined.

d. Identify any support needed to conduct an evaluation (e.g., what assistance is needed from department and IWD).

e. Describe which aspects of the project were successful and which were not.

These rules are intended to implement Iowa Code section 239B.11.

441—47.27 to **47.40** Reserved.

DIVISION III
PILOT COMMUNITY SELF-SUFFICIENCY GRANTS PROGRAM

PREAMBLE

These rules define and structure the pilot community self-sufficiency grants program. Community self-sufficiency grants shall establish pilot projects to identify and remove systemic or community barriers to self-sufficiency for targeted PROMISE JOBS participants in a geographic area. removing barriers to self-sufficiency might reduce the length of time a family is dependent on the family investment program.

County department offices and PROMISE JOBS service delivery regions must apply jointly. Either entity can administer pilot projects; however, the department and PROMISE JOBS may work in conjunction with other local resources. This program gives local projects flexibility to better address systemic or community barriers to self-sufficiency for PROMISE JOBS participants.

441—47.41(239B) Definitions.

"Approved pilot project" means a pilot proposal for a community self-sufficiency grant meeting the conditions in the request for application that has been reviewed and approved by the department division administrator and IWD division administrator and funded through the PROMISE JOBS contract. The project shall be designed to serve families in a specific geographic area, within the PROMISE JOBS service delivery regions determined by IWD, and detailed in the local plan defined in this division.

"Candidate" means anyone identified by a county office having an approved community self-sufficiency grants pilot project as likely to meet the criteria for participating in the project, and who is working with the county office, PROMISE JOBS office, or other entity, to enroll in the program.

"Community self-sufficiency grants" means the joint department and PROMISE JOBS pilot projects to identify and remove systemic or community barriers to self-sufficiency for PROMISE JOBS participants.

"Department" means the Iowa department of human services.

"Department division administrator" means the administrator of the department of human services division of economic assistance, or the administrator's designee.

"Department of workforce development" means the agency that develops and administers employment, placement and training services in Iowa; often referred to as Iowa workforce development, or IWD.

"Family" means "assistance unit" as defined at rule 441—40.21(239B).

"Family investment program" or *"FIP"* means the cash grant program provided by 441—Chapters 40, 41, and 42, designed to sustain Iowa families.

"Iowa workforce development (IWD) division administrator" means the administrator of the department of workforce development's division of workforce development center administration, or the administrator's designee.

"Local plan for community self-sufficiency grants" means the written policies and procedures for identifying and removing community barriers to self-sufficiency as described in rule 441—47.45(239B).

"Participant" means anyone receiving assistance under this division.

"Pilot proposal" means the community self-sufficiency grants project description submitted jointly by the department county office or offices and the PROMISE JOBS service delivery region prepared within the parameters of a request for application issued by the department division administrator. The department and IWD division administrators shall review, approve, modify and approve, or deny the proposal for a community self-sufficiency grant.

"PROMISE JOBS contract" means the agreement between the department and Iowa workforce development (IWD) regarding delivery of PROMISE JOBS services.

"PROMISE JOBS participant" means any person receiving services through PROMISE JOBS. A PROMISE JOBS participant must be a member of an eligible FIP household.

"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.

"PROMISE JOBS service delivery regions" means the PROMISE JOBS service delivery entities which correspond to the 15 Iowa workforce development regions.

"Request for application" means a request issued by the department division administrator to county offices and PROMISE JOBS service delivery regions for proposals to implement a pilot project under this division. The request shall provide background information about the purpose, authorization and funding for the community self-sufficiency grants program, as well as general parameters, specific criteria and time frames for submitting a proposal.

"Request for renewal" means a request issued by the department division administrator to county and PROMISE JOBS offices for proposals to renew an approved pilot project under this division. The request shall provide general parameters, specific criteria, and time frames for submitting a renewal proposal.

"Systemic or community barriers" means obstacles to obtaining or retaining employment which affect multiple families. These barriers result from conditions in the geographic area served by the approved pilot project.

441—47.42(239B) Availability of the community self-sufficiency grants program. The community self-sufficiency grants program shall be available only in those counties, PROMISE JOBS service delivery regions, or other designated areas of the state having an approved pilot project as defined at rule 441—47.41(239B). Under the PROMISE JOBS contract, IWD shall make the funds available through the PROMISE JOBS service delivery regions which are participating in an approved pilot project. This enables the PROMISE JOBS entity to become the fiscal agent for the approved pilot project. It does not restrict the ability of the department and PROMISE JOBS partners in an approved pilot project to assign responsibility for administration of the program to the department or to another entity as part of a local collaboration effort.

47.46(3) *Appealable actions.* Decisions affecting participants made by the department or PROMISE JOBS may be appealed pursuant to 441—Chapter 7. Copies of the local plan shall be included with the appeal summary.

47.46(4) *Nonappealable actions.* Households shall not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance under a community self-sufficiency grant is that self-sufficiency grant funds for the approved pilot project have been exhausted or are otherwise encumbered.

441—47.47(239B) Termination of pilot projects. The department division administrator, in conjunction with IWD, may immediately terminate an approved pilot project:

1. That is not fulfilling the conditions of its pilot proposal.
2. At the conclusion of the authorized approval period, unless a new pilot proposal application has been submitted and approved.
3. When funding is reduced, exhausted, eliminated or otherwise encumbered.

441—47.48(239B) Records and reports.

47.48(1) *Case records.* The provision of services for a participant under the community self-sufficiency grant shall be documented by the department and PROMISE JOBS in each participant's appropriate case record.

47.48(2) *Reports.*

a. PROMISE JOBS offices having approved pilot projects shall provide reports as requested by the department and IWD division administrators in a manner, format and frequency specified by the administrators.

b. PROMISE JOBS offices shall be responsible for maintaining records sufficient for audit and tracking purposes.

441—47.49(239B) Renewal of existing approved pilot projects. Contingent on continued authorization and funding, the department division administrator may renew existing approved pilot projects. Renewal proposals shall be prepared and submitted within the parameters set forth in the request for renewal issued by the department division administrator.

These rules are intended to implement Iowa Code section 239B.11.

441—47.50 to **47.60** Reserved.

DIVISION IV
PILOT POST-FIP DIVERSION PROGRAM

PREAMBLE

These rules define and structure the department of human services pilot post-family investment program (FIP) diversion program. The purpose of this pilot program is to provide assistance to stabilize employment of families leaving FIP and reduce the likelihood of the families' returning to FIP. This assistance may be in the form of support services to help maintain or improve employment status or may be cash value assistance used to meet some employment-related, short-term immediate need or barrier. Post-FIP diversion assistance shall be provided (begin and end) no later than 12 months from the effective date of the FIP cancellation. The department shall establish post-FIP diversion programs in a limited number of pilot projects. The program gives local projects considerable flexibility and authority to provide a range of assistance to help families stay off FIP.

441—47.61(239B) Definitions.

"Approved pilot project" means a pilot proposal meeting the conditions in the request for application or request for renewal that was reviewed, approved and funded by the division administrator. Each approved pilot project shall have a local plan as described at rule 441—47.67(239B) approved by the division administrator. The project shall be limited to families in a specific geographic area detailed in the local plan. At least one approved pilot project shall demonstrate substantial involvement by one or more community entities in developing, implementing, and operating the project.

"Candidate" means anyone meeting the general criteria specified at rule 441—47.65(239B) and identified during the assessment process described at subrule 47.65(1) as likely to benefit from post-FIP diversion assistance or anyone expressing an interest in the pilot post-FIP diversion program.

"Cash value" means post-FIP diversion assistance having direct value to the participant, through cash payment, voucher or vendor payment. Examples of assistance without direct cash value are mentoring and case management.

"Community entity" means any local public, private or nonprofit organization, agency, group or business that works in the employment, training or economic development arenas (including financial resources agencies) that may be involved in the development, implementation or operation of a pilot proposal.

"County office" means the county office of the department of human services.

"Department" means the Iowa department of human services.

"Director" means the director of the department of human services.

"Division administrator" means the administrator of the department of human services division of economic assistance, or the administrator's designee.

"Family" means "assistance unit" as defined at rule 441—40.21(239B).

"Family investment program" or *"FIP"* means the cash grant program provided by 441—Chapters 40, 41, and 42, designed to sustain Iowa families.

"Fiscal agent" means that entity provided funds under an agreement with a county office having an approved pilot project. The fiscal agent shall, as provided by the approved pilot project and local plan, issue payments for assistance under this division and maintain accounting records as specified by the agreement. Fiscal agents shall be used only if an approved pilot project provides that payment for operating the project, including, but not limited to, payment of post-FIP diversion assistance, is done at the local level.

"Human services area administrator" means the person responsible for delivery of income maintenance and social services programs for a county or multicounty area.

"Local plan" means the written policies and procedures and other components described in rule 441—47.67(239B) for administering an approved pilot project.

"Participant" means anyone receiving assistance under this division.

"Pilot proposal" means the project description prepared and submitted within the parameters of a request for application or request for renewal issued by the division administrator. The division administrator shall review, approve, modify and approve, or deny the proposal.

"Post-FIP diversion assistance" means any type of assistance provided under this division as described at rule 441—47.66(239B).

"Project service provider" means any county office or community entity that directly provides support services as defined in this division for participants in a pilot post-FIP diversion project.

"Request for application" means a request issued by the division administrator to county offices for proposals to implement a pilot project under this division. The request shall provide background information about the purpose, authorization and funding for the pilot post-FIP diversion program, as well as general parameters, specific criteria and time frames for submitting a proposal.

"Request for renewal" means a request issued by the division administrator to county offices for proposals to renew an approved pilot project under this division. The request shall provide general parameters, specific criteria and time frames for submitting a renewal proposal.

"Support services" means post-FIP diversion assistance having no direct cash value for the participant. Services include, but are not limited to, case management, mentoring, job coaching, skill building and intervention.

"Temporary assistance for needy families" or *"TANF"* means the program for granting benefits to eligible groups under Title IV-A of the federal Social Security Act as amended by Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This replaced the aid to families with dependent children program.

"Written funding agreement" means that agreement between a county office having an approved pilot project and a fiscal agent, and may include one or more community entities involved in the operation of the project. The agreement shall specify the responsibilities of each party to the agreement as well as indicate the amount of post-FIP diversion funds allocated to the approved pilot project. The written funding agreement shall be signed by authorized representatives of the department, the fiscal agent, and any community entity that may be a party to the agreement.

441—47.62(239B) Submitting proposals. Only county offices shall submit pilot proposals. Proposals demonstrating substantial involvement by one or more community entities in the development, implementation or operation of the pilot project will be given a higher preference.

441—47.63(239B) Project administration. The county office shall be responsible for overall project administration. Pilot proposals and local plans shall specify all community entities involved in the operation of the project and the functions and responsibilities of each. The county office may delegate, by contract or other written agreement, any or all of the following functions, completely or in part, to a community entity:

1. Assessment and eligibility determination.
2. Authorization of support services and cash assistance.
3. Provision of support services.
4. Local fiscal agent authorization to make payments.
5. Case plan management.

441—47.64(239B) Availability of program. The pilot post-FIP diversion program shall be available only in those counties or other specified areas of the state having an approved pilot project as defined at rule 441—47.61(239B). Post-FIP diversion assistance shall be provided to those families determined likely to be candidates for success in the program as determined by the criteria and procedures set out in the local plan.

441—47.65(239B) General criteria. The following criteria apply to all pilot post-FIP diversion program candidates. Participation in the pilot post-FIP diversion program is voluntary and shall be based on an informed decision by the family.

47.65(1) *Assessment criteria.*

a. Candidate households must have received FIP within the immediate 12 months before being offered or requesting post-FIP diversion assistance.

b. Pilot post-FIP diversion projects shall assess households with earned income immediately upon leaving FIP and may, as an option, assess households anytime within the 12 months immediately following the effective date of FIP cancellation.

c. Projects shall target households deemed to be at risk of losing employment or returning to FIP due to insufficient employment.

d. Post-FIP assistance shall be available only during the 12 months immediately following the effective date of FIP cancellation.

47.65(2) *Barriers.* Candidates must have barriers to retaining or obtaining more reliable or sustainable employment that can be substantially addressed by the assistance available under this division within the 12 months immediately following the effective date of FIP cancellation. Each project shall identify the types of barriers the project is intended to address in the pilot proposal and local plan.

47.65(3) *Employment status.* Either some adult member of the candidate household must be currently employed; or some adult member of the candidate household must have lost a job while participating in the pilot post-FIP diversion program.

47.65(4) *FIP-related eligibility parameters.* Candidates for the pilot post-FIP diversion program must meet the following eligibility criteria, and any other FIP-related eligibility criteria included in the local plan of an approved pilot project:

a. Requirements related to a child's age, deprivation and living with specified relative as described at rules 441—41.21(239B), 441—41.22(239B), and 441—42.22(239B).

b. Social security number requirements described at 441—subrule 41.22(13).

c. Residency requirements described at 441—subrule 41.23(1).

d. Citizenship and alien requirements described at 441—subrules 41.23(4) and 41.23(5).

e. Family members cannot be in the six-month period of ineligibility applied with a subsequent limited benefit plan as described at 441—subrule 41.24(8).

f. Family members in the indefinite period of ineligibility applied with the limited benefit plan as described at 441—subrule 41.24(8) may receive support services only.

47.65(5) *Income eligibility.* Household income must not exceed 200 percent of the federal poverty guideline for the household size to be considered. Pilot projects may incorporate more restrictive income criteria in their local plans, consistent with other income tests for FIP at rule 441—41.27(239B). Income exemptions include those specified at rule 441—41.27(239B).

47.65(6) *Period of FIP ineligibility.* Receipt of post-FIP diversion assistance having a cash value to the family shall result in a period of ineligibility for FIP for that family, including new members moving into the household. Local projects shall have flexibility in determining the period of ineligibility except that the period shall not exceed the number of calendar days arrived at by using the following formula:

$$\text{diversion amount} \div \frac{\text{(payment standard for the family size)}}{30} \times 2$$

For example, if the diversion assistance amount is $500, and the payment standard for the family of three is $426, the period of ineligibility cannot exceed 70 days.

$$\$500 \div \frac{(\$426)}{30} \times 2$$

The period of ineligibility shall include the seven-day waiting period as described at rule 441—40.26(239B), when the household applies for FIP at least seven days prior to the end of the period of ineligibility. However, there is no eligibility before the period ends, regardless of application date. If the household does not file an application until after the period of ineligibility, the requirements for effective date of eligibility requirements at 441—40.26(239B) apply. The specific period of ineligibility administered by each pilot shall be set forth in the local plan. Periods of ineligibility are applicable statewide, not limited to the local project area providing the assistance. The period of ineligibility shall not apply to diversion family members moving to other families.

47.65(7) *Exempt as income.* Post-FIP diversion assistance shall be exempt as income in determining FIP eligibility as described at 441—paragraph 41.27(7)*"ai."*

47.65(8) *Exempt from TANF provisions.* Unless determined otherwise by the U.S. Department of Health and Human Services, receipt of post-FIP diversion assistance shall not subject the family to the following TANF restrictions:

a. The five-year (60-month) lifetime limit.

b. Work participation rates.

c. Cooperation with child support recovery.

47.65(9) *Offer to participate declined.* Candidates for the pilot post-FIP diversion program shall not be denied FIP or any other services provided by the department on the basis that they do not want to participate in the pilot program.

441—47.66(239B) Assistance available. Post-FIP diversion assistance shall assist candidate families to stabilize or enhance their employment situation, or help them obtain more reliable or sustainable employment to reduce or eliminate "at risk" factors which threaten the return of the family to FIP. This assistance should enable participants to increase wages, get promotions and acquire other employment benefits.

47.66(1) *Types of assistance.*

a. Support services.

(1) These services include, but are not limited to, skill building, case management, mentoring, job coaching, economic support and reemployment services. Specific types of assistance administered by each pilot shall be set forth in the local plans.

(2) Families in the indefinite period of ineligibility applied with the limited benefit plan as described at 441—subrule 41.24(8) may receive these support services.

(3) Families in the six-month period of ineligibility applied with the subsequent limited benefit plan as described at 441—subrule 41.24(8) shall not receive support services.

b. Short-term cash value assistance.

(1) Cash value assistance may be granted through any or all of the following: cash payments, vendor payments, voucher payments. Specific types of assistance administered by each pilot shall be set forth in the local plans. Cash value assistance shall require a period of ineligibility for FIP as described at subrule 47.65(6).

(2) Families in the limited benefit plan as described at 441—subrule 41.24(8) shall not receive cash value assistance.

47.66(2) *Maximum value.* For assistance having a cash value to the family, each pilot shall establish a maximum amount each family may receive during the 12 months following the effective date of FIP cancellation. Specific maximum values of assistance administered by each pilot shall be set forth in the pilot proposals and local plans.

47.66(3) *Frequency and duration.* Families may be candidates more than once during the 12-month period following the effective date of FIP cancellation; however, this program shall not be considered ongoing assistance. The frequency and duration of assistance for each approved pilot project shall be set forth in the local plans. Assistance shall last no longer than 12 months from the effective date of FIP cancellation.

47.66(4) *Supplanting.* Post-FIP diversion program funds shall not be used for support services already available through local resources at no cost to the family, the department or other local service providers. In counties that operate both pilot FIP-applicant and post-FIP diversion projects, cash value assistance shall be paid from the post-FIP diversion funds in the initial 12 months following the effective date of FIP cancellation, if the pilot post-FIP diversion project permits cash value assistance payments, and the candidate is otherwise eligible for post-FIP diversion assistance.

441—47.67(239B) Local plans.

47.67(1) *Main components.* Each approved pilot project shall have and maintain written policies and procedures for the project approved by the division administrator. Copies of the local plan shall be available from the county office and any community entity involved in the assessment and candidate eligibility determination. Copies shall also be filed with the division administrator. At a minimum, those policies and procedures shall contain or address the following:

a. How families most likely to benefit from the project are identified.

b. How the project determines which families are at risk of going back on FIP.

c. How barriers to stabilizing, retaining or obtaining employment are identified.

d. What types of support services or cash value assistance will be available; e.g., skill building, mentoring, reemployment services, cash value assistance for car repair.

e. How determinations will be made that the service or cash value assistance provided meets the program's objective of helping participants retain or stabilize their employment to reduce the likelihood of returning to FIP and enhance their self-sufficiency.

f. How and when cash value assistance will be provided; e.g., cash payments, vouchers, vendor payments and procedures for issuing payments.

g. The period of FIP ineligibility for receipt of cash value assistance.

h. The maximum (and minimum if any) values of payments and support services.

i. The frequency of receiving assistance.

j. How families will access the project services. Any forms required to be completed by the family shall be identified by name and form number in the plan.

k. How families will be informed of the availability of the project services, its voluntary nature, and how the program works, including periods of ineligibility for FIP based on cash value assistance payments.

l. How written policies and procedures describing the project will be made available.

m. How inquiries will be responded to and assistance provided timely to prevent the need for candidates to go back on FIP. The local plans shall specify time frames for taking action steps in administering the pilot project.

n. The functions and responsibilities of the county office and all community entities involved in the operation of the project.

47.67(2) *Other components.* The local plan shall also describe or identify:

a. How staff will be trained to use the program.

b. Total funds received and available.

c. Any allocation for support services.

d. Any allocation for direct cash payments to families.

e. Any allocation for vouchers.

f. Any allocation for vendor payments.

g. Any allocation for evaluation.

h. Any allocation for fiscal agent expenses.

i. Any allocation for other expenses.

47.67(3) *Evaluation.* Local plans shall include an evaluation plan. Each project shall be willing to cooperate with Mathematica Policy Research in their state-sponsored evaluation. The local plan shall describe:

a. The methods for evaluation.

b. The scope of evaluation (e.g., what other programs may be included).

c. How measurable results will be determined.

d. The anticipated results for families in the pilot following receipt of support services.

e. Which aspects of the project were successful and which were not.

f. Any support needed to conduct an evaluation.

441—47.68(239B) Notification and appeals.

47.68(1) *Notification.* All candidate households or households participating in the pilot post-FIP diversion program under this division shall receive adequate written notice as described at 441—paragraph 7.7(1)*"b,"* using Form 470- 0486, Notice of Decision. The written notice shall:

a. Advise whether assistance under this division shall be provided.

b. Give the reason for the decision, if assistance shall not be provided.

c. Give the type, value (if applicable), frequency and duration of assistance as described at rule 441—47.66(239B), if assistance shall be provided.

d. Give any period of ineligibility for FIP based on the written policies and procedures of the pilot as required by subrule 47.65(6) and described at rule 441—47.67(239B), if assistance shall be provided.

e. Cite this division as legal authority for the decision.

f. Advise the household of its appeal rights under 441—Chapter 7 and this division.

47.68(2) *Decisions regarding assistance.* All decisions regarding assistance available under this division shall be in accordance with the rules in this division and the written policies and procedures of the approved project as required by rule 441—47.67(239B).

47.68(3) *Appealable actions.* Decisions made by the pilot projects affecting clients may be appealed pursuant to 441—Chapter 7. All sections of the local plan applicable to an appeal shall be provided as part of the appeal summary.

47.68(4) *Nonappealable actions.* Households shall not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance under this division is that diversion funds for the approved pilot project have been reduced, exhausted, eliminated or otherwise encumbered.

441—47.69(239B) Funding, rates and method of payment.

47.69(1) *Funded amounts.* The division administrator shall determine the amounts allocated to each approved pilot project based on available funding and the amount requested by each project. The division administrator may reallocate funds between approved pilot projects as necessary to meet the objectives of the program.

47.69(2) *Rate setting for services not having a cash value.* Rates for post-FIP diversion assistance in the form of support services not having a cash value shall be established in accordance with the following procedures:

a. Rates for post-FIP diversion assistance support services shall be established on an individual basis by the human services area administrator (HSAA) or designee.

b. The HSAA or designee shall evaluate proposed payment rates in approving post-FIP diversion assistance support services. Rates approved for providers with a purchase of service contract or Medicaid agreement with the department shall be similar to payment rates for comparable support services provided through the purchase of service or Medicaid agreements. Rates for other types of support services or supports shall be comparable to prevailing community standards.

c. Payment rates approved by an HSAA or designee for post-FIP diversion assistance support services on behalf of a family shall remain in effect for the time period authorized unless approval for modification is granted by the HSAA or designee.

47.69(3) *Payment and billing.* Costs for operating pilot post-FIP diversion projects including, but not limited to, providing post-FIP diversion assistance shall be paid from funds allocated to the project as provided at subrule 47.69(1).

a. Allowable costs include, but are not limited to:

(1) Support services.

(2) Cash assistance.

(3) Administrative costs for fiscal agents with a cap of 5 percent of the allocated funding.

(4) Contracted operational services.

b. Nonallowable costs include, but are not limited to:

(1) Administrative costs for the department.

(2) Cost allocation for existing positions.

(3) Bonuses or incentives of any kind.

c. Funds may be deposited locally and disbursed through a fiscal agent. Each fiscal agent shall enter into a written funding agreement as described at subrule 47.69(4).

d. Funds may be disbursed through the department's division of fiscal management.

47.69(4) *Written funding agreements.* Each approved pilot project that provides for payment of post-FIP diversion operation costs or assistance at the local level shall enter into a written funding agreement with a third party to act as a fiscal agent to disburse payments. The written funding agreement shall stipulate:

a. The entity responsible for authorizing individual payments.

b. The fiscal agent shall be responsible for issuing payments.

c. The department, the fiscal agent and any other entity responsible for authorizing payments shall keep and reconcile records for accountability and audit purposes.

d. All agreements shall be signed by the fiscal agent and the human services area administrator and any community entity that may be a party to the agreement. Any agreements for $25,000 or more shall also be signed by the director. Other signatures may be required at the discretion of the division administrator.

e. The time frames for the fiscal agent to process payments.

f. Any other responsibilities of the department, the fiscal agent and any other entity responsible for authorizing payments.

g. Provisions customarily required for agreements or contracts entered into by a state agency.

441—47.70(239B) Termination of pilot projects. The division administrator may immediately terminate an approved pilot project if:

1. The project is not fulfilling the conditions of its pilot proposal.

2. The project is at the conclusion of the authorized approval period, unless a request for renewal has been submitted and approved.

3. Funding is reduced, exhausted, eliminated or otherwise encumbered.

441—47.71(239B) Records and reports.

47.71(1) *Case records.* The provision of post-FIP diversion assistance shall be documented by the department or local community entity in each candidate's appropriate case record.

47.71(2) *Records retention.* All persons who contract with the county office shall maintain all records related to the program for five years. They shall allow federal or state officials access to all records upon request.

47.71(3) *Reports.*

a. County offices having approved pilot projects shall provide reports as requested by the division administrator in a manner, format and frequency specified by the administrator.

b. County offices shall be responsible for maintaining records sufficient for audit and tracking purposes.

441—47.72(239B) Renewal of existing approved pilot projects. Contingent on continued authorization and funding, the division administrator may renew existing approved pilot projects. Renewal proposals shall be prepared and submitted within the parameters set forth in the request for renewal issued by the division administrator.

These rules are intended to implement Iowa Code section 239B.11.

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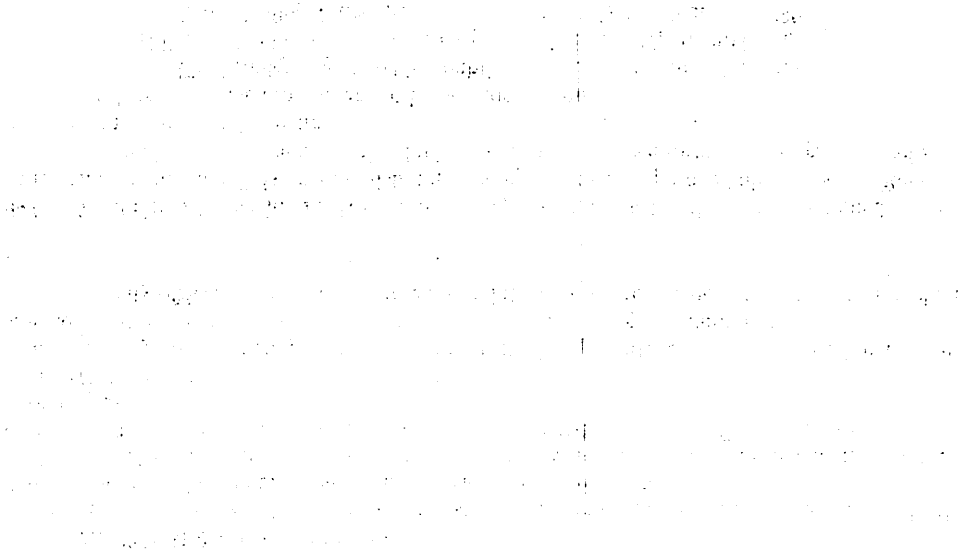

(1) Income policies specified in subrules 75.57(1) through 75.57(8), and paragraphs 75.57(9)*"c," "g," "h,"* and *"i"* regarding treatment of earned and unearned income are applied to FMAP-related and CMAP-related persons when determining initial eligibility and the two-step process for determining continuing eligibility unless otherwise specified. The three-step process for determining initial eligibility and the two-step process for determining ongoing eligibility, as described at rule 441—75.57(249A), shall not apply to medically needy persons.

(2) Income policies as specified in federal SSI regulations regarding treatment of earned and unearned income are applied to SSI-related persons when determining initial and continuing eligibility.

(3) The monthly income shall be determined prospectively unless actual income is available.

(4) The income for the certification period shall be determined by adding both months' net income together to arrive at a total.

(5) The income for the retroactive certification period shall be determined by adding each month of the retroactive period to arrive at a total.

e. Medically needy income level (MNIL).

(1) The MNIL is based on 133 1/3 percent of the schedule of basic needs, as provided in subrule 75.58(2), with households of one treated as households of two, as follows:

Number of Persons	1	2	3	4	5	6	7	8	9	10
MNIL	$483	$483	$566	$666	$733	$816	$891	$975	$1058	$1158

Each additional person $116

(2) When determining household size for the MNIL, all potential eligibles and all individuals whose income is considered as specified in paragraph 75.1(35)*"b"* shall be included unless the person has been excluded according to the provisions of rule 441—75.59(249A).

(3) The MNIL for the certification period shall be determined by adding both months' MNIL to arrive at a total.

The MNIL for the retroactive certification period shall be determined by adding each month of the retroactive period to arrive at a total.

(4) The total net countable income for the certification period shall be compared to the total MNIL for the certification period based on family size as specified in subparagraph (2).

If the total countable net income is equal to or less than the total MNIL, the medically needy individuals shall be eligible for Medicaid.

If the total countable net income exceeds the total MNIL, the medically needy individuals shall not be eligible for Medicaid unless incurred medical expenses equal or exceed the difference between the net income and the MNIL.

(5) Effective date of approval. Eligibility during the certification period or the retroactive certification period shall be effective as of the first day of the first month of the certification period or the retroactive certification period when the medically needy income level (MNIL) is met.

f. Verification of medical expenses to be used in spenddown calculation. The applicant or recipient shall submit evidence of medical expenses that are for noncovered Medicaid services and for covered services incurred prior to the certification period to the county office on a claim form, which shall be completed by the medical provider. In cases where the provider is uncooperative or where returning to the provider would constitute an unreasonable requirement on the applicant or recipient, the form shall be completed by the worker. Verification of medical expenses for the applicant or recipient that are covered Medicaid services and occurred during the certification period shall be submitted by the provider to the fiscal agent on a claim form. The applicant or recipient shall inform the provider of the applicant's or recipient's spenddown obligation at the time services are rendered or at the time the applicant or recipient receives notification of a spenddown obligation. Verification of allowable expenses incurred for transportation to receive medical care as specified in rule 441—78.13(249A) shall be verified on Form 470-0394, Medical Transportation Claim.

Applicants who have not established that they met spenddown in the current certification period shall be allowed 12 months following the end of the certification period to submit medical expenses for that period or 12 months following the date of the notice of decision when the certification period had ended prior to the notice of decision.

g. Spenddown calculation.

(1) Medical expenses that are incurred during the certification period may be used to meet spenddown. Medical expenses incurred prior to a certification period shall be used to meet spenddown if not already used to meet spenddown in a previous certification period and if all of the following requirements are met. The expenses:

1. Remain unpaid as of the first day of the certification period.
2. Are not Medicaid-payable in a previous certification period or the retroactive certification period.
3. Are not incurred during any prior certification period with the exception of the retroactive period in which the person was conditionally eligible but did not meet spenddown.

Notwithstanding numbered paragraphs "1" through "3" above, paid medical expenses from the retroactive period can be used to meet spenddown in the retroactive period or in the certification period for the two months immediately following the retroactive period.

(2) Order of deduction. Spenddown shall be adjusted when a bill for a Medicaid-covered service incurred during the certification period has been applied to meet spenddown if a bill for a covered service incurred prior to the certification period is subsequently received. Spenddown shall also be adjusted when a bill for a noncovered Medicaid service is subsequently received with a service date prior to the Medicaid-covered service. Spenddown shall be adjusted when an unpaid bill for a Medicaid-covered service incurred during the certification period has been applied to meet spenddown if a paid bill for a covered service incurred in the certification period is subsequently received with a service date prior to the date of the notice of spenddown status.

If spenddown has been met and a bill is received with a service date after spenddown has been met, the bill shall not be deducted to meet spenddown.

Incurred medical expenses, including those reimbursed by a state or political subdivision program other than Medicaid, but excluding those otherwise subject to payment by a third party, shall be deducted in the following order:

1. Medicare and other health insurance premiums, deductibles, or coinsurance charges.

EXCEPTION: When some of the household members are eligible for full Medicaid benefits under the Health Insurance Premium Payment Program (HIPP), as provided in rule 441—75.21(249A), the health insurance premium shall not be allowed as a deduction to meet the spenddown obligation of those persons in the household in the medically needy coverage group.

2. An average statewide monthly standard deduction for the cost of medically necessary personal care services provided in a licensed residential care facility shall be allowed as a deduction for spenddown. These personal care services include assistance with activities of daily living such as preparation of a special diet, personal hygiene and bathing, dressing, ambulation, toilet use, transferring, eating, and managing medication.

The average statewide monthly standard deduction for personal care services shall be based on the average per day rate of health care costs associated with residential care facilities participating in the state supplementary assistance program for a 30.4-day month as computed in the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities (Category: All; Type of Care: Residential; Location: All; and Type of Control: All). The average statewide standard deduction for personal care services used in the medically needy program shall be updated and effective the first day of the first month beginning two full months after the release of the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities report.

3. Medical expenses for necessary medical and remedial services that are recognized under state law but not covered by Medicaid, chronologically by date of submission.

4. Medical expenses for acupuncture, chronologically by date of submission.

5. Medical expenses for necessary medical and remedial services that are covered by Medicaid, chronologically by date of submission.

(3) When incurred medical expenses have reduced income to the applicable MNIL, the individuals shall be eligible for Medicaid.

(4) Medical expenses reimbursed by a public program other than Medicaid prior to the certification period shall not be considered a medical deduction.

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Staff will review the cases to perform admission review, quality review, discharge review, and DRG validation. Questionable cases will be referred to a physician reviewer for medical necessity and quality of care concerns. Day outlier cases will be reviewed to identify any medically unnecessary days which will be "carved out" in determining the qualifying outlier days. Cost outlier cases will be reviewed for medical necessity of all services provided and to ensure that services were not duplicately billed, to determine if services were actually provided, and to determine if all services were ordered by a physician. The hospital's itemized bill and remittance statement will be reviewed in addition to the medical record.

On a quarterly basis, the PRO will calculate denial rates for each facility based on completed reviews during the quarter. All outlier cases reviewed will be included in the computation or error rates. Cases with denied charges which exceed $1000 for inappropriate or nonmedically necessary services or days will be counted as errors.

Intensified review may be initiated for hospitals whose error rate reaches or exceeds the norm for similar cases in other hospitals. The error rate is determined based on the completed outlier reviews in a quarter per hospital and the number of those cases with denied charges exceeding $1000. The number of cases sampled for hospitals under intensified review may change based on further professional review and the specific hospital's outlier denial history.

Specific areas for review will be identified based on prior outlier experience. When it is determined that a significant number of the errors identified for a hospital is attributable to one source, review efforts will be focused on the specific cause of the error. Intensified review will be discontinued when the error rate falls below the norm for a calendar quarter. Providers will continue to be notified of all pending adverse decisions prior to a final determination by the PRO. If intensified review is required, hospitals will be notified in writing and provided with a list of the cases that met or exceeded the error rate threshold. When intensified review is no longer required, hospitals will be notified in writing. Hospitals with cases under review must then submit all supporting data from the medical record to the PRO within 60 days of receipt of the outlier review notifications, or outlier payment will be recouped and forfeited.

(1) Long stay outliers. Long stay outliers are incurred when a patient's stay exceeds the upper day limit threshold. This threshold is defined as the greater of 23 days of care or two standard deviations above the average statewide length of stay for a given DRG. Reimbursement for long stay outliers is calculated at 60 percent of the average daily rate for the given DRG for each approved day of stay beyond the upper day limit. Payment for long stay outliers shall be paid at 100 percent of the calculated amount and made at the time the claim is originally filed for DRG payment.

(2) Short stay outliers. Short stay outliers are incurred when a patient's length of stay is greater than two standard deviations below the average statewide length of stay for a given DRG, rounded to the next highest whole number of days. Payment for short stay outliers will be 200 percent of the average daily rate for each day the patient qualifies up to the full DRG payment. Short stay outlier claims will be subject to PRO review and payment denied for inappropriate admissions.

(3) Cost outliers. Cases qualify as cost outliers when costs of service in a given case, not including any add-on amounts for direct or indirect medical education or for disproportionate share costs, exceed the cost threshold. This cost threshold is determined to be the greater of two times the statewide average DRG payment for that case or the hospital's individual DRG payment for that case plus $16,000. Costs are calculated using hospital-specific cost to charge ratios determined in the base year cost reports. Additional payment for cost outliers is 80 percent of the excess between the hospital's cost for the discharge and the cost threshold established to define cost outliers. Payment of cost outlier amounts shall be paid at 100 percent of the calculated amount and made at the time the claim is paid. Those hospitals that are notified of any outlier review initiated by the PRO must submit all requested supporting data to the PRO within 60 days of the receipt of outlier review notification, or outlier payment will be forfeited and recouped. In addition, any hospital may request a review for outlier payment by submitting documentation to the PRO within 365 days of receipt of the outlier payment. If requests are not filed within 365 days, the provider loses the right to appeal or contest that payment.

(4) Day and cost outliers. Cases qualifying as both day and cost outliers are given additional payment as cost outliers only.

g. Billing for patient transfers and readmissions.

(1) Transfers between hospitals. When a Medicaid patient is transferred the initial hospital or unit is paid 100 percent of the average daily rate of the transferring hospital's payment for each day the patient remained in that hospital or unit, up to 100 percent of the entire DRG payment. The hospital or unit that received the transferred patient receives the entire DRG payment.

(2) Medicaid-certified substance abuse and psychiatric units. When a patient is discharged to or from an acute care hospital and is admitted to or from a Medicaid-certified substance abuse or psychiatric unit, both the discharging and admitting hospitals will receive 100 percent of the DRG payment.

(3) Medicaid-certified physical rehabilitation units. When a patient requiring physical rehabilitation is discharged from an acute care hospital and admitted to a Medicaid-certified rehabilitation unit and the admission is medically appropriate, then payment for time spent in the unit is through a per diem. The discharging hospital will receive 100 percent of the DRG payment. When a patient is discharged from a physical rehabilitation unit and admitted to an acute care hospital, the acute care hospital will receive 100 percent of the DRG payment.

h. Covered DRGs. Medicaid DRGs cover services provided in acute care general hospitals, with the exception of services provided in Medicaid-certified physical rehabilitation units which are paid per diem.

i. Payment for Medicaid-certified physical rehabilitation units. Medicaid-certified physical rehabilitation payment is prospective based on a per diem rate calculated for each hospital by establishing a base year per diem rate to which an annual index is applied.

(1) Per diem calculation. The base rate shall be the medical assistance per diem rate as determined by the individual hospital's cost report for the hospital's 1988 fiscal year. No recognition will be given to the professional component of the hospital-based physicians except as noted under 79.1(5)*"j."*

(2) Rescinded IAB 5/12/93, effective 7/1/93.

(3) Per diem reimbursement. Hospitals shall be reimbursed the lower of actual charges or the medical assistance cost per diem rate. The determination of the applicable rate shall be based on the hospital fiscal year aggregate of actual charges and medical assistance cost per diem rate. If an overpayment exists, the hospital will refund or have the overpayment deducted from subsequent billings.

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DIVISION VIII
LICENSE SANCTION

441—98.101(252J) Referral for license sanction. In the process referred to as license sanction, the child support recovery unit (CSRU) may refer an individual to a licensing agency for the suspension, revocation, nonissuance, or nonrenewal of a variety of licenses including, but not limited to, motor vehicle registrations, driver's licenses, business and professional licenses, and licenses for hunting, fishing, boating, or other recreational activity. In order to be referred to a licensing agency for license sanction, one of the following must apply:

98.101(1) *Delinquent support payments.* An obligor's support payments must be delinquent in an amount equal to the support payment for three months. CSRU may first refer for license sanction those obligors having the greatest number of months of support delinquency. CSRU shall not refer obligors whose support payments are being made under an income withholding order.

98.101(2) *Subpoena or warrant.* An individual must have failed to comply with a subpoena or warrant, as defined in Iowa Code chapter 252J, relating to a paternity or support proceeding. If a subpoena was issued, the individual must have failed to comply with either Form 470-3413, Child Support Recovery Unit Subpoena, or an Interstate Subpoena as provided in paragraph 96.2(1)*"a"* within 15 days of the issuance of the subpoena, and proof of service of the subpoena was completed according to Rule of Civil Procedure 82.

441—98.102(252J) Reasons for exemption. Certain conditions shall be considered valid reasons for exemption from the license sanction process. Upon verification of these conditions, CSRU shall bypass, exempt, or withdraw the individual's name from referral to licensing agencies for the purpose of applying a license sanction. When the information to verify the exemption is not available to CSRU through on-line sources, CSRU shall request, and the individual shall provide, verification of the reason for exemption. Valid reasons for exemption for failure to comply with a subpoena or warrant and acceptable verification are those listed in subrules 98.102(2), 98.102(3), 98.102(5), and 98.102(6). Valid reasons for exemption for delinquent support payments and acceptable verification are any of the following:

98.102(1) *Receipt of social security, supplemental security income (SSI) or the family investment program (FIP).* Receipt of social security, SSI, FIP, or county assistance (general relief, general assistance, community services, veteran's assistance), based upon the eligibility of the obligor, is considered a valid reason for exemption when verified by information contained in on-line sources available to CSRU or written verification from the agency providing the benefits.

98.102(2) *Temporary illness or disability.* Temporary illness or disability of the individual or illness or disability of another household member which requires the presence of the individual in the home as caretaker is considered a valid reason for exemption upon receipt of a completed Form 470-3158, Physician's Statement, verifying the individual's or household member's inability to work.

98.102(3) *Incarceration.* Incarceration is considered a valid reason for exemption when verified through on-line information available to CSRU or upon receipt of verification from the institution.

98.102(4) *Job training.* Participation in a job-training or job-seeking program through the department of employment services as a result of receiving food stamps is considered a valid reason for exemption upon receipt of verification from the department of employment services or verification through on-line information available to CSRU or upon receipt of a written statement from an income maintenance worker.

98.102(5) *Chemical dependency treatment.* Participation in a chemical dependency treatment program that is licensed by the department of public health or the joint commission on the accreditation of hospitals (JCAH) is considered a valid reason for exemption upon receipt of written verification from the professional staff of the program that participation in the program precludes the individual from working.

98.102(6) *Contempt process.* Involvement in a contempt action dealing with support issues is considered a valid reason for exemption from the license sanction process during the pendency of the contempt action.

441—98.103(252J) Notice of potential sanction of license. When an individual meets the criteria for selection, CSRU may issue a notice to the individual of the potential sanction of any license held by the individual, using Form 470-3278, Official Notice of Potential License Sanction.

98.103(1) *Delinquent support payments.* CSRU shall inform the obligor that the obligor may make immediate payment of all current and past due child support, schedule a conference to review the action of CSRU, or request to enter into a payment agreement with the unit. CSRU shall follow the procedures and requirements of Iowa Code chapter 252J regarding the issuance of the notice and the holding of a conference.

98.103(2) *Subpoena or warrant.* CSRU shall inform the individual that the individual may comply with the subpoena or warrant, or schedule a conference to review the action of CSRU. CSRU shall follow the procedures and requirements of Iowa Code chapter 252J regarding the issuance of the notice and the holding of a conference.

98.103(3) *Certificate of noncompliance.* If an individual fails to respond in writing to the notice within 20 days, or if the individual requests a conference and fails to appear, the unit shall issue a Certificate of Noncompliance, Form 470-3274, to applicable licensing authorities in accordance with Iowa Code section 252J.3.

441—98.104(252J) Conference.

98.104(1) *Scheduling of conference.* Upon receipt from an individual of a written request for a conference, CSRU shall schedule a conference not more than 30 days in the future. At the request of either CSRU or the individual, the conference may be rescheduled one time. When setting the date and time of the conference, if notice was sent to an obligor under subrule 98.103(1), CSRU shall request the completion of Form 470-0204, Financial Statement, and other financial information from both the obligor and the obligee as may be necessary to determine the obligor's ability to comply with the support obligation.

98.104(2) *Payment calculation.* If notice was sent to an obligor under subrule 98.103(1) during the conference held in compliance with the provisions of Iowa Code section 252J.4, CSRU shall determine if the obligor's ability to pay varies from the current support order by applying the mandatory supreme court guidelines as contained in 441—Chapter 99, Division I, with the exception of subrules 99.4(3) and 99.5(5). If further information from the obligor is necessary for the calculation, CSRU may schedule an additional conference no less than ten days in the future in order to allow the obligor to present additional information as may be necessary to calculate the amount of the payment. If, at that time, the obligor fails to provide the required information, CSRU shall issue a Certificate of Noncompliance, Form 470-3274, to applicable licensing authorities. If the obligee fails to provide the necessary information to complete the calculation, CSRU shall use whatever information is available. If no income information is available for the obligee, CSRU shall determine the obligee's income in accordance with 441—subrules 99.1(2) and 99.1(4). This calculation is for determining the amount of payment for the license sanction process only, and does not modify the amount of support obligation contained in the underlying court order.

(5) The case or arrearages have been referred by the child support recovery unit to a collection entity under Iowa Code section 252B.5, subsection 3, as amended by 1997 Iowa Acts, House File 612, section 30, or 1997 Iowa Acts, House File 612, section 244, less than nine months prior to the date on the notice from the attorney.

(6) The obligor has filed for bankruptcy and collection activities are stayed.

(7) The notice from the attorney under paragraph *"f"* lists a specific judicial proceeding and the unit has already initiated the same type of proceeding in court.

(8) The case has been referred to the U.S. Attorney's office and is still pending at that office.

f. The attorney has provided written notice to the central office of the child support recovery unit in Des Moines, as specified in subrule 98.122(2), and to the last-known address of the obligee of the intent to initiate a specified judicial proceeding to collect support on any identified court or administrative order involving the obligor and obligee in the case.

g. The attorney has provided documentation of insurance to the unit as required by 1997 Iowa Acts, House File 612, section 35.

h. The collection must be received by the collection services center within 90 days of the notice from the attorney in paragraph *"f,"* or within a subsequent 90-day extension period.

98.122(2) *Procedure.*

a. To begin the process under this rule, the attorney shall submit the following to the External Services Process Specialist, Bureau of Collections, Iowa Department of Human Services, Hoover Building, Fifth Floor, Des Moines, Iowa 50319-0114 at least 30 days prior to initiating the specified judicial proceeding:

(1) A dated, written statement which lists the specific judicial proceeding which the attorney intends to initiate, any court or administrative order under which the arrearages accrued identified by the order number, and the names of the obligor and obligee.

(2) Documentation that the attorney is insured as required by the statute. Documentation shall be either a copy of the attorney's policy from the insurer, or a letter from the insurer verifying insurance coverage as required by the statute.

(3) Documentation that the attorney is licensed to practice law in Iowa.

b. The unit shall mail a response to the attorney within ten days of receipt of the notice from the attorney. All of the following shall apply to the unit's response:

(1) If the case meets the requirements of this rule, the notice shall list the case number, any order numbers, the judicial proceeding specified by the attorney, the balance due the state of Iowa, the balance due an obligee, and the date that is 90 days from the date of the notice from the attorney. The notice shall also contain a statement that any compensation due the attorney as a result of application of this rule will be calculated on the amount of support credited to arrearages due the state at the time the support paid as a result of the judicial proceeding is received by the collection services center. The notice shall also contain a statement that any support collected shall be disbursed in accordance with federal requirements, and any support due the obligee shall be disbursed to the obligee prior to disbursement to the attorney as compensation.

(2) If the case does not meet the requirements of this rule, the notice shall list the case number, any order number, and the reason the case does not meet the requirements.

c. If the case is eligible under this rule, the attorney may initiate judicial proceedings after 30 days after providing the notice to child support recovery unit in paragraph *"a."* Section 35 of 1997 Iowa Acts, House File 612, defines "judicial proceedings."

d. The attorney may extend the time to complete the judicial proceeding or to allow for receipt of the collection by the collection services center by submitting a notice requesting a 90-day extension to the address in paragraph *"a."* This or any subsequent notice must be received by the unit before expiration of the current 90-day time frame. The child support recovery unit shall acknowledge receipt of the subsequent notice and list on the acknowledgment the date that is 90 days from the date of the attorney's subsequent notice.

98.122(3) *Collection and payment to attorney.*

a. Upon compliance with the requirements of 1997 Iowa Acts, House File 612, section 35, and this rule, the attorney shall be entitled to compensation from the state as provided for in this rule.

b. Upon receipt of a file-stamped copy of a court order which identifies the amount of support collected as a result of the judicial proceeding and which does not order the payment of attorney fees by the obligor, and the receipt of the collection by the collection services center, all the following apply:

(1) Section 35 of 1997 Iowa Acts, House File 612, specifies the formula to calculate the compensation due the attorney from the state. The child support recovery unit shall calculate the compensation due the attorney based upon the amount of support which is credited to arrearages due the state at the time the collection is received by the collection services center. After calculating the amount due the attorney, the unit shall reduce the amount due the attorney by the amount of any penalty or sanction imposed upon the state as a result of any other judicial proceeding initiated by that attorney under 1997 Iowa Acts, House File 612, section 35. The child support recovery unit shall send the attorney a notice of the amount of the compensation due from the state.

(2) The collection services center shall disburse any support due an obligee prior to payment of compensation to the attorney.

(3) The child support recovery unit shall not authorize disbursement of compensation to the attorney until the later of 30 days after receipt of the collection and the file-stamped copy of the order, or resolution of any timely appeal by the obligor or obligee.

(4) The amount of compensation due the attorney is subject to judicial review upon application to the court by the attorney.

This rule is intended to implement 1997 Iowa Acts, House File 612, section 35.

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CHAPTER 99
SUPPORT ESTABLISHMENT AND ADJUSTMENT SERVICES

PREAMBLE

This chapter contains rules governing the provision of services by the child support recovery unit regarding: the establishment of paternity; the establishment of support obligations in accordance with the mandatory guidelines set by the Iowa Supreme Court; the review and adjustment of support obligations; the modification of support obligations; and the suspension and reinstatement of support obligations. The rules in this chapter pertain only to administrative actions or procedures used by the unit in providing the services identified. This chapter shall not be interpreted to limit the unit's authority to use other means as provided for by state or federal statute, including, but not limited to, judicial procedures in providing these services.

DIVISION I
CHILD SUPPORT GUIDELINES

441—99.1(234,252B,252H) Income considered. The child support recovery unit shall consider all regularly recurring income of both legal parents to determine the amount of the support award in accordance with the child support guidelines prescribed by the supreme court. These rules on child support guidelines shall not apply if the child support recovery unit is determining the support amount by a cost-of-living alteration as provided in 1997 Iowa Acts, House File 612, sections 106 through 109.

99.1(1) *Exempt income.* The following income of the parent is exempt in the establishment or modification of support:

a. Income received by the parent under the family investment program (FIP).

b. Income or other benefits derived from public assistance programs funded by a federal, state, or local governmental agency or entity that are exempt from consideration in determining eligibility under FIP.

c. Income such as child support, social security dependent's benefits, and Veterans Administration dependent's benefits received by a parent on behalf of a child.

d. Stepparent's income.

e. Income of a guardian who is not the child's parent.

f. Income of the child's siblings.

99.1(2) *Determining income.* Any of the following may be used in determining a parent's income for establishing or modifying a support obligation:

a. Income reported by the parent in a financial statement.

b. Income established by any of the following:

(1) Income verified by an employer or other source of income.

(2) Income reported to the department of employment services.

(3) For a public assistance recipient, income reported to the department of human services caseworker assigned to the public assistance case.

(4) Other written documentation that identifies income.

c. Income as determined through occupational wage rate information published by the Iowa workforce development department or other state or federal agencies.

d. The median income for parents on the CSRU caseload, calculated annually.

99.1(3) *Verification of income.* Verification of income and allowable deductions from each parent shall be requested.

a. Verification of income may include, but is not limited to, the following:

(1) Federal and state income tax returns.

(2) W-2 statements.

(3) Pay stubs.

(4) Signed statements from an employer or other source of income.

(5) Self-employment bookkeeping records.

(6) Award letters confirming entitlement to benefits under a program administered by a government or private agency such as social security, veterans' or unemployment benefits, military or civil service retirement or pension plans, or workers' compensation.

b. Cases in which the information or verification provided by a parent is questionable or inconsistent with other circumstances of the case may be investigated. If the investigation does not reveal any inconsistencies, the financial statement and other documentation provided by the parent shall be used to establish income.

c. If discrepancies exist in the financial statement provided by the parent and additional income information is not available, the child support recovery unit may:

(1) Request a hearing before the court if attempting to establish a support order through administrative process.

(2) Conduct discovery if a parent places the matter before the court by answering a petition or requesting a hearing before the court.

(3) When attempting to establish a default order, provide the court with a copy of the parent's financial information and the reasons the information may be questionable.

d. If the child support recovery unit is unable to obtain verification of a parent's income, the financial statement provided by the parent may be used to establish support.

99.1(4) *Use of occupational wage rate information or median income for parents on the CSRU caseload.* Occupational wage rate information or median income for parents on the CSRU caseload shall be used to determine a parent's income when the parent has failed to return a completed financial statement when requested, and when complete and accurate income information from other readily available sources cannot be secured.

a. Occupation known. When the last-known occupation of a parent can be determined through a documented source including, but not limited to, Iowa workforce development or the National Directory of New Hires, occupational wage rate information shall be used to determine income. When the last-known occupation of a parent cannot be determined through a documented source, information may be gathered from the other parent and occupational wage rate information applied. Wage rate information shall be converted to a monthly amount in accordance with subrule 99.3(1).

b. Occupation unknown. When the occupation of a parent is unknown, the income of a parent shall be estimated using the medican income amount for parents on the CSRU caseload.

99.1(5) *Self-employment income.* A self-employed parent's adjusted gross income, rather than the net taxable income, shall be used in determining net income. The adjusted gross income shall be computed by deducting business expenses involving actual cash expenditures that affect the actual dollar income of the parent.

a. A person is 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 (IRS).

b. In calculating net income from self-employment, the child support recovery unit shall deduct only those items allowed by the child support guidelines. Amounts from a prior period claimed as net losses shall not be allowed as deductions.

d. The child support recovery unit shall compute the child care deduction as follows:

(1) Divide the amount of child care expense the parent may claim as a deduction for federal income tax purposes by 12 to arrive at a monthly amount.

(2) If the child care expense reported on the financial statement is not a monthly amount, convert the reported amount to an equivalent monthly figure and round the figure to two decimal places.

(3) Subtract the amount the parent may claim as "credit for child and dependent care expenses" for federal income tax from the amount of child care expenses reported on the financial statement. The difference, rounded to the nearest dollar, is the amount allowed for a deduction in determining income for child support.

99.2(8) Qualified additional dependent deduction (QADD). The qualified additional dependent deduction is the amount specified in the supreme court guidelines as a deduction for any child for whom parental responsibility has been legally established as defined by the child support guidelines. However, this deduction may not be used for a child for whom the parent may be eligible to take a deduction under subrule 99.2(4).

a. The deduction for qualified additional dependents may be used:

(1) For dependents of the custodial or noncustodial father or mother, whether in or out of the parent's home. The father may establish the deduction by providing written verification of a legal obligation to the children through one of the actions enumerated in the guidelines. The mother may establish the deduction by providing written verification of a legal obligation to the children, including the mother's statement.

(2) In the establishment of original orders.

(3) In the modification of existing orders. The deduction may be used to limit the amount of an upward modification. The adjustment based upon the qualified additional dependent deduction cannot be used to affect a downward modification, but may be used after the threshold determination for modification has been met.

b. Reserved.

441—99.3(234,252B) Determining net income.

99.3(1) *Calculating net income.* All includable income and allowable deductions shall be expressed in monthly amounts. Income and corresponding deductions received at a frequency other than monthly shall be converted to equivalent monthly amounts by multiplying the income and corresponding deductions received on a weekly basis by 4.33, on a biweekly basis by 2.17, and on a semimonthly basis by 2. All converted figures shall be rounded to the nearest dollar.

99.3(2) *Estimating net income.*

a. The estimated net income of a parent shall be 80 percent of the reported income or the estimated income as determined from occupational wage rate information or derived from the median income of parents on the CSRU caseload, as appropriate, minus the deductions enumerated in subrules 99.2(3) to 99.2(8) when the information to calculate these deductions is readily available through automated or other sources.

b. The net income of a parent shall be estimated under the following conditions:

(1) Gross earned income information was obtained from a source that did not provide itemized deductions allowed by the mandatory support guidelines.

(2) Occupational wage rate information or median income of parents on the CSRU caseload was used to determine a parent's income.

441—99.4(234,252B) Applying the guidelines.

99.4(1) *Selecting guidelines chart.* The child support recovery unit shall use the guidelines chart only for the number of children for whom support is being sought sharing the same two legal parents.

EXCEPTION: For foster care recovery cases the guidelines chart shall be used as set forth in paragraph 99.5(4)*"c."*

99.4(2) *Establishing current support.* The child support recovery unit shall calculate the amount of support required under the mandatory support guidelines as follows:

a. Determine the net monthly income of the custodial parent.

b. Determine the net monthly income of the noncustodial parent.

c. Use the chart for the appropriate number of children and the respective incomes of the parents to determine the appropriate percentage to apply.

d. Multiply the noncustodial parent's net monthly income by the percentage determined appropriate. Round this amount to the nearest whole dollar.

(1) In all cases other than foster care, CSRU shall establish current support payable in monthly frequencies.

(2) In foster care cases, CSRU may establish current support payable in monthly or weekly frequencies. To establish a weekly amount, CSRU shall divide the figure in paragraph *"d"* by 4.33 and round to the nearest whole dollar.

99.4(3) *Establishing accrued support debt amount.*

a. Support debt created. The payment of public assistance to or for the benefit of a dependent child or a dependent child's caretaker creates an accrued support debt due and owing by the child's parent to the department. The amount of the accrued support debt is based on the period of time public assistance payment or foster care funds were expended, but is not created for the period of receipt of public assistance on the parent's own behalf for the benefit of the dependent child or the child's caretaker.

b. Calculating accrued support debt. CSRU shall calculate the accrued support debt as follows:

(1) For Family Investment Program (FIP) benefits, CSRU shall use the period for which FIP was paid during the 36 months preceding the date the notice of support debt is prepared or the date the petition is filed. For foster care assistance, CSRU shall use the three-month period for which foster care assistance was paid prior to the date the initial notice to the noncustodial parent of the amount of support obligation is prepared, or the date a written request for a court hearing is received, whichever is earlier.

(2) CSRU shall exclude periods the noncustodial parent received public assistance as a part of this eligible group.

(3) CSRU may extend the period to include any additional periods public assistance is expended prior to the entry of the order.

(4) CSRU shall calculate the amount of the obligation by using the current net income of both parents, the guidelines in effect at the time the order is entered, and the number of children of the noncustodial parent who were receiving public assistance for each month for which accrued support is sought.

(5) CSRU shall calculate the total amount of the FIP support debt by multiplying the number of months for which assistance was paid times the determined guidelines amount.

(6) CSRU may calculate the total amount of the foster care support debt by multiplying the number of months for which assistance was paid times the determined guidelines amount and shall adjust this amount for weeks in which no foster care benefits were paid.

c. Establishing the accrued support repayment amount.

(1) In cases other than foster care, CSRU shall establish the repayment amount as follows:

1. When there is an ongoing obligation, the monthly repayment amount shall be 10 percent of the ongoing amount unless the noncustodial parent agrees to a higher amount.

2. When the order does not include ongoing support, the monthly repayment amount shall be the same as the amount for ongoing support which would have been due if such an obligation had been established. However, when all of the children for whom accrued support debt is sought are residing with the noncustodial parent, the monthly repayment amount shall be set at 10 percent of this amount.

(2) In foster care cases, CSRU shall establish the repayment amount in the same manner as subparagraph (1), but may establish weekly amounts and if the order does not include ongoing support, the repayment amount shall be set at 10 percent of the amount for ongoing support which would have been due if such an obligation had been established.

99.4(4) *Children in nonparental homes or foster care.* The parents of a child in a nonparental home or in foster care are severally liable for the support of the child. A support obligation shall be established separately for each parent.

a. Parents' location known. When the location is known for both parents having a legal obligation to provide support for their children, the income of both parents shall be used to determine the amount of ongoing support in accordance with the child support guidelines.

(1) Calculating support amount. There shall be a separate calculation of each parent's child support amount, regardless of whether the parents are married and living together, or living separately. Each calculation shall assume that the parent for whom support is being calculated is the noncustodial parent and the other parent is the custodial parent.

(2) Prior orders. If only one parent is paying support under a prior order for the children for whom support is being calculated, the amount of support paid shall not be deducted from that parent's net monthly income in computing the support amount for the other parent.

b. One parent's location unknown. When the location of one parent is not known, procedures shall be initiated to establish a support order against the parent whose location is known in accordance with the mandatory support guidelines as follows:

(1) The parent whose location is known shall be considered the noncustodial parent and that parent's income shall be used to calculate child support.

(2) The income of the parent whose location is unknown shall be determined by using the estimated median income for parents on the CSRU caseload and that parent shall be considered the custodial parent in calculating child support.

c. When one parent is deceased or has had parental rights terminated, the method used to calculate support when one parent's location is not known shall be used. The parent who is deceased or has had parental rights terminated shall be considered the custodial parent with zero income.

441—99.5(234,252B) Deviation from guidelines.

99.5(1) *Criteria for deviation.* Variation from the child support guidelines shall not be considered without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate under the following criteria:

a. Substantial injustice would result to the obligor, the obligee, or the child.

b. Adjustments are necessary to provide for the needs of the child and to do justice between the parties under the special circumstances of the case.

c. In certain foster care cases, adjustments are necessary due to expenses related to the goals and objectives of the case permanency plan or other circumstances contemplated in Iowa Code section 234.39.

99.5(2) *Supporting financial and legal documentation.*

a. The party requesting a deviation from the guidelines shall provide supporting documentation. The supporting documentation shall include an itemized list identifying the amount and nature of each adjustment requested. Failure to provide supporting documentation for a request for deviation shall result in a denial of the request.

b. Legal documents prepared for the court's approval, such as stipulations and orders for support, shall include language to identify the following:

(1) The amount of support calculated under the guidelines without allowance for deviations.

(2) The reasons for deviating from the guidelines.

(3) The amount of support calculated after allowing for the deviation.

99.5(3) *Depreciation.* A parent may request a deduction for depreciation of machinery, equipment, or other property used to earn income. Straight-line depreciation shall be the only type of depreciation that shall be allowed as a deduction. The child support recovery unit shall allow the straight-line depreciation amount as a deduction if the parent provides documentation from a tax preparer verifying the amount of straight-line depreciation being claimed. Straight-line depreciation is computed by deducting the property's estimated salvage value from the cost of the property, and deducting that figure in equal yearly amounts over the period of the property's remaining estimated useful life.

99.5(4) *Foster care case.* In a foster care case, the child support recovery unit may deviate from the guidelines by applying a 30 percent flat rate deduction for parents who provide financial documentation. The flat rate deduction represents expenses under the case permanency plan and financial hardship allowances.

a. and *b.* Rescinded IAB 5/5/99, effective 7/1/99.

c. CSRU shall calculate the support obligation of the parents of children in foster care when the parents have a legal obligation for additional dependents in the home, as follows: The support obligation of each parent shall be calculated by allowing all deductions the parent is eligible for under the child support guidelines as provided in rule 441—99.2(234,252B) and by using the guidelines chart corresponding to the sum of the children in the home for whom the parent has a legal obligation and the children in foster care. The calculated support amount shall be divided by the total number of children in foster care and in the home to compute the support obligation of the parent for each child in foster care.

99.5(5) *Negotiation of accrued support debt.* The child support recovery unit may negotiate with a parent to establish the amount of accrued support debt owed to the department. In negotiating accrued support, the state does not represent the custodial parent. The custodial parent may intervene at any time prior to the filing of the order to contest the amount of the debt or request the entry of a judgment in the parent's behalf which may otherwise be relinquished through negotiation or entry of a judgment.

These rules are intended to implement Iowa Code sections 234.39, 252B.3, 252B.5, 252B.7A, and 598.21(4).

441—99.6 to **99.9** Reserved.

DIVISION II
PATERNITY ESTABLISHMENT

Part A
Judicial Paternity Establishment

441—99.10(252A) Temporary support. If a court ordered a putative father to pay temporary support before entering an order making a final determination of paternity under 1997 Iowa Acts, House File 612, section 5, but then the court determines the putative father is not the legal father and the court enters an order terminating the temporary support, all the following apply.

99.10(1) *Satisfaction of accrued support.* Upon receipt of a file-stamped copy of the order terminating the support order, the child support recovery unit shall take the following action concerning unpaid support assigned to the department:

a. The child support recovery unit shall satisfy only unpaid support assigned to the department.

b. The child support recovery unit shall ask the obligee to sign the satisfaction acknowledging the obligee has no right to support owed the department and waive notice of hearing on a subsequent satisfaction order. If the obligee does not sign the satisfaction and waiver or notice, the child support recovery unit is not prevented from satisfying amounts due the department.

c. The child support recovery unit shall prepare the required documents to satisfy any amounts owed the department and shall file them with the appropriate district court.

99.10(2) *Previously collected moneys.* The child support recovery unit shall not return any moneys previously paid on the temporary support judgment.

This rule is intended to implement 1997 Iowa Acts, House File 612, section 5.

441—99.11 to **99.20** Reserved.

Part B
Administrative Paternity Establishment

441—99.21(252F) When paternity may be established administratively. The child support recovery unit may seek to administratively establish paternity and accrued or accruing child support and medical support obligations against an alleged father when the conditions specified in Iowa Code chapter 252F are met.

441—99.22(252F) Mother's certified statement. Before initiating an action under Iowa Code chapter 252F, the unit may obtain a signed Paternity Questionnaire, Form 470-0172, or a similar document from the child's caretaker. The unit shall obtain the Mother's Written Statement Alleging Paternity, Form 470-3293, from the child's mother certifying, in accordance with Iowa Code section 622.1, that the man named is or may be the child's biological father. A similar document which substantially meets the requirements of Iowa Code section 622.1 may also be used. In signing Form 470-3293 or similar document, the mother acknowledges that the unit may initiate a paternity action against the alleged father, and she agrees to accept service of all notices and other documents related to that action by first-class mail. The mother shall sign and return Form 470-3293 or a similar document to the unit within ten days of the date of the unit's request.

441—99.23(252F) Notice of alleged paternity and support debt. Following receipt of the Mother's Written Statement Alleging Paternity, Form 470-3293, or a similar document which substantially meets the requirements of Iowa Code section 622.1, the unit shall serve a notice of alleged paternity and support debt as provided in Iowa Code section 252F.3.

441—99.24(252F) Conference to discuss paternity and support issues. The alleged father may request a conference as provided in Iowa Code chapter 252F with the office that issued the notice to discuss paternity establishment and the amount of support he may be required to pay.

441—99.25(252F) Amount of support obligation. The unit shall determine the amount of the child support obligation accrued and accruing using the child support guidelines established by the Iowa Supreme Court, and pursuant to the provisions of Iowa Code section 252B.7A.

441—99.26(252F) Court hearing. If the alleged father requests a court hearing within the time frames specified in Iowa Code section 252F.3, or as extended by the unit, and paternity testing has not been conducted, the unit shall issue ex parte administrative orders requiring the alleged father, the mother and the child to submit to paternity testing.

441—99.27(252F) Paternity contested. The alleged father may contest the paternity establishment by submitting, within 20 calendar days after service of the notice upon him, as provided in rule 441—99.23(252F), a written statement contesting paternity to the address of the unit as set forth in the notice. The mother may contest paternity establishment by submitting, within 20 calendar days after the unit mailed her notice of the action or within 20 calendar days after the alleged father is served with the original notice, whichever is later, a written statement contesting paternity to the address of the unit as set forth in the notice. When paternity is contested, or at the unit's initiative, the unit shall issue ex parte administrative orders requiring the alleged father, the mother and the child to submit to paternity testing.

441—99.28(252F) Paternity test results challenge. Either party or the unit may challenge the results of the paternity test by filing a written notice with the district court within 20 calendar days after the unit issues or mails the paternity test results to the parties. When a party challenges the paternity test results, and requests an additional paternity test, the unit shall order an additional blood or genetic test, if the party requesting the additional test pays for the additional testing in advance. If the party challenges the first paternity test results, but does not request additional tests, the unit may order additional blood or genetic tests.

441—99.108(252B) Reinstatement. The child support recovery unit shall follow the procedures in Iowa Code section 252B.20, in seeking to have the court reinstate a support order.

99.108(1) The unit shall request that the court reinstate all support provisions previously suspended, including spousal support if included in the suspension in accordance with subrule 99.105(1).

99.108(2) The unit shall not seek to have a suspended order partially reinstated under this division when it is determined that the basis for suspension as provided in subrules 99.103(2) and 99.103(3) continues to apply to some, but not all, of the persons entitled to support under the terms of the suspended order. This provision shall not prohibit any party, including the child support recovery unit, from taking other action to establish support as provided for by law.

441—99.109(252B) Reinstatement of enforcement of current support. If a suspended support order is reinstated, the unit shall also reinstate all appropriate enforcement measures to enforce the reinstated ongoing support provisions of the support order.

441—99.110(252B) Temporary suspension becomes final. The temporary suspension of a support order under this division shall become final if not reinstated in accordance with Iowa Code section 252B.20.

These rules are intended to implement Iowa Code section 252B.20.

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c. Record checks. The certified adoption investigator shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions. Form 470-0643, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant, or any other adult living in the home of the applicant, the applicant shall not be approved as an adoptive family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2)*"b."* The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2)*"b."*

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of approval for adoption.

(1) If the applicant or any other adult living in the home of the applicant has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the certified adoption investigator. The certified adoption investigator shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.

(2) If the applicant or any other adult living in the home of the applicant has a founded child abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the evaluation shall be initially conducted by the certified adoption investigator.

1. If the certified adoption investigator determines that the abuse or crime does warrant prohibition of approval, the certified adoption investigator shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.

2. If the certified adoption investigator believes that the applicant should be approved despite the abuse or criminal conviction, the certified adoption investigator shall provide copies of the child abuse report or criminal history record, Form 470-2310, Record Check Evaluation, and Form 470-2386, Record Check Decision, to the Department of Human Services, Administrator, Division of Adult, Children and Family Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the certified adoption investigator in writing of that decision. The certified adoption investigator shall mail the applicant Form 470-2386, Record Check Decision, when a decision is reached regarding the evaluation of an abuse or crime, or when an applicant fails to complete the evaluation form.

(3) The child abuse and criminal record checks shall be repeated and any founded abuses or convictions of crimes since the last record check shall be evaluated using the same process during the home study update required by Iowa Code section 600.8.

d. Home study updates are required if the home study was written more than one year previously, in accordance with Iowa Code section 600.8. The home study update shall consist of completing the following:

(1) The child abuse and criminal record checks shall be repeated and if there are new founded abuses or conviction of crimes that were not evaluated in the previous home study they shall be evaluated using the process set forth in 107.8(1)*"c."*

(2) One face-to-face visit shall be conducted with the approved family.

(3) The information in the approved home study shall be reassessed.

(4) An updated report of the reassessment and adoptive home study shall be written, dated, signed and notarized and a copy provided to the family.

107.8(2) *Background information investigation.* When an adoption investigator completes a background information investigation on the child to be adopted at the request of the placer, the investigation shall include a complete family medical and mental health history and developmental history of the child to be adopted. A personal interview with each parent of the child must be completed unless a parent's identity or whereabouts is unknown.

107.8(3) *Postplacement investigation.* When an adoption investigator completes postplacement supervision, at least three visits to the adoptive family's home and personal observation of the child are required.

a. Postplacement reports are to be written after each postplacement visit and copies kept in the permanent family file retained by the investigator.

b. Postplacement supervision should assess the placement in the following areas:

(1) Integration and interaction of the child with the family.

(2) Changes in the family functioning which may be due to the child's placement.

(3) Social, emotional and school adjustment of the child.

(4) Changes that have occurred in the family since placement of the child.

(5) The family's method of dealing with testing behaviors and discipline.

c. Home visits shall be completed at a minimum as follows:

(1) One no later than 30 days after placement.

(2) One no later than 90 days after placement.

(3) A final visit prior to requesting a consent to adopt. Home visits shall be completed as often as necessary if the adoptive family is experiencing problems.

d. A report based on the postplacement visits with recommendations regarding the finalization of the adoption shall be submitted to the court.

107.8(4) *Reports of investigations.* The adoption investigator is authorized to provide reports to the courts concerning the above investigations and reports to the guardian or custodian of the child and the attorney for the adoptive family.

107.8(5) *Fees for services.* Certified investigators may charge a fee for the services described in subrules 107.8(1), 107.8(2), and 107.8(3). The licensor shall review the amount of fees for services charged to families at the time that the investigator's records are reviewed for recertification. Information shall also be retained regarding fees charged to a family by another party and collected by the investigator.

441—107.9(600) Retention of adoption records. The adoption investigator shall maintain a record of each family or child when one or more of the required reports have been completed. The record shall contain copies of all completed reports and a statement of fees charged by the investigator.

107.9(1) *Access to records.* The provisions regarding sealing of and access to adoption records in Iowa Code section 600.16 shall be followed, except that access under subrule 107.9(3) for recertification is permitted.

107.9(2) *Disposition of records.* Upon revocation, denial of renewal, or expiration of certification, all sealed records held by investigators shall be forwarded to the department.

107.9(3) *Access for recertification.* Authorized representatives of the department shall have access to all records of reports completed within a two-year period prior to recertification for purposes of recertification. Authorized representatives shall respect the confidential nature of these records.

441—107.10(600) Reporting of violations. All violations or suspected violations under Iowa Code chapter 600 or 600A which come to the attention of the investigator shall be reported in writing to the district court having jurisdiction of the matter and to the department of human services. The investigator shall maintain copies of these written reports to the court and the department.

441—107.11(600) Appeals. Certified investigators or applicants may appeal decisions of the department according to rules in 441—Chapter 7.

These rules are intended to implement Iowa Code chapter 600.

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108.7(14) *Information for foster parents.* At the time of placement, an agency shall provide foster parents with all of the following if known:

a. Name of the child, agency caseworker, and referring agency.

b. Information about the child's known behavioral characteristics, needs, and plans for the child and family.

c. Written consent to obtain routine, nonsurgical medical care and to authorize emergency medical and surgical treatment, anesthesia, and immunizations for each child placed in the foster home.

d. A copy of the child's current physical examination and medical history when completed.

As this information becomes available to the agency, foster parents shall be informed immediately.

108.7(15) *Religious policy.* The agency shall have a written policy on religious participation and training for foster children. The agency shall provide the policy to parents and foster parents and shall ensure that the policy is adhered to in each foster home.

108.7(16) *Mail.* There shall be a written policy which ensures that foster children are permitted to send and receive mail, unless documented that this practice is contraindicated.

108.7(17) *Allowance policy.* An agency shall have a written policy addressing payment of and accounting for personal allowances for foster children.

108.7(18) *Reporting hospitalization or death of child.* Any serious injury or illness requiring hospitalization of a child in care shall be reported to the parent and the responsible agency as soon as possible. Efforts to notify parents and responsible agency staff shall be documented in the child's record. The death of a child shall be reported immediately to the parent or next of kin and to the referring agency.

108.7(19) *Foster care records.* The agency shall maintain confidential individual records for each child placed in a foster home. The record shall include:

a. The initial placement outline. (Refer to subrule 108.7(7).)

b. All legal documents pertaining to the child.

c. The child's health record, including psychological and psychiatric reports.

d. The summary narrative which reflects the dates and content of the caseworker's contact regarding the child.

e. Educational records and reports.

f. All service plans developed by the agency.

g. Case permanency plans developed by the referring agency.

h. A record of foster placements made by the agency including foster parents' names and addresses and dates of placements.

108.7(20) *Termination of foster care.* When a foster care placement is terminated, all of the following information shall be documented in the child's record within 30 days:

a. Reason for termination.

b. Current location of the child, unless the child was placed for adoption. In that case the record shall state only that the child was placed for adoption and shall not disclose the identity of the adoptive family unless the adoptive family agrees to disclosure of identity prior to finalizing of adoption.

c. Steps remaining to achieve permanency plan goal.

d. Provisions for follow-up, if any.

e. For unplanned terminations, a summary explaining the circumstances.

441—108.8(238) Foster home studies. The agency shall provide information to prospective foster parents about foster care, agency policies, licensing requirements for foster care, the children needing foster care, the licensing process and the reimbursement rates.

108.8(1) *Licensing procedures.*

a. Availability of applications. The agency may provide Form SS-2101, Application for a License to Operate a Foster Family Home, to anyone requesting to be licensed.

b. Licensing study. The agency may complete a licensing study of the family.

c. New applications. If the child-placing agency decides to complete the initial licensing study, the agency shall submit to the department all documents and information required by 441—Chapter 113 pertaining to the licensing and regulation of foster family homes. This shall include a narrative evaluation of the foster family home which reflects a thorough study of each foster family. The narrative shall document at least two face-to-face interviews with the prospective foster family and at least one face-to-face interview with each member of the household before the placement of a child. At least one interview shall take place in the applicant's home. The narrative summary of the family study shall assess all of the following:

(1) Motivation for foster care.

(2) Family's and extended family's attitude toward accepting foster children.

(3) Family's attitude toward foster children's parents.

(4) Emotional stability, physical health, and compatibility of foster parents, and ways they cope with change and stress.

(5) Adjustment of own children, if any.

(6) Assessment of the child-caring skills, including disciplinary techniques used.

(7) Strengths and weaknesses of each member of the household.

(8) Types of children desired.

(9) Type of children, if any, for whom placement with the family would be appropriate.

(10) Recommendation as to the number, age, sex, characteristics, and special needs of children best served by this family.

(11) Assessment of the need for training and a plan for providing the needed training.

(12) Any other pertinent information that might assist the agency in making the licensing recommendation.

(13) Evaluation of child abuse and criminal history record checks. The licensed child-placing agency shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions. Form 470-0643, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant, or any other adult living in the home of the applicant, the applicant shall not be licensed as a foster family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of license.

EXCEPTION: An individual applying to be a foster parent shall not be granted a license and an evaluation shall not be performed if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 237.8(2)*"a."* The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 237.8(2)*"a."*

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the criminal conviction or founded child abuse report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure.

1. If the applicant, or any other adult living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the regional administrator or designee. The regional administrator or designee shall notify the child-placing agency and the applicant of the results of the evaluation.

2. If the applicant, or any other adult living in the home of the applicant, has a founded child abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the evaluation shall be initially conducted by the regional administrator or designee.

If the regional administrator or designee determines that the abuse or crime does warrant prohibition of license, the regional administrator or designee shall notify the child-placing agency and the applicant of the results of the evaluation.

If the regional administrator or designee believes that the applicant should be licensed despite the abuse or criminal conviction, the regional administrator or designee shall provide copies of Form 470-2310, Record Check Evaluation, and Form 470-2386, Record Check Decision, to the Department of Human Services, Administrator, Division of Adult, Children and Family Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days, the administrator shall determine whether the abuse or crime merits prohibition of license, and shall notify the regional administrator or designee in writing of that decision.

The regional administrator or designee shall mail the child-placing agency and foster family applicant Form 470-2386, Record Check Decision, when a decision is reached regarding the evaluation of an abuse or crime, or when an applicant fails to complete the evaluation form.

Foster parents applying for renewal of their license may be subject to the same record checks as new applicants when there is reason to believe that a founded abuse or conviction of a crime has occurred. Only abuses or convictions of crimes since the last record check shall be evaluated, using the process set forth above.

(14) Health of foster parents and impact of medical conditions on their ability to foster a child.

(15) Income information.

(16) Documentation that at least three references have been received and the responses reviewed.

108.8(2) *Licensing decision.* The department shall make the licensing decision and notify the applicant and the child-placing agency within 30 days of the licensing decision. In no case shall a child be placed in a foster home before licensing approval.

a. A full license shall be issued to foster families meeting all necessary criteria for a full licensure.

b. A provisional license may be issued for up to one year if the foster family fails to meet all requirements for licensure. When an agency recommends, because of rule violation, that a foster home receive a provisional license at the time the license is issued or renewed, the agency shall document the violation in the foster home file, and shall send the following to the department:

(1) A copy of the assessment of the rule violation and recommendation.

(2) A copy of the foster home's plan to achieve rule compliance within stipulated time frames.

c. When an agency recommends that a foster home license be denied or revoked, the agency shall send the following documents to the department:

(1) A copy of the assessment of rule compliance and the foster family's reaction to the assessment.

(2) The agency's recommendation and supporting rationale.

(3) Other appropriate documents supporting the findings.

108.8(3) *Reapplications.* At least 30 days before the expiration of the license, the agency shall submit all documents and information required by 441—Chapter 113 pertaining to the licensing and regulation of foster family homes. This shall include an update of the narrative noting any changes that may have occurred in the foster family's living arrangement or life style and any other pertinent information that might assist in making the licensing decision, including an assessment of the foster family's ability to provide foster care.

108.8(4) *Unannounced visits.* The agency shall conduct at least one annual unannounced visit to each licensed foster family home the agency inspects to meet the requirements of Iowa Code section 237.7.

108.8(5) *Complaints.* When an agency receives a complaint which may indicate possible violation of the foster care licensing rules, the agency shall, within five working days of receiving the complaint, either conduct an investigation to assess compliance with applicable rules or refer the complaint to the department for investigation. If the agency conducts the investigation, the agency shall submit a written report of the investigation to the department within ten working days of receiving the complaint with a statement of rule violation and a recommendation regarding the license of the foster family home. The written report shall be filed in the foster parents' file.

108.8(6) *Foster family training.* The agency shall ensure that each foster home recommended for foster family license has complied with the training requirements in 441—113.8(237).

Within six months of licensure and every five years thereafter, each foster parent shall obtain mandatory reporter training relating to identification and reporting of child abuse.

108.8(7) *Placement agreement.* When a child is placed with a foster family, the agency shall have a signed agreement with each foster family home including the expectations and responsibilities of both the agency and the foster family, the services to be provided, and the financial arrangements for children placed in the home.

108.8(8) *Foster family home records.* The agency shall keep separate records for each foster family home. The agency shall begin the record at the time of application. Foster family home records shall contain:

a. The application.
b. Family assessment.
c. Most recent medical reports on foster family members.
d. Summary of dates and content of worker's contacts relating to licensing or relicensing.
e. Reference letters.
f. Annual assessment of strengths and weaknesses of the foster family relative to the care of individual children placed with them.

441—108.9(238) Adoption services.

108.9(1) *Program statement.* An agency licensed to place children for adoption shall have a current written program statement which shall include all of the following:

a. Types of children to be placed.
b. Eligibility requirements for adoptive families.
c. Services provided during the adoption process.
d. Services to the birth parents upon relinquishment.
e. Postadoption services to adoptive families, if offered.
f. Fees and application costs.
g. A statement that payment of fees does not ensure adoption approval.
h. A statement informing applicants of the right to appeal the agency's decision regarding nonapproval of the family for placement of a child for adoption, or other adverse decisions.

The program statement shall be made available to referring agencies and to all persons making formal inquiry regarding adoption.

108.9(2) *Services to birth families.* An agency which offers services to birth parents who are considering relinquishing a child for adoption shall provide a minimum of three hours of counseling, or any additional hours of counseling necessary to assist the parents in making an informed decision regarding their child's adoption, consistent with the child's best interest. The counseling of the birth parents shall begin when the birth parents begin the intake process. This shall be documented in the service plan format.

a. Intake process. When an agency agrees to provide services to the birth parents, intake interviews shall be conducted, including provision of information to the birth parents regarding the adoption process and their rights and role.

b. Background information. A collection of information about the birth parents and the child shall include, but need not be limited to:

(1) The child's legal status, or due date if unborn.

(2) The child's physical description, medical and mental health history, developmental information, and other pertinent information necessary for a child study.

(3) Identification of any specific needs of the child and the type of family to be considered for adoptive placement.

(4) The birth parents' strengths and needs.

(5) The involvement of the birth parents and significant others in the child's care.

(6) The birth family's physical description, medical and mental health history, educational level, any problematic areas including substance and alcohol abuse.

(7) An affidavit signed by the birth parents regarding wishes for the court to reveal, or not reveal, their names to the child pursuant to Iowa Code chapter 600.

(8) Any additional information the birth family wishes to have included in the child's adoption record.

108.9(3) *Preparation of child for adoptive placement.* Preparing a child, especially an older child, includes activities designed to enable a child to make a transition to an adoptive placement. The activities shall include, but are not limited to:

a. Counseling regarding issues of separation, loss, grief, guilt, anger and adjustment to an adoptive family.

b. Preparation of a life book.

c. Provision of age-appropriate information regarding community resources available, such as children's support group to assist the child in the transition and integration into the adoptive family.

108.9(4) *Services to adoptive applicants.*

a. Application process. Before proceeding with an adoptive home study, the agency shall have received an application for adoption from the person or persons wishing to adopt a child. The application form shall include information about the applicant's intent to become an adoptive parent, and the basic data about the applicant's family, home, financial status, health, and references.

b. Explanation of the adoption process. The agency shall provide the applicant an explanation of the entire adoption process, including the legal procedures, the agency policies and procedures regarding placement of children, and the children available for adoption.

c. Adoptive home study. The home study consists of a family assessment which shall include at least two face-to-face interviews with the applicant and at least one face-to-face interview with each member of the household. At least one interview shall take place in the applicant's home. The assessment shall include, but need not be limited to, the following:

(1) Motivation for adoption and whether the family has biological, adopted or foster children.

(2) Family and extended family's attitude toward accepting an adopted child, and plans for discussing adoption with the child.

(3) The attitude toward adoption of the significant other people involved with the family.

(4) Emotional stability; marital history, including verification of marriages and divorces; assessment of marital relationship; and compatibility of the adoptive parents.

(5) Ability to cope with problems, stress, frustrations, crises, separation and loss.

(6) Medical, mental, or emotional conditions which may affect the applicant's ability to parent a child.

(7) Ability to provide for the child's physical and emotional needs and respect the child's cultural and religious identity.

(8) Adjustment of biological and previously adopted children, if any, including their attitudes toward adoption, relationship with others, and school performance.

(9) Capacity to give and receive affection.

(10) Statements from at least three references provided by the family and other unsolicited references that the agency may wish to contact.

(11) Attitudes of the adoptive applicants toward the birth parents and the reasons the child is available for adoption.

(12) Income information, ability to provide for a child, and a statement as to the need for adoption subsidy for a special needs child, or children.

(13) Disciplinary practices that will be used.

(14) History of abuse by family members and treatment.

(15) Assessment of, commitment to, and capacity to maintain other significant relationships.

(16) Substance use or abuse by members of the family and treatment.

(17) Recommendations for type of child, number, age, sex, characteristics, and special needs of children best parented by this family.

d. Record checks. The licensed child-placing agency shall submit record checks for each applicant, and for any other adult living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions. Form 470-0643, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant, or any other adult living in the home of the applicant, the applicant shall not be approved as an adoptive family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2)*"b."* The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2)*"b."*

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded abuse of crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the criminal conviction or founded child abuse report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of approval for adoption.

f. Birth family information and background report, including physical descriptions, medical and mental health history, educational level, developmental history, problem areas such as substance or alcohol abuse.

g. Summary narrative on the placement decision and the preplacement and postplacement contacts with the adoptive family and child.

h. Information pertaining to the child including, but not limited to: physical, medical, and mental health; problem areas, including verification of the child's special needs; and whether or not a referral was made to the department for adoption subsidy.

i. In the event a family is not approved for placement of a child, the narrative shall clearly indicate the reason.

j. In the event a family is approved, but no child is placed with them, the narrative shall clearly indicate the reason.

108.9(10) *Right to appeal.* An adoptive applicant or an adoptive family may appeal an adverse decision made by a licensed agency. The appeal shall be filed with the department within 30 days of the notice of decision to the applicant or family by the licensed agency.

108.9(11) *Disposition of records.* When an adoption has occurred, the agency must maintain all records regarding the child, the birth family, and the adoptive family or families, forever. Any subsequent information received following the adoption finalization shall be placed in the adoption record. If the agency closes, all adoption records shall be forwarded to the department.

441—108.10(238) Independent living placement services. An agency seeking to obtain a child-placing license which authorizes the agency to place or supervise children in independent living placements shall meet the standards in rules 108.2(238) to 108.6(238).

108.10(1) *Program statement.* An agency authorized to place or supervise children in independent living placements shall have a current written program statement which includes all of the following:

a. A description of the types of living arrangements approved by the agency.

b. The eligibility requirements for the children who may be placed in an independent living placement.

c. The means of financial support for the children.

d. The expectations the agency has for children while placed in an independent living placement.

e. Services provided to the children.

f. Provisions for emergency medical care.

This program statement shall be provided to all children placed in independent living.

108.10(2) *Basis for placement.* Before placing a child in independent living, an agency shall document all of the following:

a. The child is at least 16 years of age.

b. An initial assessment has been made that identifies the child's strengths and needs as these pertain to the child's ability to live independently.

c. The child has the capacity to function outside the structure of a foster family or group care setting.

d. The selection of an independent living placement is the most appropriate placement for the child.

e. The child shall be involved in school or other educational or vocational program, work, or a combination thereof on a full-time basis, as indicated in the child's individual care plan.

f. The child has entered into a mutually agreed-upon written contract with the agency which specifies the responsibilities of the agency and the child. This contract shall be reviewed quarterly.

g. It has been determined, through a visit to the living arrangement, that the minimum standards for approval have been met.

108.10(3) *Services provided.* The following services are required:

a. Ongoing assessment that identifies child's strengths and needs as these pertain to the child's ability to live independently.

b. The development of an individual service plan within 30 days of placement. The service plan shall be developed in consultation with the child and referring agent. The individual service plan shall include projection of the expected length of stay in supervised independent living and shall address the activities necessary to achieve independence and the services needed to be provided to the child. The individual service plan shall be updated quarterly.

c. At least weekly face-to-face contacts with the child for the first 60 days of placement and at least twice a month face-to-face contact thereafter. Frequency of visits shall be based on the needs of the individual child.

d. Personal observation by the agency worker that the living situation provides safe and suitable social, emotional, and physical care.

e. Maintenance of a means by which the youth can contact agency personnel 24 hours a day, seven days a week.

108.10(4) *Record.* An agency shall maintain a record for each child in an independent living placement. The record shall contain all of the following:

a. The name, date of birth, sex, and address of the child and information on how the child can be contacted.

b. Documentation of financial support sufficient to meet the child's housing, clothing, food, and miscellaneous expenses.

c. Name, address, and phone number of guardian, if applicable, and referring agent.

d. Medical records.

e. Educational and employment records.

f. All of the individual service plans and updated reviews.

g. Documentation of visits.

108.10(5) *Staffing requirements.* Each child in an independent living placement shall receive an agreed-upon number of hours of casework services per month. This shall be recorded in the child's individual service plan.

These rules are intended to implement Iowa Code chapter 238.

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e. A medical authorization.

f. A placement agreement signed by the child's parent(s) or guardian and the foster parent(s) when the child's parent(s) or guardian have placed the child privately; or a placement agreement for the specific child in placement signed by the foster parent(s) and the agency when placement is made by an agency.

113.10(2) *Additional information.* The following information shall be maintained on foster children placed in the foster home:

a. Names and addresses of doctors who have treated the child and the type of treatment received while in the foster home.

b. School reports including report cards and pictures.

c. Date of discharge.

d. Name and address of the person to whom the child is discharged.

113.10(3) *Maintenance of records.* All of the information listed in 113.10(1) and 113.10(2) shall be kept in a notebook or folder and be provided to the supervising agency when the child leaves the foster care placement.

This rule is intended to implement Iowa Code section 237.7.

441—113.11(237) Health of foster family.

113.11(1) *Prior to initial licensure.* The foster parents shall furnish the licensing agency with a health report on the family completed no more than six months prior to the application for licensure. The report shall include information on all family members.

113.11(2) *Contents of report.* This report shall include a statement from the health practitioner that there are no health problems which would be a hazard to foster children placed in the home, and a statement that the foster parents' health would not prevent needed care from being furnished to the foster child.

113.11(3) *Capability for caring for the child.* If there is evidence that the foster parent is unable to provide necessary care for the child, the worker or the physician may require additional medical reports.

This rule is intended to implement Iowa Code section 237.7.

441—113.12(237) Characteristics of foster parents.

113.12(1) *Age.*

a. Foster parents shall be at least 18 years of age.

b. The age of foster parents shall be considered as it affects their ability to care for a specific child and function in a parental role.

113.12(2) *Income and resources.* The foster family shall have sufficient income and resources to provide adequately for the family's own needs.

113.12(3) *Religious considerations.* The foster parent shall respect the foster child's religious background and affiliation.

113.12(4) *Requirements of foster parents.* Foster parents shall be stable, responsible, physically able to care for the type of child placed, mature individuals who are not unsuited by reason of substance abuse, lewd or lascivious behavior or other conduct likely to be detrimental to the physical or mental health or morals of the child. They shall exercise good judgment in caring for children and have a capacity to accept agency supervision.

113.12(5) *Personal characteristics.* The foster parents shall:

a. Provide evidence of marital adjustment and stability.

b. Have realistic expectations of foster children.

c. Have time available to parent foster children.

d. Be able to accept and deal with acting out behavior.

e. Treat foster children in a manner similar to natural or adoptive children in the home as far as participation in normal family life is concerned.

f. Have the ability to be accepting and loving toward a foster child entering the home.

g. Be able to separate from the foster child and not hamper return to the natural home.

h. Ensure that all family members are aware of and in agreement with having foster children in the home.

113.12(6) *Determination of characteristics.* The areas discussed in 113.12(4) and 113.12(5) shall be explored through observation of the family and interviews with family members and documented in the foster family record. Any additional areas that the family or worker identifies as a possibility for creating problems shall also be documented in the foster family record.

This rule is intended to implement Iowa Code section 237.3.

441—113.13(237) Record checks. The department shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions. Form 470-0643, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant or any other adult living in the home of the applicant, the applicant shall not be licensed as a foster family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of license.

EXCEPTION: An individual applying to be a foster parent shall not be granted a license and an evaluation shall not be performed if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 237.8(2)*"a."* The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 237.8(2)*"a."*

The evaluation shall consider the nature and seriousness of the founded child abuse or crime in relation to the position sought or held, the time elapsed since the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure.

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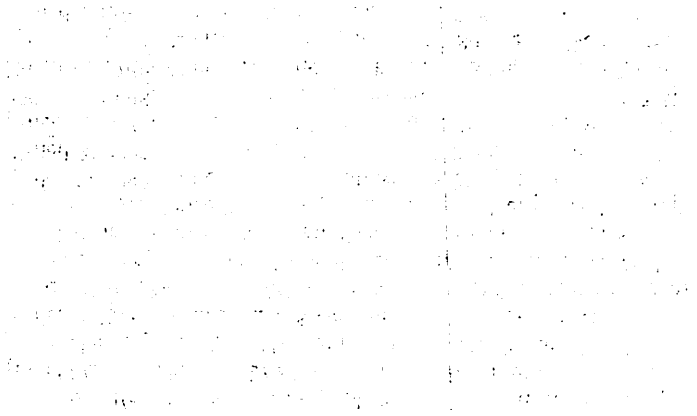
◊Two ARCs



CHAPTER 157
PURCHASE OF ADOPTION SERVICES
[Prior to 2/11/87, Human Services[498]]

PREAMBLE

These rules define the children, individuals, and families who are eligible for purchase of adoption services; service components which may be purchased; minimum service requirements; contracting requirements; and management and payment provisions.

441—157.1(600) Definitions.

"Adoptive home study" includes an assessment of the family's parental attributes and a written report stating approval or nonapproval of the family for adoptive placement of a child or children.

"Contract" refers to a purchase of service contract or agreement between a provider and the department.

"Department" means the department of human services.

"Placement services" includes the activities and travel necessary to place the child in the adoptive family.

"Postplacement services" includes the supervision, support and intervention necessary to assist the adoptive placement.

"Preparation of child" includes activities necessary to ready the child for placement into an adoptive family.

"Preparation of family" includes activities necessary to assist the family in adding a child as a new member of their family.

"Preplacement visits" means contacts, activities, and visits between the child and adoptive family prior to permanent adoptive placement.

"Provider" means a child-placing agency licensed in Iowa or another state or a certified adoption investigator which has a purchase of service contract with the department.

"Recruitment" includes activities designed to identify individuals or families who may be prospective adoptive families for a special needs child or children.

"Screening" includes an initial contact and interview with an individual or family to determine if the individual or family wishes to adopt a special needs child or children and whether or not to proceed with a preplacement assessment and adoptive home study.

441—157.2(600) Eligibility. Individuals and families and special needs children are eligible for purchased adoption services as follows:

157.2(1) *Individuals and families.* Individuals and families are eligible without regard to income when referred by the department and one of the following exists:

a. An individual or family has applied to the department to adopt a special needs child or children and the department worker is unable to begin the preplacement assessment and adoptive study process within 90 days of the application date.

b. An individual or family applies to a provider to adopt a special needs child or children and department staff determines the family eligible and makes the referral for purchased adoption services.

c. An individual or family who has a current approved adoptive home study applies to adopt a special needs child or children and the department wishes to purchase some components of adoption services in order to facilitate an adoptive placement of a special needs child or children in the family.

157.2(2) *Special needs children.* Special needs children as defined in 441—subrule 201.3(1), who are legally available for adoption and who are under the guardianship of the department, are eligible for purchased adoption services.

441—157.3(600) Components of adoption service. Any or all of the following components of adoption service may be purchased: adoptive home study, preparation of child, preparation of family, preplacement visits, placement services and postplacement services. The decision as to whether to purchase adoption services is based on the availability of funding, the availability of department staff to provide adoption services to individuals and families, and the needs of the special needs child or children.

157.3(1) *Adoptive home study.* This component includes the following activities:

a. Family assessment. The family assessment shall include a minimum of two face-to-face interviews with the applicant(s) and at least one face-to-face interview with each member of the household. At least one of the interviews shall take place at the applicant's home. The assessment of the prospective adoptive family shall include an evaluation of the family's ability to parent a special needs child or children including the following:

(1) Motivation for adoption and whether the family has biological, adopted or foster children.

(2) Family and extended family's attitude toward accepting an adopted child and plans for discussing adoption with the child.

(3) The attitude toward adoption of the significant other people involved with the family.

(4) Emotional stability, marital history, family relationships and compatibility of the adoptive parents.

(5) Ability to cope with problems, stress, frustrations, crises, separation, and loss.

(6) Medical, mental and emotional conditions that may affect the applicant's ability to parent a child, treatment history, and current status of treatment.

(7) Ability to provide for the child's physical and emotional needs.

(8) Adjustment of any children in the home, including their attitudes toward adoption, relationships with others, and school performance.

(9) Disciplinary practices that will be used.

(10) Capacity to give and receive affection.

(11) Statements from three references provided by the family and a minimum of three additional references selected by the adoption worker.

(12) Financial information, ability to provide for a child and whether there is a need for adoption subsidy for a special needs child or children.

(13) Attitudes of the adoptive applicants toward the birth parents and the reasons the child is available for adoption.

(14) Commitment to and capacity to maintain significant relationships.

(15) Substance use or abuse, if any, by family members or members of the household, treatment history and current status of treatment.

(16) History of abuse, if any, by family members or members of the household, treatment history, current status of treatment and the provider agency's evaluation of the abuse.

(17) Criminal convictions, if any, by family members or members of the household, and the provider agency's evaluation of the criminal record.

(18) Recommendations for number, age, sex, characteristics, and special needs of a child or children the family can best parent.

b. Record checks. The licensed child-placing agency shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions. Form 470-0643, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant or any other adult living in the home of the applicant, the applicant shall not be approved as an adoptive family unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2)*"b."* The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2)*"b."*

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of approval for adoption.

(1) If the applicant, or any other adult living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the licensed child-placing agency. The licensed child-placing agency shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.

(2) If the applicant, or any other adult living in the home of the applicant, has a founded child abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the evaluation shall be initially conducted by the licensed child-placing agency.

1. If the licensed child-placing agency determines that the abuse or crime does warrant prohibition of approval, the licensed child-placing agency shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.

2. If the licensed child-placing agency believes that the applicant should be approved despite the abuse or criminal conviction, the licensed child-placing agency shall provide copies of the child abuse report or criminal history record, Form 470-2310, Record Check Evaluation, and Form 470-2386, Record Check Decision, to the Department of Human Services, Administrator, Division of Adult, Children and Family Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the licensed child-placing agency in writing of that decision.

The licensed child-placing agency shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.

(3) The child abuse and criminal record checks shall be repeated and any founded abuses or convictions of crimes since the last record check shall be evaluated using the same process during the home study update required by Iowa Code section 600.8.

c. Written report. The provider shall prepare a written report of the family assessment, known as the adoptive home study, which shall be used to approve or deny a prospective family as an appropriate placement for a special needs child or children. The family shall be notified by the provider agency in writing of the decision, and if denied, reasons for denial shall be stated. The adoptive home study shall be dated and signed by the provider adoption worker. A copy of the adoptive home study shall be provided to the family and to the department with the notification of approval or denial.

d. Home study updates are required if the home study was written more than one year previously, in accordance with Iowa Code section 600.8. The home study update shall consist of completing the following:

(1) The child abuse and criminal record checks shall be repeated and if there are new founded abuses or conviction of crimes that were not evaluated in the previous home study they shall be evaluated using the process set forth in 157.3(1)*"b."*

(2) One face-to-face visit shall be conducted with the approved family.

(3) The information in the approved home study shall be reassessed.

(4) An updated report of the reassessment and adoptive home study shall be written, dated, signed and notarized and a copy provided to the family.

157.3(2) *Preparation of child.* This component includes specific activities designed to enable a child to make the transition to an adoptive placement. The activities shall include, but are not limited to:

a. Counseling regarding issues of separation, loss, grief, guilt, anger and adjustment to an adoptive family.

b. Preparation or update of a life book.

c. Provision of age-appropriate information regarding community resources available, such as children's support groups, to assist the child in the transition and integration into the adoptive family.

157.3(3) *Preparation of family.* This component includes activities designed to assist the adoptive family in expanding its knowledge and understanding of the child or children. This component should enhance the family's readiness to accept the child or children into their family and encourage their commitment. The activities shall include, but are not limited to:

a. Counseling with the family members.

b. Providing background information on the child.

c. Providing information regarding the child's special needs.

d. Providing information regarding the child's anticipated behavior.

e. Discussing the impact that adding a new member or members to the family may have on all current family members.

f. Informing the family of the community resources that are available to assist the family, such as parent support groups.

157.3(4) *Preplacement visits.* This component includes activities necessary to plan, conduct and assess the transitional visits between the adoptive family and the special needs child or children prior to the adoptive placement of the child in the home.

157.3(5) *Placement services.* Placement services include activities necessary to plan and carry out the placement of a child or children into the adoptive home.

157.3(6) *Postplacement services.* Postplacement services include supervision, support, crisis intervention and required reports. Postplacement services are provided from the time a child is placed with an adoptive family until finalization of the adoption occurs.

a. Postplacement supervision should focus on the following areas:

(1) Integration and interaction of the child or children with the family.

(2) Changes in the family functioning which may be due to the placement.

(3) Social, emotional and school adjustment of the child or children.

(4) Changes that have occurred in the family since the placement.

(5) Family's method of dealing with testing behaviors and discipline.

(6) Behavioral evidence of the degree of bonding that is taking place and the degree to which the child is becoming a permanent member of the adoptive family.

b. A minimum of three adoptive home visits are required or, if the family is experiencing problems, as many as are necessary to assess and support the placement. The number shall be determined by mutual agreement between the provider and the department.

Home visits shall be completed at a minimum as follows: one no later than 30 days after placement; one between 60 and 90 days after placement; and a final visit prior to requesting a consent to adopt.

c. A written report based on the postplacement visits with recommendations regarding the finalization of the adoption shall be submitted to the department. Other reporting requirements are addressed in 441—157.6(600).

441—157.4(600) Contract requirements and management. The department of human services and the provider agency shall enter into a purchase of adoption services contract using Form SS-1501-0, Iowa Purchase of Social Services Contract—Agency Provider. The development and management of the contract including contract amendments, contract renewal and contract termination shall comply with 441—150.2(1)*"a"* and 441—150.3(234).

157.4(1) *Units of service and unit rates.*

a. A single child or all members of a sibling group or any or all members of an adoptive family shall be considered one recipient of any unit of purchased adoption service.

b. The unit rate for group services shall represent a total per hour cost of providing the group session. For billing purposes, it shall be prorated to the recipient families in attendance. The need for and use of cofacilitators must be addressed in the contract.

c. One hour of service to a single child, a sibling group or family members shall be considered a unit of service for the following components: preparation of family, preparation of child, preplacement visits, placement services, and postplacement services. Billings shall be based on any quarter or half portion of one hour of service. Monthly cumulative units shall be rounded up if a half hour or over or down if a quarter hour to the nearest whole unit for billing purposes. Service billings for purchase of adoption service shall be based on direct face-to-face contacts between the provider agency and the family members, child, or children. Recruitment and screening, travel, administrative activities, update of adoptive home studies and preparation time shall be considered indirect costs and shall be included in the unit costs, but not counted as billable units.

d. The unit for the adoptive home study component shall be the completion of the home study and shall be billed as one unit.

e. Unit rates shall be established according to 441—150.3(234).

157.4(2) *Referral for purchased adoption service.* To receive purchased adoption services, the child or children or the individual or family must be determined eligible and referred by the department. The department shall not make payment for purchased adoption service until eligibility is determined, and a referral is made authorizing services on Form SS-1701-0, Referral of Client for Purchased Social Services.

157.4(3) *Billing procedures.* Billings shall be prepared and submitted at the end of the month to the department by the provider agency on Form AA-2241-0, Purchase of Service Provider Invoice, for contractual services provided by the agency during the month, according to 441—subrule 150.3(8).

441—157.5(600) Case permanency plan requirements. The department worker shall submit to the provider a copy of the department case permanency plan when adoption services are purchased for a specific special needs child. The case plan shall include, but not be limited to, specific components to be purchased and the maximum number of units, the costs determined for each component, and the goals and objectives of the service components. The department worker shall update the plan as necessary to reflect current needs and services, according to case permanency plan guidelines.

441—157.6(600) Progress reports. The provider shall complete written monthly progress reports whenever any of the following components are purchased: preplacement visits, preparation of a child, preparation of a family, or placement services. Postplacement services shall be reported in writing after the 30-day, 90-day, and final home visit at a minimum, or on a monthly basis if the family is experiencing difficulties. The progress reports shall include a brief description of the services provided and the progress with respect to the goals and objectives identified in the case permanency plan. The first report shall be submitted to the department worker no later than one month after service is initiated. The final report shall be submitted within one week after the purchased services are terminated.

These rules are intended to implement Iowa Code chapter 600.

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CHAPTER 158
FOSTER HOME INSURANCE FUND

PREAMBLE

These rules implement the provisions of the foster home insurance fund. These rules define eligible claims, the payment limits for claims, the procedure for filing claims, and the time frames for filing claims.

441—158.1(237) Payments from the foster home insurance fund.

158.1(1) *Eligible foster family claims.* The foster home insurance fund shall pay the following within the limits defined in Iowa Code section 237.13, subsections 3 and 4:

a. Valid and approved claims of family foster care children, their parents, guardians or guardians ad litem.

b. Reimbursement to licensed foster families for property damage or medical care for bodily injury, as a result of the activities of the family foster care child.

c. Reasonable and necessary legal fees incurred by licensed foster families in defense of civil claims filed pursuant to Iowa Code section 237.13, subsection 7, paragraph *"d,"* and any judgments awarded as a result of these claims. The reasonableness and necessity of legal fees shall be determined by the department or its contract agent.

158.1(2) *Eligible guardian and conservator claims.* The foster home insurance fund shall pay the reasonable and necessary legal costs incurred by a guardian or conservator in defending against a suit filed by an eligible ward or the ward's representative and the damages awarded as a result of the suit within the limits defined in Iowa Code section 237.13, subsection 5. The reasonableness and necessity of legal fees shall be determined by the department or its contract agent. To be eligible a ward must meet the following conditions:

a. The ward's income at the time covered by the suit determined in accordance with 441—subrule 130.3(3) must not exceed $920.

b. The ward's resources shall be treated in accordance with Supplemental Security Income policies except that one residence which shall be the homestead if exempt under SSI and one vehicle shall be excluded. Resources shall not exceed $2,000.

441—158.2(237) Payment limits. The fund is not liable if there is another source of compensation, including the child's own funds. The fund is not liable for the first $75 of any claim based on a single occurrence. Claims may not be aggregated or accumulated to avoid payment of the deductible. The fund is not liable for claims in excess of $300,000 for a single foster home or ward for all claims based on one or more occurrences during a calendar year.

441—158.3(237) Claim procedures. Claims against the fund shall be filed with the department's contractor. If the department does not have a contractor, claims shall be filed on Form 470-2470, Foster Home Insurance Fund Claim. The decision to approve or deny the claim shall be made by the department or its contractor and the notice mailed or given to the claimant within 180 days of the date the claim is received.

441—158.4(237) Time frames for filing claims.

1. Claims by children who were under the age of 18 at the time of the occurrence shall be submitted within two years of the date of the occurrence, or after the child's eighteenth birthday, but before the child's nineteenth birthday.

2. Claims by persons who were aged 18 or older at the time of the occurrence, parents, foster parents, guardians, or guardians ad litem shall be submitted within two years of the occurrence.

3. Claims by foster parents and by guardians or conservators pursuant to subrules 158.1(1)*"c"* and 158.1(2) for legal fees or court-ordered judgments shall be submitted within two years of the date of the judgment.

441—158.5(237) Appeals. Claimants dissatisfied with the decision may request a fair hearing under the provisions of 441—Chapter 7.

These rules are intended to implement Iowa Code section 237.13.

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CHAPTER 159
CHILD CARE RESOURCE AND REFERRAL GRANTS PROGRAM

PREAMBLE

These rules define and structure the resource and referral grants program. This program shall make grants available for the development and operation of resource and referral services for child care.

441—159.1(237A) Definitions.

"Applicant" means a resource and referral agency which makes application for a grant.

"Department" means the Iowa department of human services.

"Grantee" means an applicant who has received a grant.

"Grant review committee" means a five-member body designated by the chief of the bureau of individual and family support and protective services, to review and rate submitted applications and make its recommendations for grant funding to the department.

"Resource and referral agency" means a community-based nonprofit incorporated agency or public agency that has all the service capabilities listed under subrule 159.3(1).

441—159.2(237A) Availability of grants. In any year in which funds are available for resource and referral grants, the department shall administer grants to eligible applicants. The amount of each grant shall be contingent upon the funds available and shall not exceed $50,000. The department shall work with all new and existing resource and referral agencies to extend these services to all regions of the state.

The department reserves the right to grant less than the amount of appropriated funds if there is an insufficient number of acceptable applications submitted to adequately achieve the purpose of the resource and referral grants program.

441—159.3(237A) Project eligibility.

159.3(1) Grants will be awarded to community-based nonprofit incorporated agencies and public agencies that have the capacity to provide the following services:

a. Assist families in selecting quality child care. The agency shall provide referrals to registered and licensed child day care facilities and may provide referrals to unregistered providers.

b. Assist child day care providers in adopting appropriate program and business practices to provide quality child care services.

c. Provide information to the public regarding the availability of child day care services in the communities within the agency's region.

d. Actively encourage the development of new and expansion of existing child day care facilities in response to identified community needs.

e. Provide specialized services to employers, including the provision of resource and referral services to employee groups identified by the employer and the provision of technical assistance to develop employer-supported child day care programs operated on or near the work site.

f. Refer eligible child day care facilities to the federal child care food programs.

g. Loan toys, other equipment, and resource materials to child day care facilities.

h. Inform child day care facilities regarding technical assistance available from the department in obtaining insurance coverage at a reasonable cost.

i. Assist the department in providing child day care facilities with opportunities for group purchasing of equipment and supplies.

j. Administer funding designated within the grant to provide a substitute caregiver program for registered family and group day care homes.

159.3(2) Grants will be awarded to eligible agencies for the establishment of new child care resource and referral agencies and ongoing operation of existing child care resource and referral agencies.

159.3(3) Grant funds must be matched with at least 25 percent local resources. Eligible match includes in-kind contributions, private donations and public funding sources, except child care grant funds from the department of economic development.

159.3(4) Only one grant will be awarded per county to the agency which best meets the criteria outlined in subrule 159.3(1).

159.3(5) There shall be an advisory or incorporated board specifically for the child care resource and referral services representative of the child care community, parent consumers of services, public education, adult education, private sector organizations, business and industry.

441—159.4(237A) Request for proposals for project grants.

159.4(1) The director will announce through public notice the opening of an application period. Applicants for grants shall request Form 470-2474, "Child Care Resource and Referral Grant Application," and shall submit a grant proposal using this form by the deadlines specified in the announcement.

159.4(2) Requirements for project proposals are specified on the "Child Care Resource and Referral Grant Application." If a proposal does not contain the information specified in the application package or if it is late, it shall be disapproved. Proposals shall contain the following information:

a. General agency information.

b. A list of project advisory committee members.

c. Specific project information, including population and geographic area to be served.

d. A summary of the project.

e. An introductory section outlining agency background information.

f. A problem statement outlining the need or problem to be addressed and assurance of nonduplication of other services in the community.

g. Project goals and objectives.

h. Project methodology.

i. An evaluation plan.

j. A plan for future project funding.

k. A line item budget.

l. Letters of support.

441—159.5(237A) Selection of proposals.

159.5(1) All proposals received shall be reviewed by the grant review committee which shall make funding recommendations to the director. The director shall make the final funding decisions.

159.5(2) Applicants who have demonstrated the ability to effectively operate programs shall be given first consideration for funds. The following factors shall be considered in selecting proposals:

a. The demonstrated need for the service in the program areas selected and assurance that the proposed project does not duplicate other services in the community.

b. The community support demonstrated and the coordination with other existing agencies and organizations providing services to the targeted population.

c. The general program structure including, but not limited to, how well goals are met, how realistic the objectives are, services offered and likelihood of anticipated impact on the problem, the administration of funds, stability of the organization and the overall quality of the proposal in comparison to other proposals.

d. The plan for using the funds. The funds may be used only for salaries, fringe benefits, contract services, job-related in-state travel, materials, and operational expenses. Funds may not be used for construction, capital improvement, or purchase of real estate.

441—159.6(237A) Project contracts. The funds for approved applications shall be awarded through a contract entered into by the director and the applicant. The contract period shall not exceed the state fiscal year in which the contract is awarded. The state fiscal year is from July 1 to June 30. Expenditures shall be reimbursed monthly pursuant to regular reimbursement procedures of the state of Iowa.

441—159.7(237A) Records. Grantees shall provide the department with the following information on a quarterly basis which shall be shared with the commission on children, youth and families:

1. Unmet gaps in child care needs including services, types of care, hours of service, and subsidies.
2. Number of clients served.
3. Number of licensed centers, registered group homes, registered family day care homes, and nonregulated homes listed with the referral file.
4. Operational fiscal data of the agency.
5. Repetition of return of clients to the resource and referral agency.
6. Other reports requested by the department.

441—159.8(237A) Evaluation. The department shall evaluate the provider at least once prior to the end of the contract year to determine how well the purposes and goals are being met. Funds are to be spent to meet program goals as provided in the contract. The provider will receive a written report of the evaluation.

441—159.9(237A) Termination of contract. The contract may be terminated by either party at any time during the contract period by giving 30 days' notice to the other party.

159.9(1) The department may terminate a contract upon 10 days' notice when the provider or any of its subcontractors fail to comply with the grant award stipulations, standards, or conditions.

159.9(2) Within 45 days of the termination, the provider shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

159.9(3) The department shall administer the funds for this program contingent upon their availability. If the department lacks the funds necessary to fulfill its fiscal responsibility under this program, the contracts shall be terminated or renegotiated. The department may terminate any agreement to distribute program funds by giving the provider 30 days' notice of its intent to terminate.

441—159.10(237A) Appeals. Applicants dissatisfied with the director's decision may file an appeal with the director. The letter of appeal must be submitted within ten working days of the notice of decision and must include a request for the director to review the decision and the reasons for dissatisfaction. The amount of the grant award cannot be appealed. Within ten working days of the receipt of the appeal the director will review the appeal request and issue a final decision.

No disbursements shall be made to any applicant for a period of ten calendar days following the notice of decision. If an appeal is filed within the ten days, all disbursements will be held pending a final decision on the appeal. All applicants involved will be notified if an appeal is filed and given the opportunity to be included as a party in the appeal.

These rules are intended to implement Iowa Code section 237A.26.

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CHAPTER 160
ADOPTION OPPORTUNITY GRANT PROGRAM

PREAMBLE

These rules define and structure the adoption opportunity grant program. The services under the grant program are to be provided to special needs children, prospective adoptive families and adoptive families in an effort to place children in adoptive families and to prevent disruptions and dissolutions.

441—160.1(234) Definitions.

"Adoptive family" means an approved family who has a special needs child placed in their family for the purpose of adopting the child, or a family with a special needs child in their family whose adoption has been finalized by the court.

"Applicant" means a private agency licensed in Iowa as a child-placing agency that offers a continuum of child welfare services to families and special needs children, or an individual provider involved in providing services to adoptive families and special needs children which makes application for a grant.

"Department" means the Iowa department of human services.

"Director" means the director of the department of human services.

"Grant review committee" means a five-member committee composed of two departmental employees and two private child-placing agency employees or supervisors who work with children and adoptive families, but are not currently applying for a grant, and one member with a fiscal background, responsible for reviewing and designating grant awards.

"Grantee" means an applicant who has been awarded a grant.

"Prospective adoptive family" means a family with an approved home study waiting placement of a special needs child into their family for the purpose of adoption.

"Special needs child" means a child as defined in 441—subrule 201.3(1).

441—160.2(234) Availability of grant funds. The amount of money granted shall be contingent upon the amount of federal grant funds available to Iowa in a given year. The allocation of funds shall be in compliance with legislation and approved by the grant review committee.

441—160.3(234) Project eligibility.

160.3(1) *Grant awards.* Grants will be awarded to eligible applicants for specifically designed adoption projects with the duration of the projects based on the time frames specified in the relevant federal grant.

160.3(2) *Residence of clients.* A grantee may not use grant funds to serve residents of states other than Iowa.

160.3(3) *Services.* Grants will be awarded to provide one or more of the following services:

a. Preplacement assessment and adoptive home studies of families wishing to adopt a special needs child.

b. Training and preparation of families for adoption.

c. Preparation of children for adoption.

d. Postplacement services.

e. Postadoption services.

f. Other specified services as stated in the federal grant award to Iowa.

441—160.4(234) Request for proposals for project grants.

160.4(1) *Application.* The department will announce through a request for proposals the opening of an application period. The request shall state the purpose for which grant funds shall be spent. A grant application shall be included in the request for proposals. Applicants shall submit their grant proposal using Form 470-2910, Application for Adoption Opportunity Grant Funding, by the deadline specified in the announcement.

160.4(2) *Project proposal requirements.* Requirements for project proposals shall be specified in the "Adoption Opportunity Grant Application Packet." If a proposal does not contain the information specified in the application packet, or if it is late, it will be disapproved. Proposals accepted for review shall contain the following information:

a. Application for Adoption Opportunity Grant Funding, Form 470-2910.
b. Proposal summary.
c. Reason for grant request, including statement of problems and needs.
d. Agency background information and demonstrated effectiveness.
e. Project goals, objectives and methods.
f. Project monitoring and evaluation.
g. Project budget and budget forms.
h. Plans for future funding.
i. Assurances and certification.
j. Letters of support.
k. Explanation of grantee share of matching funds, when applicable.
l. Project checklist.

Projects will demonstrate that they can be replicated for use with families and special needs children in other parts of the state.

Projects will be coordinated with other local agencies or groups.

441—160.5(234) Selection of proposals.

160.5(1) *Evaluation of proposals.* All proposals completed as directed and submitted within the time frames allowed will be evaluated by the grant review committee to determine which applicants will be awarded grants.

160.5(2) *Factors in selection.* The following factors will be considered in selecting proposals for grant awards:

a. The demonstrated need for the service in the program area selected and assurance that the proposed project does not duplicate other services offered in the community.

b. The support of and coordination with other existing agencies providing services to the targeted population.

c. The program structure, including how realistic goals and objectives are, likelihood of the anticipated impact on the problem addressed, experience serving similar populations or providing similar services, administration of funds, stability of the organization and the overall quality of the proposal in comparison to other proposals submitted.

d. Plans for use of funds. Grant funds may not be used for construction, capital improvements, or purchase of real estate.

e. Potential of replicating the project in other parts of the state.

160.5(3) *Scoring criteria.* A weighted criteria will be used to determine grant awards. A maximum of 110 points is possible. Determination of final point awards will be based on the following:

a. Proposal summary—10 points.
b. Statement of problems and need—20 points.
c. Agency background information and demonstrated effectiveness—15 points.
d. Project goals, objectives and methods of attainment—25 points.
e. Project monitoring and evaluation—10 points.
f. Budget information points—15 points.
g. Future funding and applicant assurances and certification—5 points.
h. Overall quality and impact of program—10 points.

441—160.6(234) Project contracts. The funds for approved applicants will be awarded through a contract entered into by the director and the applicant. The contract period shall not exceed the time frames of the federal grant awarded to the department. Expenditures shall be reimbursed monthly pursuant to the regular reimbursement procedures of the state of Iowa.

441—160.7(234) Records. Grantees shall keep client and fiscal records of services provided and any other records required by the department and specified in the contract.

441—160.8(234) Evaluation of projects. The department or a designee shall evaluate the grantee at least once prior to the end of the contract period to determine whether or not the goals are being met and shall provide feedback to the grantee. Funding is to be spent to meet the program goals stated in the contract. Grantees may request and receive copies of the department's evaluation of their grant project.

441—160.9(234) Termination. The contract may be terminated by either party at any time during the contract period by giving 30 days' notice to the other party.

160.9(1) *Notice of termination.* The department may terminate a contract upon 10 days' notice when a grantee fails to comply with the award stipulation, standards or conditions.

160.9(2) *Financial statement.* Within 45 days of termination of a contract, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

160.9(3) *Availability of funding.* The department shall administer the funds for the adoption grants contingent upon their availability. If the department lacks the funding necessary to fulfill its fiscal responsibility under the adoption grant program, the contracts shall be terminated or renegotiated.

441—160.10(234) Appeals. Applicants dissatisfied with the grant review committee's decision may file an appeal with the director. The written appeal must be received within ten working days of the date of the notice of decision; must be based on a contention that the process was conducted outside of statutory authority, violated state or federal law, policy or rules, did not provide adequate public notice, was altered without adequate public notice, or involved conflict of interest by staff or committee members; and must include a request for the director to review the decision and the reasons for dissatisfaction. Within ten working days of receipt of the appeal the director will review the appeal request and issue a final decision. No disbursements will be made to any applicant for a period of ten calendar days following the notice of decision. If an appeal is filed within ten days, all disbursements will be held pending a final decision on the appeal. All applicants involved will be notified if an appeal is filed and given the opportunity to be included as a party in the appeal.

These rules are intended to implement Iowa Code section 234.6.

[Filed emergency 11/14/91—published 12/11/91, effective 11/14/91]
[Filed 1/15/92, Notice 12/11/91—published 2/5/92, effective 4/1/92]

CHAPTER 161

Rescinded IAB 6/28/89, effective 7/1/89
Pursuant to 1989 Iowa Acts, House File 775, the Displaced Homemaker program is transferred to the Human Rights Department

CHAPTER 162
GAMBLERS ASSISTANCE PROGRAM

Transferred to Public Health Department 641—Chapter 162 pursuant to 1996 Iowa Acts, Senate File 2448, sections 11 to 13, IAC Supplement 7/3/96.

CHAPTER 175
ABUSE OF CHILDREN

[Prior to 7/1/83, Social Services[770] Ch 135]
[Previously appeared as Ch 135—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services[498]]

DIVISION I
CHILD ABUSE

[Rescinded IAB 5/6/98, effective 9/1/98]

441—175.1 to **175.20** Reserved.

DIVISION II
CHILD ABUSE ASSESSMENT PILOT PROJECTS

PREAMBLE

*The purpose of this division is to implement requirements established in the Iowa Code which charge the department of human services with accepting reports of child abuse, assessing those reports and taking necessary steps to ensure a reported child's safety. Protection is provided through encouraging the reporting of suspected cases of abuse, conducting a thorough and prompt assessment of the reports, and providing rehabilitative services to abused children and their families. This response to reports of child abuse emphasizes child safety and engagement of a family in services, where necessary. The assessment-based approach recognizes that child protection and strong families are the responsibility not only of the family itself, but also of the larger community (including formal and informal service networks). It is the department's legal mandate to respond to reports of child abuse. The assessment approach shall allow the department to develop divergent strategies when responding to reports of child abuse, adjusting its response according to the severity of abuse, to the functioning of the family, and to the resources available within the child and family's community.

441—175.21(232,235A) Definitions.

"Adequate food, shelter, clothing or other care" means that food, shelter, clothing or other care which, if not provided, would constitute a denial of critical care.

**"Allegation"* means a statement setting forth a condition or circumstance yet to be proven.

**"Assessment"* means the process by which the department carries out its legal mandate to ascertain if child abuse has occurred, to record findings, to develop conclusions based upon evidence, to address the safety of the child and family functioning, engage the family in services if needed, enhance family strengths and address needs in a culturally sensitive manner.

**"Assessment intake"* means the process by which the department receives and records reports of child abuse.

**"Caretaker"* means a person responsible for the care of a child as defined in Iowa Code section 232.68.

**"Case"* means a report of child abuse that has been accepted for assessment services.

"Denial of critical care" is the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing or other care necessary for the child's health and welfare when financially able to do so, or when offered financial or other reasonable means to do so, and shall mean any of the following:

1. Failure to provide adequate food and nutrition to the extent that there is danger of the child suffering injury or death.
2. Failure to provide adequate shelter to the extent that there is danger of the child suffering injury or death.

*Effective date (7/1/98) of amendments adopted in ARC 7975A (IAB 5/6/98) delayed 70 days by the Administrative Rules Review Committee at its meeting held June 9, 1998.

3. Failure to provide adequate clothing to the extent that there is danger of the child suffering injury or death.

4. Failure to provide adequate health care to the extent that there is danger of the child suffering injury or death. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child and shall not be placed on the child abuse registry. However, a court may order that medical service be provided where the child's health requires it.

5. Failure to provide the mental health care necessary to adequately treat an observable and substantial impairment in the child's ability to function.

6. Gross failure to meet the emotional needs of the child necessary for normal development.

7. Failure to provide for the proper supervision of the child to the extent that there is danger of the child suffering injury or death, and which a reasonable and prudent person would exercise under similar facts and circumstances.

8. Failure to respond to the infant's life-threatening conditions (also known as withholding medically indicated treatment) by providing treatment (including appropriate nutrition, hydration and medication) which in the treating physician's reasonable medical judgment will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's reasonable medical judgment any of the following circumstances apply: the infant is chronically and irreversibly comatose; the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane.

"Department" means the department of human services.

"Facility providing care to a child" means any public or private facility, including an institution, hospital, health care facility, intermediate care facility for mentally retarded, residential care facility for mentally retarded, or skilled nursing facility, group home, mental health facility, residential treatment facility, shelter care facility, detention facility, or child care facility which includes licensed day care centers, all registered family and group day care homes and licensed family foster homes. A public or private school is not a facility providing care to a child, unless it provides overnight care. Public facilities which are operated by the department of human services are assessed by the department of inspections and appeals.

"Illegal drug" means cocaine, heroin, amphetamine, methamphetamine or other illegal drugs, including marijuana, or combinations or derivatives of illegal drugs which were not prescribed by a health practitioner.

"Immediate threat" means conditions which, if no response were made, would be more likely than not to result in sexual abuse, injury or death to a child.

"Infant," as used in the definition of "Denial of critical care," numbered paragraph "8," means an infant less than one year of age or an infant older than one year of age who has been hospitalized continuously since birth, who was born extremely prematurely, or who has a long-term disability.

"Nonaccidental physical injury" means an injury which was the natural and probable result of a caretaker's actions which the caretaker could have reasonably foreseen, or which a reasonable person could have foreseen in similar circumstances, or which resulted from an act administered for the specific purpose of causing an injury.

"Physical injury" means damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition or damage to any bodily tissue which results in the death of the person who has sustained the damage.

"Preponderance of evidence" means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

"Proper supervision" means that supervision which a reasonable and prudent person would exercise under similar facts and circumstances, but in no event shall the person place a child in a situation that may endanger the child's life or health, or cruelly or unduly confine the child. Dangerous operation of a motor vehicle is a failure to provide proper supervision when the person responsible for the care of a child is driving recklessly, or driving while intoxicated with the child in the motor vehicle. The failure to restrain a child in a motor vehicle does not, by itself, constitute a cause to assess a child abuse report.

**"Rejected intake"* means a report of child abuse that has not been accepted for assessment.

"Reporter" means the person making a verbal or written statement to the department, alleging child abuse.

**"Report of child abuse"* means a verbal or written statement made to the department by a person who suspects that child abuse has occurred.

**"Subject of a report of child abuse"* means any of the following:

1. A child named in a report as having been abused, or the child's attorney or guardian ad litem.
2. A parent or the attorney for the parent of a child named in a child abuse assessment summary as having been abused.
3. A guardian or legal custodian, or that person's attorney, of a child named in a child abuse assessment summary as having been abused.
4. A person or the attorney for the person named in a child abuse assessment summary as having abused a child.

**"Unduly"* shall mean improper or unjust, or excessive.

***441—175.22(232) Receipt of a report of child abuse.** Reports of child abuse shall be received by county department offices, the central abuse registry, or the Child Abuse Hotline. Any report made to the department which alleges child abuse as defined in Iowa Code section 232.68 shall be accepted for assessment. Reports of child abuse which do not meet the legal definition of child abuse shall become rejected intakes. Rejected intakes may be referred for services. If a report does not meet the legal definition of child abuse, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency. If a report constitutes an allegation of child sexual abuse as defined under Iowa Code section 232.68, paragraph *"c"* or *"e,"* except that the suspected abuse resulted from the acts or omissions of a person who was not a caretaker, the department shall refer the report to law enforcement orally and, as soon as practicable, follow up in writing within 72 hours of receiving the report.

***441—175.23(232) Sources of report of child abuse.**

175.23(1) *Mandatory reporters.* Any person meeting the criteria of a mandatory reporter is required to make an oral report of the child abuse to the department within 24 hours of becoming aware of the abusive incident and make a written report to the department within 48 hours following the oral report. If the person making the report has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

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175.23(2) *Others required to report.* In addition to mandatory reporters which are so designated by the Iowa Code, there are other classifications of persons who are required, either by administrative rule or department policy, to report child abuse when this is a duty identified through the person's employment. Others required to report include:

a. Income maintenance workers.

b. Certified adoption investigators.

175.23(3) *Permissive reporters.* Any person who suspects child abuse may make an oral or written report, or both, to the department. Mandatory reporters may report as permissive reporters when they suspect abuse of a child outside the scope of their professions. A permissive reporter may remain anonymous and is not required by law to report abuse.

***441—175.24(232) Child abuse assessment intake process.** The primary purpose of intake is to obtain available and pertinent information regarding an allegation of child abuse and determine whether a report of child abuse becomes a case or a rejected intake. To result in a case, the report of child abuse must include some information to indicate all of the following. The alleged:

1. Victim of child abuse is a child.
2. Perpetrator of child abuse is a caretaker.
3. Incident falls within the definition of child abuse.

Only mandatory reporters or the person making the report may be contacted during the intake process to expand upon or to clarify information in the report. Any contact with subjects of the report or with nonmandatory reporters, other than the original reporter, automatically causes the report of child abuse to be accepted for assessment. When it is determined that the report of child abuse fails to constitute an allegation of child abuse, the report of child abuse shall become a rejected intake. Rejected intake information shall be maintained by the department for six months and then destroyed. The county attorney shall be notified of all reports of child abuse. When a report of child abuse is received which does not meet the requirements to become a case, but has information about illegal activity, the department shall notify law enforcement of the report.

***441—175.25(232) Child abuse assessment process.** An assessment shall be initiated within 24 hours following the report of child abuse becoming a case. The primary purpose in conducting an assessment is to protect the safety of the child named in the report. The secondary purpose of the assessment is to engage the child's family in services to enhance family strengths and to address needs, where this is necessary and desired. There are eight tasks associated with completion of the assessment. These are:

1. Observing and evaluating the child's safety. In instances when there is an immediate threat to the child's safety, reasonable efforts shall be made to observe the alleged child victim named in the report within one hour of receipt of the report. Otherwise, reasonable efforts shall be made to observe the alleged child victim within 24 hours of the report of child abuse becoming a case. When the alleged perpetrator clearly does not have access to the alleged child victim, reasonable efforts shall be made to observe the alleged child victim within 96 hours of receipt of the report. When reasonable efforts have been made to observe the alleged child victim within the specified time frames and the worker has established that there is no risk to the alleged child victim, the observation of the alleged child victim may be waived with supervisory approval.
2. Interviewing the alleged child victim.

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175.36(3) *Department not bound.* The department shall consider the recommendation of the team in a specific child abuse case but shall not, in any way, be bound by the recommendation.

***175.36(4)** *Confidentiality provisions.* Any written report or document produced by the team pertaining to an assessment case shall be made a part of the file for the case and shall be subject to all confidentiality provisions of 441—Chapter 9, unless the assessment results in placement on the central abuse registry in which case the written report or document shall be subject to all confidentiality provisions of Iowa Code chapter 235A.

175.36(5) *Written records.* Any written records maintained by the team which identify an individual assessment case shall be destroyed when the agreement lapses.

175.36(6) *Compensation.* Consultation team members shall serve without compensation.

175.36(7) *Withdrawal from contract.* Any party to the agreement may withdraw with or without cause upon the giving of 30 days' notice.

175.36(8) *Expiration date.* The date on which the agreement will expire shall be included.

***441—175.37(232) Community education.** The department shall conduct a continuing publicity and educational program for the personnel of the department, mandatory reporters, and the general public to encourage recognition and reporting of child abuse, to improve the quality of reports of child abuse made to the department, and to inform the community about the assessment-based approach to child abuse cases.

***441—175.38(235) Written authorizations.** Requests for information from members of the general public as to whether a person is named on the central abuse registry as having abused a child shall be submitted on Form 470-3301, Authorization for Release of Child Abuse Information, to the county office of the department or the central abuse registry. The form shall be completed and signed by the person requesting the information and the person authorizing the check for the release of child abuse information.

***441—175.39(232) Founded child abuse.** Reports of child abuse where abuse has been confirmed shall be placed on the central abuse registry as founded child abuse for ten years under any of the circumstances specified by Iowa Code Supplement subsection 232.71D(3). Reports of denial of critical care by failure to provide adequate clothing or failure to provide adequate supervision and physical abuse where abuse has been confirmed and determined to be minor, isolated, and unlikely to reoccur shall not be placed in the central abuse registry as a case of founded child abuse as specified by Iowa Code Supplement subsections 232.71D(2) and (3). The confirmed abuse shall be placed on the registry unless all three conditions are met. Minor abuse shall be placed on the registry if there is a prior confirmed abuse.

***441—175.40(235A) Retroactive reviews.** Review of child abuse information which is on the central abuse registry as of July 1, 1997, shall be performed using the requirements for child abuse cases to be placed on the central abuse registry as founded child abuse pursuant to Iowa Code Supplement subsections 232.71D(2) and (3). If the review indicates the information should not be placed on the central abuse registry, the information shall be expunged from the registry. The information shall be retained as a service record for five years from the date of intake. The time the report has been placed on the central abuse registry shall count toward the five years' total.

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175.40(1) *Eligibility for retroactive reviews.* Eligibility for retroactive reviews is limited to reports which do not meet the criteria for placement in the central abuse registry as a case of founded child abuse specified in Iowa Code Supplement subsection 232.71D(3). The reports eligible for review are reports where the confirmed abuse involved one of the following circumstances:

a. Physical abuse where the injury was minor and isolated and is unlikely to reoccur.

b. Denial of critical care by failure to provide adequate clothing or failure to provide adequate supervision, where the risk to the child's health and welfare was minor and isolated and is unlikely to reoccur.

175.40(2) *Reviews initiated by subject.* Rescinded IAB 5/6/98, effective 7/1/98.

175.40(3) *Reviews initiated by department.* Reviews shall be performed when the department is reviewing a case for the purpose of one of the following:

a. A record check evaluation is being completed for licensing, registration or employment or residence in a child care facility. If the department worker completing the record check evaluation determines the case does not meet the criteria specified in Iowa Code Supplement subsection 232.71D(3) and, therefore, should be expunged from the central abuse registry, the department worker shall provide copies of the written report and Form 470-2310, Record Check Evaluation, to the Department of Human Services, Chief, Bureau of Program Support and Protective Services, Retroactive Review, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days the bureau chief shall determine if the report is to be expunged from the central abuse registry and shall notify the regional administrator or designee in writing of that decision and the time frame for retention or expungement of the report. The bureau chief or designee shall notify the person on whom the review was completed of the decision to expunge the case from the central abuse registry. If the department determines that the case is to be expunged from the central abuse registry, no record check evaluation is necessary and the department shall notify the requester. If the department determines that the case does meet the criteria for placement on the central abuse registry, the department shall proceed with the record check evaluation procedure.

b. A central abuse registry review is being completed in response to a request for correction or expungement. After the department has completed a central abuse registry review and has determined the case is a confirmed case of child abuse, the department shall determine if the case is eligible for a retroactive review. If eligible for retroactive review, the department shall perform a review to determine if the case should be listed on the central abuse registry. Notification of the decision shall be sent with the central abuse registry review decision.

***441—175.41(235A) Access to child abuse information.** Requests for child abuse information shall include sufficient information to demonstrate that the requesting party has authorized access to the information.

175.41(1) *Written requests.* Requests for child abuse information shall be submitted on Form 470-0643, Request for Child Abuse Information, to the county office of the department, except requests made for the purpose of determining employability of a person in a department-operated facility shall be submitted to the central abuse registry. Subjects of a report may submit a request for child abuse information to the county office of the department on Form 470-0643, Request for Child Abuse Information, or on Form 470-3243, Notice of Child Abuse Assessment: Founded; Form 470-3575, Notice of Child Abuse Assessment: Confirmed Not Registered; or on Form 470-3242, Notice of Child Abuse Assessment: Not Confirmed. The county office is granted permission to release child abuse information to the subject of a report immediately upon verification of the identity and subject status.

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175.41(2) *Oral requests.* Oral requests for child abuse information may be made when a person making the request believes that the information is needed immediately and if the person is authorized to access the information. When an oral request to obtain child abuse information is granted, the person approving the request shall document the approval to the central abuse registry through use of Form 470-0643, Request for Child Abuse Information, or Form 470-3243, Notice of Child Abuse Assessment: Founded.

Upon approval of any request for child abuse information authorized by this rule, the department shall withhold the name of the person who made the report of child abuse unless ordered by a juvenile court or district court after a finding that the person's name is needed to resolve an issue in any phase of a case involving child abuse. Written requests and oral requests do not apply to child abuse information that is disseminated to an employee of the department, to a juvenile court, or to the attorney representing the department as authorized by Iowa Code section 235A.15.

175.41(3) *Written authorizations.* Requests for information from members of the general public as to whether a person is named on the central abuse registry as having abused a child shall be submitted on Form 470-3301, Authorization for Release of Child Abuse Information, to the county office of the department or the central abuse registry. The form shall be completed and signed by the person requesting the information and the person authorizing the check for the release of child abuse information.

The department shall not provide requested information when the authorization form is incomplete. Incomplete authorization forms shall be returned to the requester.

***441—175.42(235A) Person conducting research.** The supervisor of the central abuse registry shall be responsible for determining whether a person requesting child abuse information is conducting bona fide research, whether the research will further the official duties and functions of the central abuse registry, and whether identified information is essential to the research design. A bona fide research design is one which shows evidence of a good-faith, academically objective and sincere intent to add to the body of knowledge about child abuse. To make this determination, the central abuse registry shall require the person to submit credentials and the research design. Additional criteria for approval of a research project may include whether the research involves contact with subjects of child abuse information, and whether contact with department personnel is required to complete the research design. If it is determined that the research will involve use of identified information, the central abuse registry shall also determine under what circumstances and in what format the information is to be used and shall execute an agreement with the researcher which will enable the researcher to obtain access to identified information on subjects of child abuse investigations, as an agent of the central abuse registry. The department will require the researcher to assume costs incurred by the department in obtaining or providing information for research purposes. The department shall keep a public record of persons conducting this research.

175.42(1) *Child abuse factors.* For purposes of conducting research pursuant to Iowa Code sections 235A.15 and 235A.23, official duties and functions of the central abuse registry shall include analysis or identification of child abuse factors in at least one of the following areas:

a. Causes of abuse—victim, parent and perpetrator characteristics, types of abuse, and correlations to family and environmental factors.

b. Effects of abuse—immediate and long-term effects of abuse on the individual child victim, the child's family and the perpetrator, in areas such as family functioning, foster placement, emotional and medical problems, and criminal activity; and effects of abuse on the community and society in general.

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c. Prevention of abuse—intervention, prevention and treatment strategies.

d. Treatment of abuse—impact of service delivery upon recidivism and maintenance of the family unit.

e. Reporting of abuse—mandatory and permissive reporter characteristics, training needs, and perception of the department's protective services to children and families.

f. Identification of strengths and weaknesses in statute, policy or practice concerning child abuse services.

175.42(2) *Guidelines.* To be accepted by the central abuse registry, a research proposal originating outside the department shall meet the following guidelines:

a. The proposal shall meet the criteria listed above as "official duties and functions" of the central abuse registry.

b. The research shall be conducted by a competent researcher, evidenced by affiliation with a recognized human services agency, government body, or academic, social work or medical facility. The researcher shall demonstrate an ability to conduct nonbiased research and present findings in a professional and responsible manner which will benefit the department in providing protective services to children and families.

c. The proposed research shall not unduly interfere with the ongoing duties and responsibilities of department staff.

d. When the proposed research includes contact with subjects of child abuse information, the research design shall reflect a plan for initial subject contact by the department, which includes the following:

(1) Subjects shall be informed in writing of their right to refuse to participate in the research.

(2) Subjects shall receive written assurance that their participation in the research will not affect eligibility for services.

(3) Department staff shall be advised of research goals and procedures prior to contact with subjects, in order to answer questions which may arise.

(4) Subjects shall receive written assurance that when identifying information is released by the central abuse registry to research staff, the information will remain confidential and that all child abuse information will be deidentified prior to publication of the research findings.

175.42(3) *Approval procedures.* Procedures for approval of a research proposal are conducted as follows:

a. The supervisor of the central abuse registry shall designate a person to be the single point of contact (SPOC) for all research proposals requesting child abuse information or involving department staff who provide child protective services. All proposals shall be routed to the SPOC at the Division of Adult, Children and Family Services, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

b. Having received a research proposal, the SPOC shall log the date the proposal was received and other identifying information about the researcher and the research design and shall convene a research advisory committee to review the proposal. This committee may consist of:

(1) The unit supervisor of the child and dependent adult abuse registry, when applicable.

(2) The unit managers for the programs addressed by the research proposal.

(3) The research specialist.

(4) Representatives from the field, including a regional administrator or designee and one representative from a region, appointed by the regional administrator, if a specific region is involved.

(5) A representative from the department's division of management information, when the proposal involves use of one of the department's computerized data systems.

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(6) A representative of the attorney general's office, when the proposal involves legal questions or issues.

(7) Other persons whom the SPOC may designate to assist in the review.

c. The SPOC is responsible for ensuring that advisory committee members receive copies of the research proposal.

d. The advisory committee may meet in person or by teleconference.

e. The researcher may, at the discretion of the SPOC, be provided an opportunity to address the advisory committee concerning the research proposal and answer questions about the research design.

f. The committee shall determine the value of the proposed research and formulate recommendations for acceptance of the proposal (with conditions as necessary) or rejection of the proposal (with rationale for the rejection). These recommendations shall be submitted to the SPOC.

g. The SPOC shall transmit the committee's recommendations, with additional comments and recommendations, as needed, to the division administrators for the divisions involved.

h. The division administrators shall review committee recommendations and submit the research proposal to the director or designee for final approval.

i. After review by the director, the proposal shall be returned to the SPOC, who shall notify the researcher of the director's decision, which decision shall be final.

j. If the research proposal is approved, the SPOC shall prepare a written research agreement with the researcher which provides:

(1) The purpose of the research.

(2) The research design or methodology.

(3) The control of research findings and publication rights of all parties, including the deidentification of child abuse information prior to publication.

(4) The duties of all parties in conducting the research.

(5) The transfer of funds, if applicable.

k. The SPOC shall be responsible for securing written approval of the research agreement from the attorney general's office, applicable division administrators, and the researcher.

l. The SPOC shall be responsible for maintaining the research agreement throughout the research project and renewing or modifying the agreement when necessary.

441—175.43(235A) Child protection services citizen review panels. The purposes of the child protection services citizen review panels established in this rule are to comply with requirements set forth by the Child Abuse Prevention and Treatment Act and to take advantage of this process to identify strengths and weaknesses of the child protective service system as a whole, including community-based services and agencies. The specific objectives are to clarify expectations for child protective services with current policy; to review consistency of practice with current policy; to analyze trends and recommend policy to address them; and to provide feedback on what is or is not working, and why, and to suggest corrective action if needed.

175.43(1) *Establishment of panels.* The department shall establish at least three panels, with at least one panel each at the state level, multicounty level, and county level. The department may designate as panels one or more existing entities established under state or federal law, such as multidisciplinary teams, if the entities have the capacity to satisfy the requirements of the function of a citizen review panel set forth in the Child Abuse Prevention and Treatment Act and the department ensures that the entities will satisfy the requirements. The department shall establish procedures to be used for selecting the panels.

175.43(2) *Membership of panels.* Each panel established shall be composed of a multidisciplinary team of volunteer members who are broadly representative of the community in which the panel is established, including members who possess knowledge and skills related to the diagnosis, assessments, and disposition of child abuse cases, and who have expertise in the prevention and treatment of child abuse. The membership of each panel shall include professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, domestic violence, mental health, social work, child development, education, law, juvenile probation, law enforcement; or representatives from organizations that advocate for the protection of children. The panel shall function under the leadership of a chairperson and vice-chairperson who are elected annually by the membership. Members shall enter into a contract with the department by signing Form 470-3602, Iowa Child Protection System Citizens' Review Panel Contract.

175.43(3) *Meetings.* Each panel established pursuant to this rule shall meet not less than once every three months.

175.43(4) *Functions.* Each panel established pursuant to this rule shall evaluate the extent to which the department effectively discharges the child protection responsibilities in accordance with: the state plan and the child protection standards under subsection (b) of the Child Abuse Prevention and Treatment Act of 1996; the child protection duties of the department set forth in Iowa Code chapters 232 and 235A; and any other criteria that the panel considers important to ensure the protection of children, including a review of the extent to which the child protective services system is coordinated with the foster care and adoption programs established under Part E of Title IV of the Social Security Act (42 USCS 670 et seq.) and a review of child fatalities and near fatalities.

175.43(5) *Redissemination.* No panel member shall redisseminate child abuse information obtained through the citizen review panel. This shall not preclude redissemination of information as authorized by Iowa Code section 235A.17 when an individual panel member has received information as a result of another authorized access provision of the Iowa Code.

175.43(6) *Department not bound.* The department shall consider the recommendations of the panel but shall not, in any way, be bound by the recommendations.

175.43(7) *Confidentiality.* Members and staff of a panel may not disclose child abuse information about any specific child abuse case to any person or government official and may not make public any information unless authorized by the Iowa Code to do so.

175.43(8) *Reports.* Each panel established under this rule shall prepare and make available to the public, on an annual basis, a report containing a summary of the activities of the panel.

175.43(9) *Staff assistance.* The department shall provide staff assistance to citizen review panels for the performance of their duties, upon request of the panel.

175.43(10) *Access to child abuse information.* Citizen review panels shall be under contract to carry out official duties and functions of the department and have access to child abuse information according to Iowa Code section 235A.15 [2*"e"*(2)].

These rules are intended to implement Iowa Code sections 232.67 to 232.77 and Iowa Code chapter 235A.

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CHAPTER 184
INDIVIDUAL AND FAMILY DIRECT SUPPORT

DIVISION I
FAMILY SUPPORT SUBSIDY PROGRAM

PREAMBLE

The purpose of this division is to define and structure the family support subsidy program. This program is designed to assist families in staying together by defraying some of the costs of caring for a child with special needs living at home.

441—184.1(225C) Definitions.

"Department" means the department of human services.

"Family" means a family member and the parent or legal guardian of the family member.

"Family member" means a person less than 18 years of age who by educational determination has a moderate, severe, or profound educational handicap or special health care needs or who otherwise meets the definition of developmental disability in the federal Developmental Disabilities Act, Section 102(5), as codified in 42 U.S.C. 6001(5).

"Home" means the home of the parent or legal guardian of the family member.

"Legal guardian" means a person appointed by a court to exercise powers over a family member.

"Parent" means a biological or adoptive parent.

"Supplemental Security Income (SSI)" means financial assistance provided to individuals pursuant to Title XVI of the federal Social Security Act, 42 U.S.C. Sections 1381 to 1383c.

441—184.2(225C) Eligibility requirements. A child shall be eligible for the family support subsidy program if funds are available and all of the following requirements are met:

184.2(1) The child meets the definition of family member.

184.2(2) Rescinded IAB 6/27/90, effective 7/1/90.

184.2(3) The child is currently residing in the applicant's home, or there is a discharge plan for the child to return home in the next 60 calendar days.

184.2(4) The family resides in the state of Iowa.

184.2(5) The family's net taxable income for the calendar year immediately preceding the date of application did not exceed $40,000 unless it can be verified that their estimated taxable income for the year in which the application is made will be less than $40,000.

184.2(6) The applicant agrees that, if the child receives Medicaid, the subsidy shall only be used for the cost of services which are not covered by Medicaid.

441—184.3(225C) Application process. Applications for the family support subsidy program may be obtained at the local office of the department in the county in which the family resides. Arrangements shall be made through the local office for the parent or legal guardian to meet with a trained volunteer or staff person to respond to questions.

184.3(1) A parent or legal guardian who wishes to apply shall complete Form 470-2526, Application for Family Support Subsidy, and provide the following verification for each family member for whom application is being made:

a. Verification of the family's net taxable income for the previous calendar year, or estimated income for the current year.

b. Verification of educational or health care needs.

(1) If the child has undergone an educational evaluation and by educational determination has a moderate, severe, or profound educational handicap or special health care needs, either the child's school principal, local superintendent of schools or the director of special education for the area education association, or any person so designated by the above individuals, shall complete the educational sign-off portion of Form 470-2526, Application for Family Support Subsidy.

(2) If the child has not undergone an educational evaluation and, therefore, the parents or guardians are unable to obtain signatures on the educational sign-off portion of Form 470-2526, then the medical sign-off portion of Form 470-2526 shall be utilized. When using the medical sign-off portion of Form 470-2526, the doctor completing the form shall be familiar with the child and the definition of developmental disability as defined in the federal Developmental Disabilities Act, Section 102(5), as codified in 42 U.S.C. 6001(5), which is contained on the form itself. In addition, the doctor shall be a doctor of medicine (M.D.) or a doctor of osteopathic medicine and surgery (D.O.) and licensed to practice in the doctor's state of residence.

184.3(2) The date of application is the date that Form 470-2526 and all verifications specified in subrule 184.3(1) are received in the local office of the department. Application materials shall be processed in the office within two working days of receipt. Obtaining verifications is the responsibility of the applicant.

184.3(3) A determination of eligibility shall be made within 15 working days after the completed application and required verification are received by the department.

184.3(4) After funds appropriated for this purpose are obligated, pending applications will be denied by the district office. A denial shall require a notice of decision to be mailed within ten calendar days following the determination that funds have been obligated. The notice shall state that the applicant meets eligibility requirements but no funds are available and that the applicant will be placed on the waiting list, or that the applicant does not meet eligibility requirements. Applicants not awarded funding who meet the eligibility requirements will be placed on a statewide waiting list according to the order in which the completed applications and verification were received by the local office. In the event that more than one application is received at one time, families shall be entered on the waiting list on the basis of the day of the month of the child's birthday, lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

441—184.4(225C) Family support services plan.

184.4(1) The special needs of the child and the family for the subsidy, and the resources available to meet those needs shall be identified on the application form.

184.4(2) The applicant shall agree that the subsidy will be used to meet the special needs identified in the plan or other special needs of the child and family.

184.4(3) Families shall retain the greatest possible flexibility in determining use of the subsidy, except a parent or legal guardian who receives aid to dependent children shall not use the subsidy to meet the basic needs of the family as defined in 441—subrule 41.8(2) or the special needs as defined in 441—subrule 41.8(3). In addition, if the child receives Medicaid, the subsidy shall only be used for the cost of services which are not covered by Medicaid.

441—184.5(225C) Approval. Rescinded IAB 6/27/90, effective 7/1/90. Subrule 184.5(3) transferred to 184.3(4).

441—184.6(225C) Amount of subsidy payment. Families approved for payment shall receive an ongoing monthly payment which is equal to the maximum supplemental security income payment available in Iowa in effect at the beginning of each state fiscal year for an adult recipient living in the home of another. In addition, a one-time lump-sum advance payment of twice the monthly amount may be paid to the parent or legal guardian whose family member will be returning home for the purpose of preparing for in-home care. An approved subsidy shall be payable as of the first of the month following approval. A notice of decision stating that the application is approved shall be sent within two working days of the approval. The notice shall state the date payments will begin, the amount of monthly payments, and, if different, the amount of the first payment.

441—184.7(225C) Redetermination of eligibility.

184.7(1) The department shall send an application packet, which shall include instructions and necessary forms for verification of continuing eligibility, to all recipients of subsidy payments at least 30 calendar days prior to the deadline date for annual redetermination of eligibility. The completed Form 470-2526, Application for Family Support Subsidy, and required verification materials shall be submitted annually to the Department of Human Services, Division of MH/MR/DD, Hoover State Office Building, Des Moines, Iowa 50319-0114. If the signed application and verification of continuing eligibility are not received by the division by the last working day of the renewal month, the family's subsidy shall be terminated.

184.7(2) When funding allows additional individuals to be added to the subsidy program, they shall be taken from the statewide waiting list, and their eligibility shall be redetermined at that time. An application packet, which includes instructions and necessary forms for verification of continuing eligibility, shall be sent to these families for completion and returned to the Department of Human Services, Division of MH/MR/DD, Hoover State Office Building, Des Moines, Iowa 50319-0114, within timelines specified by the department. If the signed application and verification of continuing eligibility are not received by the timeline specified by the department, the family's name shall be dropped from consideration for receipt of the subsidy payments.

441—184.8(225C) Termination of subsidy payments.

184.8(1) The family support subsidy shall terminate at the end of the month in which any of the following occur and a notice shall be sent which states the reason for the termination:

a. The family member dies.

b. The family no longer meets one or more of the eligibility criteria outlined in rule 441—184.2(225C).

c. The parent or legal guardian has failed to provide information required for redetermination of eligibility as outlined in rule 441—184.7(225C).

d. No funds appropriated for this purpose are available.

184.8(2) The parent or legal guardian is required to report to the local office within ten working days any changes which may affect eligibility. Failure to do so may result in responsibility for repayment of funds and termination of the subsidy.

184.8(3) If funds are not sufficient to cover payments for all persons on the subsidy, persons will be terminated from the subsidy in inverse order to the dates they began receiving payments, i.e., the last person to be added on to the subsidy being the first person to be removed. The person terminated will move back to the waiting list with the person's original application date dictating the person's position as stated in subrule 184.3(4). The division of MH/MR/DD is responsible for notifying the persons who will be removed from the subsidy for this reason.

441—184.9(225C) Appeals. The parent or legal guardian of the child may appeal a denial of an application or termination of the subsidy payment pursuant to 441—Chapter 7.

These rules are intended to implement Iowa Code sections 225C.35 to 225C.42.

441—184.10 to **184.20** Reserved.

DIVISION II
PERSONAL ASSISTANCE SERVICES PROGRAM

PREAMBLE

The purpose of this division is to define and structure the personal assistance services pilot program. The program is designed to assist in the inclusion of persons with disabilities in the general population, community, and work force of the state by helping to defray the cost of hiring a personal care attendant. The pilot will operate in Scott, Clinton and Muscatine counties.

441—184.21(225C) Definitions.

"County office" means the county department office.

"Department" means the department of human services.

"Disability," for the purposes of this program, means a physical or mental impairment that substantially limits one or more of the major life activities of the person, a record of physical or mental impairment that substantially limits one or more of the major life activities of the person, or being regarded as a person with a physical or mental impairment that substantially limits one or more of the major life activities of the person.

"Disability" does not include any of the following:

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

"Home" means a person's private home. The person may be living alone or with family or friends. "Home" does not include intermediate care facilities, intermediate care facilities for the mentally retarded, residential care facilities, residential care facilities for the mentally retarded, or other facility-owned living arrangements.

"Personal assistance services" means services performed by an individual to assist a person with a disability with tasks which that person would typically do if the person did not have a disability. The services are intended to enable a person with a disability to live in the person's home or community rather than in an institutional setting and may include, but are not limited to, any of the following:

1. Dressing.
2. Bathing.
3. Access to and from bed or a wheelchair.
4. Toilet assistance, including bowel, bladder, and catheter assistance.
5. Eating and feeding.
6. Cooking and housekeeping assistance.
7. Employment support.
8. Cognitive assistance with tasks such as handling money and scheduling.
9. Fostering communication access through interpreting and reading services.

441—184.22(225C) Eligibility requirements. A person shall be eligible for the personal assistance program if funds are available and all of the following requirements are met:

184.22(1) *Disability.* The person has a disability which is severe and chronic and:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments and,

b. Results in a substantial functional limitation in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, capacity for independent living, and economic self-sufficiency.

184.22(2) *Age.* The person is at least 18 years of age.

184.22(3) *Residing in own home.* The person is currently residing in the person's own home, or there is a discharge plan for the person to return home in the next 60 calendar days.

184.22(4) *Residency.* The person has residency in Scott, Muscatine, or Clinton counties.

184.22(5) *Income.* The person has a taxable income of $40,000 or less. Only the income of the person with a disability should be considered. If a joint return is filed and the person's gross income is $40,000 or less, the person meets the income eligibility. If the person's gross income exceeds $40,000, the person's net taxable income is computed in the same manner as on the Iowa income tax return for married filing separately on the combined return. That amount would then be reduced by the amount of the personal exemptions allowed.

184.22(6) *Other programs.* The person shall apply for other programs that provide assistance with personal care and home chore services prior to accessing this program and access all programs for which the person is eligible.

a. If the person is eligible for consumer-directed attendant care services under one of the home- and community-based waivers, the person must access that program. Since the waivers are Medicaid programs and Medicaid cannot be supplemented, the person would then not be eligible for the personal assistance services program.

b. If the person is eligible for in-home health-related care, the person must access that program. If, according to the person's Personal Assistance Needs Checklist, the person's allowed payment level exceeds the amount the person receives from in-home health-related care, the person is eligible for the personal assistance services program for the amount of the difference.

184.22(7) *Use of funds.* The person must agree that any funds received through this program shall be used solely for a personal attendant.

441—184.23(225C) Application process. Applications for the personal assistance services program may be obtained at the county office in the county in which the person resides.

184.23(1) *Application forms.* An application for the personal assistance services program shall be submitted on Form 470-3511, Personal Assistance Application and Disability Verification, and Form 470-0615, Application for Social Services/Title IV-A Emergency Assistance Services. Verification of disability and verification of income for the previous calendar year, or estimated income for the current year shall be submitted with the application forms.

184.23(2) *Date of application.* The date of application is the date that all completed required forms are received in the county office. Obtaining verifications is the responsibility of the applicant.

184.23(3) *Eligibility determination.* Eligibility shall be determined within 30 working days after the completed applications and required verifications are received by the department. The person shall be notified in writing of the decision of the county office regarding the person's eligibility for the program and the amount of the payment to be made.

184.23(4) *Effective date.* The effective date of service shall be the first of the month following the month the county determines the applicant is eligible.

184.23(5) *Program limits.* After all funds appropriated for this purpose are obligated, pending applications shall be denied by the county office. If all funds have been obligated, a notice of decision shall be mailed to the applicant within ten calendar days following the determination. 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 applicant does not meet eligibility requirements. Applicants not awarded funding who meet the eligibility requirements shall be placed on a waiting list maintained by each county office.

As funds are determined available, persons shall be served from the waiting lists based on the following schedule in descending order of prioritization:

a. The person is working or volunteering or receiving job training or schooling. Work is defined as competitive employment or supported employment. School or training must lead to an employment goal and is included if a person requires assistance in getting the education or training, whether it is in or out of the home.

b. The person is at imminent risk of out-of-home placement.

c. The date the application forms and verification are received.

d. In the event that more than one application is received on the same date and all of the applicants meet the criteria set forth in paragraphs "a" and "b," a person shall be removed from the waiting list on the basis of the day of the month of the person's birthday, lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

441—184.24(225C) Amount of personal assistance services payments. The amount of the personal assistance service payments shall be determined in the following manner:

184.24(1) *Completion of checklist.* Form 470-3512, Personal Assistance Needs Checklist, shall be completed by the county worker with assistance from the applicant. Those activities with which the applicant wants to receive help shall be checked in the appropriate column. If another member of the household is either applying for the program or is already on the program, both cannot receive assistance with the same household tasks.

If help with an activity is requested, the intensity of support needs shall be indicated as minimal, moderate, or intensive.

a. Minimal support may include: giving instructions, prompting, or feedback; making preparations by collecting and placing materials within reach, setting up area, preparing devices, i.e., installing supplies, such as floss in a flossing aid, or adjusting settings and parts; assisting with mobility by providing balance support or coordination, pushing or moving equipment; restoring order to area by disposing of used waste items, wiping spills or soiled surfaces; and maintaining equipment and devices that require only cleaning, changing batteries or filters.

b. Moderate support may include: monitoring task completion assisted by instructions, prompting, or feedback; hands-on assistance with primary tasks or performing all of nonsubstantial tasks, as well as preparation and cleanup; supplement strength (such as transfers), operating equipment or devices, maneuvering demanding environmental conditions, and maintaining equipment and devices that require adjustments in tensions or pressure.

c. Intensive support may include: providing total assistance for the consumer who is cognitively alert but physically unable to carry out tasks and providing total or near total assistance for the consumer who is significantly cognitively disabled under the direction of a caregiver or guardian.

184.24(2) *Scoring of checklist.* The county worker shall score the Personal Assistance Needs Checklist. The tasks on the form are listed under the broad categories of personal care, household maintenance, and community living support. Each task is given a weight of 1, 2, or 3, based on whether the support needed for the task is minimal, moderate, or intensive. Personal care tasks are also given twice the weight of household maintenance and community living support tasks.

The total score determines the payment level the applicant is eligible to receive as indicated in the following table:

Score	Level	Payment
0 - 40	Level 1	$200/month
41 - 75	Level 2	$400/month
76 - 104	Level 3	$700/month
105 +	Level 4	$1,000/month

A copy of Form 470-3512, Personal Assistance Needs Checklist, may be obtained from the county office of participating counties.

441—184.25(225C) Redetermination of eligibility. The county office shall send Form 470-3513, Personal Assistance Reapplication, which shall include instructions and necessary forms for verification of continuing eligibility, to all program participants at least 30 calendar days prior to the deadline date for annual redetermination of eligibility. If the signed application and verification are not received in the county office by the time designated in the reapplication letter, the person shall be terminated from the program.

The Personal Assistance Needs Checklist, Form 470-3512, shall be reviewed at least annually. If the person's needs have changed due to, but not limited to, increasing disability, an improvement in ability or a change in environment, a new form shall be completed and payment levels redetermined.

441—184.26(225C) Employment of attendant.

184.26(1) *Responsibility of person.* It is the responsibility of the person to locate, hire, train and supervise the person's own attendant. If the person desires assistance in locating, training or employing an attendant, the department may assist by providing written material or referring the person to local or state resources such as, but not limited to, centers for independent living, the division of vocational rehabilitation services, or home health care agencies.

184.26(2) *Contract.* The person shall have a written contract with each of the person's attendants. A sample contract shall be provided to the person for the person's use. Any contract used should include: the scope of services; the duties of the employer; the duties of the attendant; payment of services; emergency, illness, or absence procedures; how services are terminated; and by whom and how the attendant will be trained. Any contract is between the person and the person's attendant, not between the department and the attendant. The person shall provide a copy of each contract to the department.

441—184.27(225C) Termination of payments.

184.27(1) *Reasons for termination of payments.* The personal assistance services payments shall terminate at the end of the month in which any of the following occur. A notice shall be sent identifying the reason for the termination.

a. The person no longer meets one or more of the eligibility criteria outlined in rule 441—184.22(225C).

b. The person has failed to provide information required for redetermination of eligibility as outlined in rule 441— 184.25(225C).

c. The person has died.

d. The person does not use the funds for their intended purpose.

184.27(2) *Reporting requirements.* The person is required to report to the county office within ten working days any changes which may affect eligibility. Failure to do so may result in responsibility for repayment of funds and termination of the payments.

184.27(3) *Insufficient funding.* If funds are not sufficient to cover payments for all persons on the program, payments to persons will be terminated from the program in inverse order to the dates they began receiving payments, i.e., the last person to be added to the program will be the first person to be removed. The name of any person whose payment was terminated shall be put on the waiting list. The county office is responsible for notifying the person whose payment from the program was terminated for this reason.

441—184.28(225C) Appeals. The person may appeal a denial of an application, termination of the payments or any decision pursuant to 441—Chapter 7.

441—184.29(225C) Allocation of appropriation. The appropriation shall be distributed to each of the counties in the pilot program based on their share of the total population of all of the counties in the program.

441—184.30(225C) Coordination of personal assistance activities. The personal assistance and comprehensive family support services council shall oversee the activities of the personal assistance services program and provide coordination with and information to other programs which provide services to people with disabilities.

These rules are intended to implement Iowa Code section 225C.46.

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(11) Statements from three references provided by the family and additional references the worker may wish to contact.

(12) Financial information, ability to provide for a child and whether there is a need for adoption subsidy for a special needs child or children.

(13) Attitudes of the adoptive applicants toward the birth parents and the reasons the child is available for adoption.

(14) Commitment to and capacity to maintain significant relationships.

(15) Substance use or abuse, if any, by family members, or members of the household, treatment history and current status of treatment.

(16) History of abuse, if any, by family members, or members of the household, treatment history, current status of treatment and the evaluation of the abuse.

(17) Criminal convictions, if any, by family members, or adults in the household, and the evaluation of the criminal record.

(18) Recommendations for number, age, sex, characteristics, and special needs of a child or children the family can best parent.

b. Record checks. The department shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions. Form 470-0643, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant, or any other adult living in the home of the applicant, the applicant shall not be approved as an adoptive family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2)*"b."* The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or any other adult living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2)*"b."*

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of approval for adoption.

(1) If the applicant, or any other adult living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the regional administrator or designee. The department adoption worker and supervisor shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.

(2) If the applicant, or any other adult living in the home of the applicant, has a founded child abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the evaluation shall be initially conducted by the department adoption worker and supervisor.

1. If the regional administrator or designee determines that the abuse or crime does warrant prohibition of approval, the department adoption worker shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.

2. If the regional administrator or designee believes that the applicant should be approved despite the abuse or criminal conviction, the department adoption worker shall provide copies of the child abuse report or criminal history record, Form 470-2310, Record Check Evaluation, and Form 470-2386, Record Check Decision, to the Department of Human Services, Administrator, Division of Adult, Children and Family Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days the administrator shall determine whether the abuse or crime merits prohibition of approval, and shall notify the department adoption worker in writing of that decision. The adoption worker shall mail the applicant Form 470-2386, Record Check Decision, when a decision is reached regarding the evaluation of an abuse or crime, or when an applicant fails to complete the evaluation form.

(3) Fees associated with the record checks shall be assessed to the adoptive applicant unless the family is being studied to adopt a child with special needs.

c. Written report. The worker shall prepare a written report of the family assessment, known as the adoptive home study, using Form RC-0025, Home Study Format. The home study shall be used to approve or deny a prospective family as an appropriate placement for a child or children. The department adoption worker and supervisor shall date and sign the adoptive home study. The worker shall notify the family of the decision using Form SS-6104-0, Adoption Notice of Decision, and if the worker denies the placement, reasons for denial shall be stated. The worker shall provide the family a copy of the adoptive home study with the notification of approval or denial.

d. Preplacement assessment and home study update. A preplacement assessment and home study update is required if the adoptive home study was written more than one year previously, in accordance with Iowa Code section 600.8, and placement of the child is imminent. The preplacement assessment and home study update shall be conducted by completing the following:

(1) The child abuse and criminal record checks shall be repeated. If there are any founded abuses or convictions of crimes that were not evaluated in the previous home study, they shall be evaluated using the process set forth in 200.4(1)*"b."*

(2) One face-to-face visit shall be conducted with the approved adoptive family.

(3) The information in the approved adoptive home study shall be reassessed.

(4) An updated written report of the reassessment and adoptive home study shall be written, dated, signed by the worker and the supervisor; and a copy provided to the adoptive family.

200.4(2) ***Preparation of child.*** This component includes specific activities designed to enable a child to make the transition to an adoptive placement. The activities shall include, but are not limited to:

a. Counseling regarding issues of separation, loss, grief, guilt, anger and adjustment to an adoptive family.

b. Preparation or update of a life book.

c. Provision of age-appropriate information regarding community resources available, such as children's support groups, to assist the child in the transition and integration into the adoptive family.

A consent to adopt may be rescinded by the department, by signing Rescinding the Consent to Adoption, Form 470-2990, for any of the following reasons:

1. At the request of the adoptive family.
2. A founded child abuse report, or accusation of child abuse, pending determination of the report.
3. Conviction of a crime, or accusation of a crime, pending a court decision regarding the crime.
4. At the request of a child who is aged 14 or over and has reversed the decision regarding the adoption.
5. Other verified indications that the adoption is not in the best interest of the child.

441—200.14(600) Requests for access to information for research or treatment.

200.14(1) *Requests.* Any person seeking access to the department's sealed adoption records for the purpose or purposes set forth in Iowa Code paragraph 600.16(1)"*c*" or Iowa Code subsection 600.24(2) shall submit a request in writing to the director. Each request shall contain sufficient facts to establish that the information sought is necessary for conducting a legitimate medical research project, or for treating a patient in a medical facility.

200.14(2) *Process.* Upon receipt of a request for information sought in conducting a research project, the director or a designee shall review the request for information and make a decision to approve, or deny, the request based on the research to be conducted, the benefits of the research, the methodology, and the confidentiality measures to be followed. Upon a request for information for treating a patient in a medical facility, a decision regarding approval or denial shall be made by the director or designee based on the written information provided by a physician or the medical facility, making the request. Requesters shall be notified in writing of approval or denial and if denied, reasons for denial given.

441—200.15(600) Requests for information for other than research or treatment. Requests for information from department adoption records for other than research or treatment shall be made to the Department of Human Services, Division of Adult, Children and Family Services, Adoption Program, Hoover State Office Building, Des Moines, Iowa 50319-0114.

The department shall not release identifying information from sealed adoption records. Adult adoptees, adoptive parents, birth parents, siblings or descendants of an adopted person, or legal representatives of any of the above shall be provided an adoption packet containing a sample affidavit for filing with the court, directions for filing the affidavit, a list of county clerks of court and the address of the bureau of vital statistics which retains the name of the county where their adoption was finalized in Iowa.

An adopted person who was a resident of the Annie Wittenmeyer Home (Iowa Soldier's and Sailor's Home) may receive nonidentifying information from Annie Wittenmeyer records if the information is available.

441—200.16(600) Appeals. Prospective adoptive families may appeal denial of approval of their home study based on rule 441—200.11(600), pursuant to 441—Chapter 7.

These rules are intended to implement Iowa Code chapter 600.

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CHAPTER 4
PRACTICE AND PROCEDURE
BEFORE THE RACING AND GAMING COMMISSION

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

GENERAL PROVISIONS

491—4.1(99D,99F) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

"Administrator" means the administrator of the commission.

"Board" means either the board of stewards or gaming board, as appointed by the administrator, whichever is appropriate. The administrator may serve as a board of one.

"Bookmaker" means a person engaged in bookmaking as defined in Iowa Code section 725.13.

"Commission" means the Iowa racing and gaming commission.

"Commissioner" means any member of the Iowa racing and gaming commission.

"Contested case" means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statutes to be determined by the commission after an opportunity for an evidentiary hearing.

"Gaming official" means any person authorized by the administrator to perform regulatory functions related to racing, gambling games at pari-mutuel racetracks or riverboat gambling.

"License" means the whole or any part of any permit, certificate, approval, registration, charter, or similar form of permission to engage in any occupation or activity related to racing or gaming required by the commission.

"Pari-mutuel license" means a license issued to a nonprofit corporation or association for the operation of pari-mutuel racing.

"Party" means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, including intervenors.

"Person" means any individual, estate, trust, fiduciary, partnership, corporation, association, government subdivision or agency, or public or private organization of any character or any other covered by the Iowa administrative procedure Act other than an agency.

"Related party" means any officer or director of the operator or member of the nonprofit group who has any economic or beneficial ownership interest in any other party with whom the operator is seeking to negotiate a contract.

"Steward" means one of three individuals appointed as a steward or judge at a racetrack in accordance with the rules of the commission.

"Tout" means a person other than a licensed tip sheet concessionaire who obtains for or sells to others information on horses, dogs, stables, kennels, jockeys, or other aspects of a race meeting of potential use to bettors.

491—4.2(99D,99F) Computation of time, filing of documents. In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays are prescribed in the Code.

4.2(1) All documents or papers required to be filed with the commission shall be delivered to any commission office within such time limits as prescribed by law or by rules or orders of the commission. No papers shall be considered filed until actually received by the commission.

4.2(2) In all cases where the time for the filing of a protest or an appeal or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.

491—4.3(99D,99F) Gaming officials—duties. Gaming officials shall have the following powers and duties.

4.3(1) Regulate and control all individuals licensed by the commission.

4.3(2) Have control over and free access to all places and equipment within the boat, racetrack enclosures or support facilities under the control of the licensee, with the exception specified in Iowa Code section 99F.6(8)*"b."*

4.3(3) Order the exclusion or ejection from the boat, racetrack or support facilities any person who is disqualified for corrupt practices from any boat or racetrack in Iowa or any gaming jurisdiction.

4.3(4) Take notice of any questionable conduct with or without complaint and investigate promptly and render a report to the commission office when there is reasonable cause to believe that the holder of a license has committed an act or engaged in conduct in violation of statute or rules of the commission.

4.3(5) Report all complaints as soon as received by them and make prompt report of their investigation and decision to the commission office.

4.3(6) Conduct an investigation, to include a signature check of all electronic chips, on all slot machines or video games of chance jackpots that are more than $50,000, and have the authority to withhold or require the award of any slot machine jackpot, in writing, when conditions indicate that action is warranted.

4.3(7) Have the authority to sanction for violation of rules persons who are not holders of a license or occupational license and who have allegedly violated commission rules, orders, or final orders, or the Iowa riverboat gambling Act, or whose presence in a casino is allegedly undesirable. These persons are subject to the authority of the board and the commission, to the procedures and rights accorded to a license holder under this chapter, and to the sanctions allowed by law including a fine and expulsion from all casinos in the state.

4.3(8) Suspend a license until the outcome is known of any pending charges if conviction of those charges would disqualify the licensed individual.

4.3(9) Suspend a license pending the outcome of a board hearing when the official has reasonable cause to believe that a violation of a law or rule has been committed and that continued performance of that individual in a licensed capacity would be injurious to the best interests of gaming.

491—4.4(99D,99F) Duties of the board. The board shall have the:

4.4(1) Power to interpret the rules and to decide all questions not specifically covered by them.

4.4(2) Power to determine all questions arising with reference to the conduct of gaming.

4.4(3) Authority to decide any question or dispute relating to racing or gaming in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority.

4.4(4) Authority to suspend the license of any license holder when the official has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

4.4(5) Designate the length of suspensions and the dates for which all suspensions will be served.

491—4.29(99D,99F) Standards of conduct. All persons appearing in any proceeding before the commission in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Iowa. If any person does not conform, the commission may decline to permit that person to appear in a representative capacity in any future proceeding before the commission.

491—4.30(99D,99F) Alcohol and drug testing rule. Rescinded IAB 3/25/98, effective 4/29/98.

491—4.31(99D,99F) Commission approval of contracts and business arrangements. Rescinded IAB 3/25/98, effective 4/29/98.

491—4.32(99D,99F) Labor organization registration required. Rescinded IAB 3/25/98, effective 4/29/98.

491—4.33(99D,99F) Failure to pay child support. Rescinded IAB 3/25/98, effective 4/29/98.

491—4.34(99D,99F) Retention, storage and destruction of books, records and documents. Rescinded IAB 3/25/98, effective 4/29/98.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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491—13.24(99D) Practicing veterinarians. Every veterinarian practicing on association premises must be licensed by the state veterinary regulatory authority and licensed by the commission.

491—13.25(99D) Jockeys.

13.25(1) *Eligibility.*

a. No person under 18 years of age shall be licensed by the commission as a jockey, except persons who have been licensed by this commission prior to January 1, 1995.

b. A jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming fitness to participate as a jockey. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

c. An applicant shall show competence by prior licensing, demonstration of riding ability or temporary participating in races. An applicant may participate in a race or races, with the stewards' prior approval for each race, not to exceed five races.

d. A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

e. A person whose weight exceeds 125 pounds at the time of application shall not be licensed as a jockey.

f. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey or apprentice jockey.

13.25(2) *Apprentice jockeys.*

a. The conditions of an apprentice jockey license do not apply to quarter-horse racing. A jockey's performances in quarter-horse racing do not apply to the conditions of an apprentice jockey license.

b. An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

c. An apprentice certificate may be obtained from the stewards on a form provided by the commission. A person shall not receive more than one apprentice certificate. In case of emergencies, a copy of the original may be obtained from the commission where it was issued. A copy of the certificate shall be filed with the stewards.

d. An apprentice jockey may claim the following weight allowance in all overnight races except stakes and handicaps: ten-pound allowances beginning with the first mount and continuing until the apprentice has ridden five winners; a seven-pound allowance until the apprentice has ridden an additional 25 winners; and, if an apprentice has ridden a total of 40 winners prior to the end of a period of one year from the date of the apprentice's fifth winner, the apprentice jockey shall have an allowance of five pounds until one year from the date of the fifth winning mount. If after one year from the date of the fifth winning mount the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year from the date of the fifth winning mount, or until the fortieth winner, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted under this paragraph *"d."* A contracted apprentice may claim an allowance of three pounds for an additional one year when riding horses owned or trained by the original contract employer.

The commission may extend the weight allowance of an apprentice jockey when, in the discretion of the commission, an apprentice jockey is unable to continue riding due to physical disablement or illness, military service, attendance in an institution of secondary or higher education, restriction on racing or any other valid reason. In order to qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance. Under exceptional circumstances, total days lost collectively will be given consideration. The commission currently licensing the apprentice jockey shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation verifying time lost as defined by this paragraph *"d."* An apprentice may petition one of the jurisdictions in which the apprentice is licensed and riding for an extension of the time for claiming apprentice weight allowances, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

e. The conditions set forth in subrule 13.22(1) shall also apply.

13.25(3) *Foreign jockeys.* Upon making application for license in this jurisdiction, jockeys from a foreign country shall declare that they are holders of valid licenses in their country and currently not under suspension, bound by these rules and the laws of this state. To facilitate this process, the jockeys shall present a declaration sheet in a language recognized in this jurisdiction to the commission.

491—13.26(99D) Jockey agents.

13.26(1) *Eligibility.* An applicant for a license as a jockey agent shall:

a. Provide written proof of agency with at least one jockey licensed by the commission;

b. Demonstrate to the stewards that they have a contract for agency with at least one jockey who has been licensed by the commission; and

c. Be qualified, as determined by the administrator's designee by reason of experience, background and knowledge. A jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

(1) A written examination or

(2) An interview or oral examination.

d. Applicants not previously licensed as a jockey agent shall be required to pass a written and oral examination.

13.26(2) *Limit on contracts.* A jockey agent may serve as agent for no more than two jockeys and one apprentice jockey.

These rules are intended to implement Iowa Code chapters 99D, 99F and 252J.

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k. In calculating adjusted gross receipts, a licensee may deduct its pro-rata share of the present value of any system jackpots awarded during the month. Such deduction amount shall be listed on the detailed accounting records provided by the person authorized to provide the multilink system. A licensee's pro-rata share is based on the number of coins-in from that licensee's machines on the multilink system, compared to the total amount of coins-in on the whole system for the time period(s) between jackpot(s) awarded.

l. In the event an excursion gambling boat or racetrack enclosure licensee ceases operations and a progressive jackpot is awarded subsequent to the last day of the final month of operation, the excursion gambling boat or racetrack enclosure licensee may not file an amended wagering tax submission or make a claim for a wagering tax refund based on its contributions to that particular progressive prize pool.

m. An excursion gambling boat or racetrack enclosure licensee, or an entity that is licensed as a manufacturer or distributor, shall provide the multilink system in accordance with a written agreement which shall be reviewed and approved by the commission prior to offering the jackpots, provided, however, a trust comprised of the participating excursion gambling boat and racetrack enclosure licensees shall be established to control the system jackpot fund (trust fund) provided for in paragraph *"n,"* subparagraph "3."

n. The payment of any system jackpot offered on a multilink system shall be administered by a trust, in accordance with a written trust agreement which shall be reviewed and approved by the commission prior to the offering of the jackpot. The trust may contract with a licensed manufacturer or distributor to administer the trust fund. The trust agreement shall require the following:

(1) Any excursion gambling boat or racetrack enclosure licensee participating in offering the multilink system jackpot shall serve as trustee for the trust fund.

(2) Any excursion gambling boat or racetrack enclosure licensee shall be jointly and severally liable for the payment of system jackpots won on a multilink system in which the licensee is or was a participant at the time the jackpot was won.

(3) The moneys in the trust fund shall consist of the sum of funds invoiced to and received by the trust from the excursion gambling boat or racetrack enclosure licensees with respect to each particular system, which invoices shall be based on a designated percentage of the handle generated by all machines linked to the particular system; any income earned by the trust; and sums borrowed by the trust and any other property received by the trust. Prior to the payment of any other expenses, the trust funds shall be used to purchase Iowa state issued debt instruments or United States Treasury debt instruments in sufficient amounts to ensure that the trust will have adequate moneys available in each year to make all multilink system jackpot payments which are required under the terms of the multilink system jackpots which are won.

(4) A reserve shall be established and maintained within the trust fund sufficient to purchase any United States Treasury or Iowa state debt instruments required as multilink system jackpots are won (systems reserves). For purposes of this rule, the multilink system reserves shall mean an amount equal to the sum of the present value of the aggregate remaining balances owed on all jackpots previously won by patrons on the multilink systems; the present value of the amount currently reflected on the system jackpot meters of the multilink systems; and the present value of one additional reset (start amount) on such systems.

(5) The trust shall continue to be maintained until all payments owed to winners of the multilink system jackpots have been made.

(6) For multilink system jackpots disbursed in periodic payments, any United States Treasury or Iowa state debt instruments shall be purchased within 90 days following notice of the win of the multilink system jackpot, and a copy of such debt instruments will be provided to the commission office within 30 days of purchase. Any United States Treasury or Iowa state debt instrument shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment, and shall have a maturity date prior to the date the periodic jackpot payment is required to be made.

(7) The trust shall not be permitted to sell, trade, or otherwise dispose of any United States Treasury or Iowa state debt instruments prior to maturity unless approval to do so is first obtained from the commission.

(8) Upon becoming aware of an event of noncompliance with the terms of the approved trust agreement or reserve requirement mandated by paragraph *"n,"* subparagraph (4) above, the trust must immediately notify the commission of such event. An event of noncompliance includes a nonpayment of a jackpot periodic payment or a circumstance which may cause the trust to be unable to fulfill, or otherwise impair, its ability to satisfy its jackpot payment obligations.

(9) With the exception of the transfer to the estate or heir(s) of a deceased system jackpot winner or to the estate or heir(s) of such transferee upon death or the granting of a first priority lien to the trust to secure repayment of a tax loan to the winner should a tax liability on the full amount of the jackpot be assessed by the Internal Revenue Service against the winner, no interest in income or principal shall be alienated, encumbered or otherwise transferred or disposed of in any way by any person while in the possession and control of the trust.

(10) On a quarterly basis, the trust must deliver to the commission office a calculation of system reserves required under paragraph *"n,"* subparagraph (4), above.

(11) The trust must be audited, in accordance with generally accepted auditing standards, on the fiscal year of the trust by an independent certified public accountant. Two copies of the report must be submitted to the commission office within 90 days after the conclusion of the trust's fiscal year.

o. For multilink system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a "qualified prize option," as that term is defined in Section 451(h) of the Internal Revenue Code. For purposes of calculating the single cash payment, the trust administrator shall obtain quotes for the purchase of U.S. Government Treasury Securities at least three times per month. The quote selected by the trust administrator shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected quote, until a new quote becomes effective.

491—26.18(99F) Other games approved by the commission.

26.18(1) The commission must approve the conducting of any new game on a licensed riverboat.

26.18(2) Requests to conduct additional games must be accompanied by a complete set of rules, which must be approved by the administrator prior to conducting the game.

491—26.19(99F) Poker.

26.19(1) *Rules and limits—poker.* Proposals for rules for each poker game, minimum buy-in and table limits, table rake and rental charges must be submitted in writing and approved by the administrator prior to the operator's conducting any poker games. Rules must be clear and legible and placed at each poker table or in a conspicuous location so that a player may easily read the rules.

26.19(2) *Imprest dealer banks.* When the operator conducts poker with a dealer chip bank at an imprest amount, the administrative rules in 491—Chapter 24 for closing and distributing/removing gaming chips to/from gaming tables are not required. The entire amount of the table rake is subject to the wagering tax pursuant to Iowa Code section 99F.11. Proposals for imprest dealer chip banks must be submitted in writing and approved by the administrator prior to conducting poker under this rule.

26.19(3) *Table stakes.* All games shall be played according to table stakes rules as follows:

a. All bets must be made with coins or chips issued by the operator.

b. Only chips on the table at the start of a deal shall be in play for that pot.

c. Concealed chips do not play.

d. A player with chips may add additional chips between deals, provided that the player complies with the minimum buy-in requirement.

e. A player is never obliged to drop out of contention because of insufficient chips to call the full amount of a bet, but may call for the amount of chips the player has on the table. The excess part of the bet made by other players is either returned to the players or used to form a side pot.

26.19(4) *Collusion.* Each player in a poker game is required to act only in their own best interest. The operator has the responsibility to ensure that any behavior designed to assist one player over another is prohibited and may prohibit any two players from playing in the same game.

26.19(5) *Operator funded payouts.* Poker games where winning wagers are paid according to specific payout odds or pay tables are permitted. Proposals for rules, permissible wagers, shuffling and cutting procedures, payout odds, and pay tables must be submitted in writing and approved by the administrator prior to the operator's conducting any game. Changes in rules, wagers, payout odds, or pay tables must be submitted in writing and approved by the administrator prior to implementation.

491—26.20(99F) Red dog.

26.20(1) *Rules, permissible wagers, shuffling, dealing and cutting procedures, and payout odds.* Proposals for rules, permissible wagers, shuffling and cutting procedures, and payout odds must be submitted in writing and approved by the administrator prior to the operator conducting any games of red dog. Changes in rules, permissible wagers, shuffling, dealing and cutting procedures, and payout odds must be submitted in writing and approved by the administrator prior to implementation.

26.20(2) *Placement of wagers.* Prior to the first card being dealt from each round of play, each player at the game of red dog shall make a wager against the dealer by placing gaming chips on the appropriate areas of the layout. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager to double down has been made and confirmed by the dealer, no player shall handle, remove or alter such wagers until a decision has been rendered and implemented with respect to that wager except as explicitly permitted by these rules. No dealer or other casino employee or casino key employee shall permit any player to engage in conduct violative of this rule.

26.20(3) *Wagers—amount—red dog.* Rescinded IAB 6/8/94, effective 5/20/94.

491—26.21(99F) Tournaments and contests.

26.21(1) *Rules.* Proposals for rules, entry fee and prize accounting and procedures must be submitted in writing and approved by the administrator prior to the operator's conducting any tournament or contest. Rules, fees, and a schedule of prizes must be made available to the player prior to entry.

26.21(2) *Limits.* Tournaments and contests must be based on gambling games authorized by the commission. Entry fees, less the operator's cash equivalent cost of prizes paid out not to exceed total entry fees, are subject to the wagering tax pursuant to Iowa Code section 99F.11.

491—26.22(99F) Keno.

26.22(1) *Requirements.*

a. Keno shall be conducted using an automated ticket writing and redemption system where a game's winning numbers are selected by a random number generator.

b. Each game shall consist of the selection of 20 numbers out of 80 possible numbers, 1 through 80.

c. For any type of wager offered, the payout must be at least 80 percent.

d. Multigame tickets shall be limited to 20 games.

e. Writing or voiding tickets for a game after that game has closed is prohibited.

f. All winning tickets shall be valid up to a maximum of one year. The dollar amount of all expired and unclaimed winning tickets shall be added to existing keno jackpots in a manner approved by the administrator.

26.22(2) *Rules, procedures, permissible wagers and payout odds.* Proposals for permissible rules, wagers, procedures, payout odds, ticket contents, and progressive jackpots must be submitted in writing and approved by the administrator prior to the operator's conducting any keno games. Changes in conduct or operation of keno games must be submitted in writing and approved by the administrator prior to implementation.

26.22(3) *Equipment.* The administrator shall determine minimum hardware and software requirements to ensure the integrity of play. An automated keno system must be proven to accurately account for adjusted gross receipts to the satisfaction of the administrator.

26.22(4) *Wagering tax.* Adjusted gross receipts from keno games shall be the difference between dollar amount of tickets written and dollar amount of winning tickets as determined from the automated keno system. The wagering tax pursuant to Iowa Code section 99F.11 shall apply to adjusted gross receipts of keno games.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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PUBLIC EMPLOYMENT RELATIONS BOARD[621]

[Prior to 11/5/86, Public Employment Relations Board [660]]

CHAPTER 1
GENERAL PROVISIONS

621—1.1(20) Construction and severability. These rules shall be liberally construed to effectuate the purposes and provisions of the public employment relations Act. If any provisions of these rules are held to be invalid, it shall not be construed to invalidate any of the other provisions of these rules.

621—1.2(20) General agency description. The purpose of the public employment relations board established by the Public Employment Relations Act is to implement the provisions of the Act and adjudicate and conciliate employment related cases involving the state of Iowa and other public employers and employee organizations. For these purposes the powers and duties of the board include, but are not limited to, the following:

Determining appropriate bargaining units and conducting representation elections.

Adjudicating prohibited practice complaints and fashioning appropriate remedial relief for violations of the Act.

Adjudicating and serving as arbitrators regarding state merit system grievances and grievances arising under collective bargaining agreements between public employers and certified employee organizations.

Providing mediators, fact finders and arbitrators to resolve impasses in negotiations.

Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.

Assisting the attorney general in the preparation of legal briefs and the presentation of oral arguments in the district courts and the supreme court in cases affecting the board.

621—1.3(20) General course and method of operation. Upon receipt of a petition or complaint, the board may assign an administrative law judge to process the case. The board may determine that the petition or complaint is without basis and dismiss it without further proceedings. Petitions and complaints not dismissed are assigned for a hearing before either an administrative law judge or the board, unless the procedures for informal settlement described in these rules are followed. The administrative law judge or the board will conduct a hearing on the complaint or petition and issue a decision and order. The decisions of administrative law judges are appealable to the board, and final orders and decisions of the board are appealable to the district court under the Iowa administrative procedure Act.

621—1.4(20) Method of obtaining information and making submissions or requests. Any person may obtain information from, make submission to, or make a request of the board by writing to Chairperson, Iowa Public Employment Relations Board, 514 East Locust Street, Suite 202, Des Moines, Iowa 50309.

621—1.5(20) Petition for rule making. Any person may file a petition with the board for the adoption, amendment or repeal of a rule. Such petition shall be in writing and shall include:

1.5(1) The name and address of the person requesting the adoption, amendment or repeal of the rule.

1.5(2) 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 to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

1.5(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

1.5(4) A brief summary of any data supporting the action urged in the petition.

1.5(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. Within 60 days after the filing of a petition, the board shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

621—1.6(20) Definitions.

1.6(1) *"Act"* as used in these rules shall mean the public employment relations Act, Iowa Code chapter 20.

1.6(2) *"Board"* as used in these rules shall mean the public employment relations board. No official board action may be taken without the concurrence of at least two members of the board; provided, however, that when for compelling reasons only two members hear an appeal of a proposed decision in a contested case and the two members do not concur, the result shall be affirmation of the proposed decision. The board, in its discretion, may delegate to board employees duties which the Act does not specifically require be performed by the board.

1.6(3) *Petitioner—complainant—respondent—intervenor.*

a. *"Petitioner"* means the party filing a petition under Iowa Code section 20.13 or 20.14.

b. *"Complainant"* means the party filing a complaint under Iowa Code section 20.11, alleging the commission of a prohibited practice.

c. *"Respondent"* means the party accused of committing a prohibited practice.

d. *"Intervenor"* means a party who voluntarily interposes in a proceeding with the approval of the board or administrative law judge.

1.6(4) *"Party"* as used in these rules shall mean any person, employee organization or public employer who has filed a petition or complaint under the Act or these rules; who has been named as a party in a complaint, petition or other matter under these rules; or whose motion to intervene has been granted by the board.

1.6(5) *"Impasse item"* means any term which was a subject of negotiations and proposed to be included in a collective bargaining agreement upon which the parties have failed to reach agreement in the course of negotiations, except as provided for in 6.1(20). Failure of the parties to agree upon impasse procedures shall not constitute an impasse item or compel implementation of impasse procedures.

1.6(6) *"Impasse procedures"* means either the procedures set forth in Iowa Code sections 20.20, 20.21 and 20.22 or any procedures agreed upon by the parties pursuant to Iowa Code section 20.19 which are designed to result in a binding collective bargaining agreement.

1.6(7) *"Contested case"* means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

621—1.7(20) Computation of time. Time periods established by these rules shall be computed pursuant to Iowa Code section 4.1(34).

621—1.8(20,279) Fees of neutrals. Qualified fact finders, arbitrators and teacher termination adjudicators appointed from a list maintained by the board may be compensated by a sum not to exceed $475 per day of service, plus their necessary expenses incurred.

These rules are intended to implement Iowa Code chapters 20 and 279.

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CHAPTER 2
GENERAL PRACTICE AND HEARING PROCEDURES

621—2.1(20) Hearing—time and place—administrative law judge. A member of the board or an administrative law judge shall fix the time and place for all hearings. Hearings may be conducted by the board, or by one or more of its members, or by an administrative law judge designated by the board. At their discretion the board or administrative law judge may order a prehearing conference.

621—2.2(20) Notice of hearing—contents. Written notice of a contested case hearing shall be delivered by the board to all parties by ordinary mail. The notice shall include:

2.2(1) A statement of the date, time, place and nature of the hearing.

2.2(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.

2.2(3) A reference to the particular sections of the statutes and rules involved.

2.2(4) A short and plain statement of the matters asserted.

621—2.3(20) Default.

2.3(1) If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no continuance is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

2.3(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 2.3(3) is filed and served on all parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision to the board on the merits is filed within the time provided by rule 621—9.2(20) or, in cases brought pursuant to Iowa Code section 19A.14, a petition for review by the board on the merits is filed within the time provided by rule 621—11.8(19A,20).

2.3(3) A motion to vacate may be filed only by a party who failed to appear for the hearing and against whom the decision was rendered. The motion must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to and filed and served with the motion.

2.3(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to the existence of good cause is on the moving party. Adverse parties may, within ten days of the service of the motion and supporting affidavit(s) upon them, file a response to the motion. Adverse parties shall be allowed to conduct discovery as to the issue of the existence of good cause and to present evidence on the issue prior to a ruling on the motion, if a request to do so is included in that party's response.

2.3(5) The time for the filing of an intra-agency appeal from or petition for review of a decision for which a timely motion to vacate has been filed is stayed pending the issuance of the presiding officer's ruling on the motion to vacate.

621—2.4(20) Intervention and additional parties. Any interested person may request intervention in any proceeding before the public employment relations board. An application for intervention shall be in writing, except that applications made during a hearing may be made orally to the hearing officer, and shall contain a statement of the reasons for such intervention. When an application for intervention is filed regarding a petition for bargaining representative determination, the rules set forth in 4.3(2), 4.4(4) and 5.1(4) shall apply.

Where necessary to achieve a more proper decision, the board or administrative law judge may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered the board shall serve upon such additional parties all relevant pleadings, and allow such parties a reasonable time to respond thereto where appropriate.

621—2.5(20) Continuance. Hearings or proceedings on any matter may be continued by order of the board or an administrative law judge, with the reasons therefor set out in said order, and notice thereof to all parties. Parties may, upon written application to the board prior to commencement of the hearing or other proceeding, or oral application to the administrative law judge during the hearing, but not ex parte, request a continuance. A continuance may be allowed for any cause not growing out of the fault or negligence of the applicant, which satisfies the board or administrative law judge that a proper decision or result will be more nearly obtained by granting a continuance. The continuance may also be granted if agreed to by all parties and approved by the board or administrative law judge.

621—2.6(20) Appearances and conduct of parties. Any party may appear and be heard on its own behalf, or by its designated representative. Designated representatives shall file a notice of appearance with the board for each case in which they appear for a party. Filing of pleadings on behalf of a party shall be equivalent to filing a notice of appearance. All persons appearing in proceedings before the board shall conform to the standard of ethical conduct required of attorneys before the courts of the state of Iowa. If any person refuses to conform to such standards, the board may decline to permit such person to appear in any proceeding.

621—2.7(20) Evidence—objections. Rules of evidence shall be those set forth in the Administrative Procedure Act. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

621—2.8(20) Order of procedure. The employer shall present its evidence first in unit determination hearings. The complainant shall present its evidence first and shall have the burden of proof in prohibited practice hearings. Intervenors shall follow the parties in whose behalf the intervention is made; if not made in support of a principal party, the administrative law judge shall designate at what stage such intervenors shall be heard. The order of other parties shall be determined by the administrative law judge. All parties shall be allowed cross-examination and an opportunity for rebuttal. At any stage of the hearing or after the close of the hearing but prior to decision, the board or administrative law judge may call for further evidence to be presented by the party or parties concerned.

621—2.9(20) Amendments. A petition, complaint or answer may be amended for good cause shown, but not ex parte, upon motion at any time prior to the decision. Allowance of such amendments, including those to conform to the proof, shall be within the discretion of the board or administrative law judge. The board or administrative law judge may impose terms, or grant a continuance with or without terms, as a condition of such allowance. Such motions prior to hearing shall be in writing filed with the board, and the moving party shall serve a copy thereof upon all parties by ordinary mail.

621—2.10(20) Briefs and arguments. At the discretion of the board or administrative law judge, oral arguments may be presented by the parties with such time limits as determined by the board or administrative law judge. Briefs may be filed in such order and within such time limits as set by the board or administrative law judge.

621—2.11(20) Sequestration of witnesses. Upon its own motion, or the motion of any party, the board or administrative law judge may order the sequestration of witnesses in any proceeding.

621—2.12(20) Subpoenas.

2.12(1) *Attendance of witnesses.* The board, administrative law judge, or board appointed fact finder or arbitrator shall issue subpoenas to compel the attendance of witnesses and the production of relevant records upon written application of any party filed with the board prior to the hearing or oral motion at the hearing. The party requesting subpoenas shall serve the subpoenas, and notify the board in writing prior to hearing, or orally at the time of hearing, of the names and addresses of the witnesses or the person or party having possession of the requested documents. Where a subpoena has been served more than seven days prior to the hearing, a party may move to quash the subpoena not less than three days prior to the hearing. Subpoenas for production of records shall list with specificity the items sought for production and the name and address of the person or party having possession or control thereof. A motion to quash subpoenas may be filed with the board prior to hearing or with the hearing officer, fact finder or arbitrator at the time of hearing. The motion filed prior to hearing shall be in writing, and the moving party shall provide copies to all parties of record.

2.12(2) *Witness fees.* Witnesses shall receive from the subpoenaing party fees and expenses as are prescribed by statute for witnesses in civil actions before a district court. Witnesses may, however, waive such fees and expenses.

2.12(3) *Service of subpoenas.* Subpoenas shall be served as provided in Iowa Code section 622.63.

621—2.13(20) Form of documents. All documents, other than forms provided by the board, which relate to any proceeding before the board should be typewritten and bear the docket number of the proceeding to which it relates. Such documents may be single- or double-spaced at the option of the submitting party.

621—2.14(20) Captions. The following captions for documents other than forms provided by the board are suggested for use in practice before the board:

2.14(1) In prohibited practice proceedings:

Before the Public Employment Relations Board

XYZ, **Complainant** **and** **J. Doe,** **Respondent**	**[name of document]** **Case No. 1234**

2.14(2) In proceedings pursuant to a petition:
Before the Public Employment Relations Board

In the matter of	
XYZ, **Public Employer**	**[name of document]**
and	
J. Doe, Petitioner	**Case No. 1234**

621—2.15(20) Service of pleadings and other papers.

2.15(1) *Service—upon whom made.* Whenever under these rules service is required to be made upon a party, such service shall be as follows:

a. Upon any city, or board, commission, council or agency thereof, by serving the mayor or city clerk.

b. Upon any county, or office, board, commission or agency thereof, by serving the county auditor or the chairperson of the county board of supervisors.

c. Upon any school district, school township, or school corporation by serving the presiding officer or secretary of its governing body.

d. Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the governor or the director of personnel.

e. Upon the state judicial department by serving the state court administrator.

f. Upon any other governing body by serving its presiding officer, clerk or secretary.

g. Upon an employee organization by serving the person designated by the employee organization to receive service pursuant to 8.2(2), or, by service upon the president or secretary of the employee organization.

h. Upon any other person by serving that person or that person's attorney of record.

2.15(2) *Service—how made.* Except as provided in rules 3.4(20) and 5.7(20) and subrules 2.12(3) and 4.2(2), whenever these rules require service upon any person or party the service shall be sufficient if made by ordinary mail.

2.15(3) *Proof of service.* Where service is by restricted certified mail or personal service, the serving party shall forward the return receipt or return of service to the board for filing. Where service by ordinary mail is permitted under these rules, the serving party shall include the following certificate on the original document filed with the board:

"I hereby certify that on _____ I sent a copy of the foregoing matter to
(date)
the following parties of record or their representatives at the addresses indicated, by depositing same in a United States mail receptacle with sufficient postage affixed.

(Signed) _____"
(party or representative)

621—2.16(20) Consolidation. Upon application of any party or upon its own motion, the board or an administrative law judge may consolidate for hearing any cases which involve common questions of law or fact.

621—2.17(20) Prohibition against testimony of mediators, fact finders, arbitrators and board employees. A mediator, fact finder, arbitrator, labor relations examiner, administrative law judge, member of the board or other officer or employee of the board shall not testify on behalf of any party to a prohibited practice, representation or impasse resolution proceeding, pending in any court or before the board, with respect to any information, facts, or other matter coming to that individual's knowledge through a party or parties in an official capacity as a resolver of disputes.

621—2.18(20) Delivery of decisions and orders. Decisions and orders of the board or administrative law judge shall be delivered to the parties by ordinary mail.

621—2.19(20) Stays of agency action. Application for stays of agency actions must be filed with the board and served upon all interested parties pursuant to rule 2.15(20). The board may in its discretion and on such terms as it deems proper, grant or deny an application.

621—2.20(20) Ex parte communications.

2.20(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case or in proceedings on a petition for declaratory order in which there are two or more parties, shall not communicate directly or indirectly with any party, representative of any party or any other person with a direct or indirect interest in such case, nor shall any such party, representative or person communicate directly or indirectly with the presiding officer concerning any issues of fact or law in that case, except upon notice and opportunity for all parties to participate. Nothing in this provision precludes the presiding officer, without such notice and opportunity for all parties to participate, from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish or modify the evidence in the record. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another's investigative work product in the course of determining whether to initiate a proceeding or exposure to factual information while performing other agency functions, including fact-gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as a presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202.

2.20(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and with the filing of the petition in a declaratory order proceeding in which there are two or more parties, and continue for as long as the case is pending.

2.20(3) Communications with a presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties prior to seeking to continue hearings or other deadlines.

2.20(4) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case or proceedings on a petition for declaratory order in which there are two or more parties shall disclose to all parties and place on the record of the pending matter all such written communications, all written responses to the communication, and a memorandum stating the substance of all such oral and other communications received, all responses made and the identity of each person from whom the presiding officer received a prohibited ex parte communication. The presiding officer shall notify all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited communication will be allowed the opportunity to do so upon written request filed within ten days after the giving of notice that the matters have been placed on the record.

2.20(5) If the presiding officer determines that the effect of a prohibited ex parte communication is so prejudicial that it cannot be cured by the procedure specified in subrule 2.20(4), the presiding officer shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

2.20(6) Promptly after being assigned to serve as presiding officer, either individually, on a hearing panel or on an intra-agency appeal, a presiding officer shall disclose to all parties any material factual information received through ex parte communication prior to such assignment, unless the factual information has or soon will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery.

2.20(7) Sanctions for prohibited communications.

a. The agency and any party may report any violation of this rule to appropriate authorities for any disciplinary proceedings provided by law.

b. The presiding officer may render a proposed decision or, in the case of the board or a majority thereof, a final decision, imposing appropriate sanctions for violations of this rule including a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the agency.

c. Alleged violations of ex parte communication prohibitions by agency personnel shall be reported to the chairperson for the possible imposition of sanctions including censure, suspension, dismissal or other disciplinary action.

621—2.21(20) Transcripts of record. Oral proceedings in all hearings shall be recorded by a certified shorthand reporter or by mechanized means. The board does not furnish transcriptions, but oral proceedings shall be transcribed at the expense of any party requesting the transcription. Arguments on motions, oral arguments on appeal to the board, and arguments made in declaratory order and expedited negotiability dispute proceedings need not be recorded.

621—2.22(20) Dismissal. The board or an administrative law judge may dismiss cases for want of prosecution if, after receiving notice by certified mail, the parties do not show good cause why the case should be retained.

These rules are intended to implement Iowa Code chapter 20.

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CHAPTER 3
PROHIBITED PRACTICE COMPLAINTS

621—3.1(20) Filing of complaint. A complaint that any person, employee, organization or public employer has engaged in or is engaging in a prohibited practice under the Act may be filed by any person, employee organization or public employer. A complaint shall be in writing and signed according to these rules, and may be on a form provided by the board. The complaint shall be filed with the board within 90 days following the alleged violation.

621—3.2(20) Contents of complaint. The complaint shall include the following:

3.2(1) The name, address and organizational affiliation, if any, of the complainant, and the title of any representative filing the complaint.

3.2(2) The name and address of the respondent(s) and any other party named therein.

3.2(3) A clear and concise statement of the facts constituting the alleged prohibited practice, including the names of the individuals involved in the alleged act, the dates and places of the alleged occurrence, and the specific section(s) of the Act alleged to have been violated.

621—3.3(20) Clarification of complaint. The board may, on its own motion or motion of the respondent, require the complainant to make the complaint more specific.

621—3.4(20) Service of complaint. The complainant shall, within a reasonable time following the filing of a complaint, serve the respondent(s) with a copy of the complaint in the manner of an original notice or by restricted certified mail, return receipt requested. Such service shall be upon the person designated for service by subrule 2.15(1), and the complainant shall file proof thereof with the board.

621—3.5(20) Answer to complaint.

3.5(1) *Filing and service.* Within ten days of service of a complaint, the respondent(s) shall file with the board a written answer to the complaint, and cause a copy to be delivered to the complainant by ordinary mail to the address set forth in the complaint. The answer shall be signed by the respondent(s) or the designated representative of the respondent(s).

3.5(2) *Extension of time to answer.* Upon application and good cause shown, the board may extend the time to answer to a time and date certain.

3.5(3) *Contents of answer.* The answer shall include a specific admission or denial of each allegation of the complaint or, if the respondent is without knowledge thereof, the respondent shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation, but shall fairly meet the circumstances of the allegations. The answer shall include a specific statement of any affirmative defense. Matters contained in the answer shall be deemed denied by the complainant.

3.5(4) *Admission by failure to answer.* If the respondent fails to file a timely answer, such failure may be deemed by the board to constitute an admission of the material facts alleged in the complaint and a waiver by the respondent of a hearing.

621—3.6(20) Withdrawal of complaint. A complaint or any part thereof may be withdrawn with the consent of the board, and upon conditions the board may deem proper. Withdrawal shall constitute a bar to refiling the same complaint or part thereof by the complainant.

621—3.7(20) Amendment of complaint or answer. Amendments to a party's complaint or answer shall be governed by rule 621—2.9(20).

621—3.8(20) Investigation of complaint. The board or its designee may conduct a preliminary investigation of the allegations of any complaint. In conducting such investigation, the board may require the complainant and respondent to furnish evidence, including affidavits and other documents if appropriate. If a review of the evidence shows that the complaint has no basis in fact, the complaint may be dismissed with prejudice by the board and the parties notified. Board employees involved in investigations under this rule shall not act as administrative law judges in any proceeding related to the investigation.

621—3.9 Rescinded, effective December 22, 1976.

621—3.10(20) Informal disposition. Any party seeking to settle a controversy which may result in a contested case may request assistance from the board. The board may schedule meetings between the parties and assist the parties in reaching a settlement of the dispute; provided, however, that no party shall be required to settle the controversy pursuant to this rule. Any prohibited practice case commenced with the board may be informally settled by stipulation, agreed settlement, consent order, default, or by any other method agreed upon by the parties, subject, however, to approval by the board.

621—3.11(20) Evidence of settlement negotiations. Evidence of proposed offers of settlement of a prohibited practice complaint shall be inadmissible at the hearing thereon.

These rules are intended to implement Iowa Code chapter 20.

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CHAPTER 4
BARGAINING UNIT AND BARGAINING REPRESENTATIVE DETERMINATION

621—4.1(20) General procedures.

4.1(1) *Separate or combined petitions.* Request for bargaining unit determination and bargaining representative determination shall be by petitions which may be filed separately. Where a request has been made to a public employer to bargain collectively with a designated group of public employees and the board has not previously determined the bargaining unit, the petitions shall be filed jointly or on a combined form provided by the board.

4.1(2) *Intervention and additional parties.* See rule 2.4(20).

4.1(3) *Withdrawal of petitions.* Petitions may be withdrawn only with the consent of the board. Petitions withdrawn after the commencement of a hearing, or withdrawn after direction of an election where no hearing was conducted, may not be refiled by the withdrawing party for a period of six months following the board order permitting withdrawal.

621—4.2(20) Unit determination.

4.2(1) *Content of petition.* A petition for bargaining unit determination shall be on a form provided by the board and shall be filed by delivery to the board. The petition shall contain an identification and description of the proposed unit.

4.2(2) *Notice to parties.* Upon receipt of a proper petition, the board shall serve copies thereof upon other interested parties by certified mail, return receipt requested. Upon the filing of a petition for unit determination, the board shall furnish to the employer a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under the Act. Notices shall be posted by the public employer in conspicuous places customarily used for the posting of notices to employees.

4.2(3) *Notice of hearing.* The board or administrative law judge shall issue a notice of hearing by ordinary mail to all interested parties setting forth the time, date and place of the hearing and any other relevant information. The board or administrative law judge shall provide additional copies of the notice of hearing to the public employer, which shall be posted by the public employer in conspicuous places customarily used for the posting of information to employees.

4.2(4) *Intervention.* See rule 2.4(20).

4.2(5) *Professional and nonprofessional elections.* If, in any case, the board should determine that professional employees and nonprofessional employees could be represented in a single bargaining unit, the board shall direct and supervise an election among such employees to determine whether they wish to be represented in a single or in separate bargaining units. The election shall be by secret ballot under conditions as the board may prescribe. Absentee ballots shall be as provided for in 5.2(5). The elections may, in the discretion of the board, be conducted in whole or in part by mail ballots provided for in 5.1(3). A majority affirmative vote of those voting in each category shall be necessary to include professional and nonprofessional employees within the same bargaining unit. The rules concerning voting lists, as set forth in 5.1(2), shall apply.

4.2(6) *Informal settlement of bargaining unit determination.* Cases on bargaining unit determination may be informally settled in the following manner:

a. The petitioning party shall prepare a stipulation setting forth in detail the composition of the bargaining unit as agreed upon by all parties. The stipulation shall be signed by the authorized representative of the parties involved and shall be forwarded to the board for informal review and tentative approval. In the event the parties agree to a combined unit of professional and nonprofessional employees, the stipulation shall set forth both those job classifications included within the professional category and those job classifications included within the nonprofessional category. If the board fails to tentatively approve the stipulation, the board shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the board, the matter shall proceed to hearing. If the board tentatively approves the stipulation, the board shall prepare a public notice of proposed decision and shall deliver copies to the parties. The public employer shall post the notice of the proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in conspicuous places customarily used for the posting of information to employees. The public employer shall also have copies of the proposed decision available for distribution to the public upon request.

b. Notice of the proposed decision shall be on a form provided by the board which shall identify the parties; specify the terms of the proposed decision; list the names, addresses and telephone numbers of the parties or their authorized representatives to whom inquiries by the public should be directed; and, further, state the date by which written objection to the proposed decision must be filed with the board and the address to which such objections should be sent.

c. Objections to the proposed decision must be filed with the board by the date posted in the notice of proposed decision. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address and telephone number. The board shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the board deems the objections to be of substance, the parties may, with board approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the board of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

d. Final board decision on the informed settlement shall be reserved until expiration of the time for filing of objections. If no objections have been filed; or if filed objections have been resolved through amendment of the proposed decision; or if filed objections, after inquiry by the board, were found to be frivolous, the board shall endorse the proposed decision as final.

e. If interested parties are unable to informally settle a case on bargaining unit determination within 15 days of service of a petition, the board or administrative law judge may order any interested party to file with the board its proposed unit description.

621—4.3(20) Bargaining representative determination (election petitions).

4.3(1) *Form of petition.* A petition for bargaining representative determination (election petition) shall be on a form provided by the board and shall be filed by delivery to the board. These petitions shall be of three types:

a. A certification petition, filed by an employee organization requesting that through an election it be certified as the exclusive bargaining representative in an appropriate unit of public employees. The name of the employee organization which appears on the petition, or the petition as amended, shall be the name which appears on the election ballot.

b. A decertification petition, filed by an employee requesting an election to determine whether a certified bargaining representative does, in fact, represent a majority of the employees in the bargaining unit, and

c. A representation petition, filed by a public employer requesting an election to determine the bargaining representative, if any, of the employees in the bargaining unit.

4.3(2) *Showing of interest—certification—decertification—intervention.* Whenever a petition for certification or decertification is filed, or whenever intervention is requested for the purpose of being placed on an election ballot, the petitioner or intervenor shall submit therewith evidence that the petition or application for intervention is supported by employees in the unit in the following percentages: Thirty percent for certification or decertification and 10 percent for intervention in election proceedings. In petitions for certification or applications for intervention, such interest showing shall be dated and signed not more than one year prior to its submission; shall contain the job classification of the signatory; and shall contain a statement that the signatory is a member of the employee organization or has authorized it to bargain collectively on the signatory's behalf. In appropriate cases, an authenticated dues checkoff list may be used for this purpose. In petitions for decertification, evidence of interest shall be as provided above and shall further contain a statement that the signatory no longer wishes to be represented by the certified employee organization. When a representation petition is filed by an employer, no show of interest will be required.

4.3(3) *Determination of showing of interest.* The public employer shall, within seven days of receipt of notice of a certification petition, submit to the board a list of the names and job classifications of the employees in the unit requested by the petitioner. The board shall administratively determine the sufficiency of the showing of interest upon receipt of the list. This determination, including the identification and number of signers of the showing of interest, shall be confidential and not subject to review, and parties other than the party submitting the interest showing shall not be entitled to a copy or examination of the showing of interest. If the employer fails to furnish the list of employees, the board shall determine the sufficiency of the showing of interest by whatever means it deems appropriate. In election proceedings where the petitioner withdraws its petition pursuant to subrule 4.1(3), in the presence of an intervenor, the election shall not be conducted unless the intervenor produces a 30 percent showing of interest within a time period determined by the board.

4.3(4) *Notice.* Upon the filing of a petition for certification, decertification or representation, the board shall furnish to the employer a notice to employees, giving notice to employees that an election petition has been filed and setting forth the rights of employees under the Act. Such notices shall be posted by the public employer in conspicuous places customarily used for the posting of information to employees.

4.3(5) *Direction of election.* Whenever an election petition is filed which conforms to these rules and the Act and the appropriate bargaining unit has been previously determined, an election shall be directed and conducted.

4.3(6) *Intervention.* See 4.1(2).

621—4.4(20) Concurrent (combined) petitions.

4.4(1) *When to file.* A combined petition for both bargaining unit determination and bargaining representative determination shall be filed whenever a question of representation exists and the bargaining unit has not been previously determined by the board.

4.4(2) *Content of petition.* A combined petition for unit determination and representative determination (election) shall be on a form provided by the board and shall be filed by delivery to the board.

4.4(3) *Notice of petition, hearing, and notice to employees.* Upon receipt of a combined petition, notice shall be as provided in 4.2(2), 4.2(3) and 4.3(4).

4.4(4) *Showing of interest.* Showing of interest shall be as provided in 4.3(2) and 4.3(3). Should the board determine an appropriate unit different than that requested, any employee organization affected may request a reasonable period of time to submit additional evidence of interest sufficient to satisfy the requirements of the Act.

4.4(5) *Scope of hearing.* Hearings on combined petitions shall resolve all issues with regard to both bargaining unit determination and bargaining representative determination.

4.4(6) *Intervention.* See 4.1(2).

4.4(7) *Professional and nonprofessional elections.* See 4.2(5).

621—4.5(20) Unit reconsideration. A petition for reconsideration of a board-established bargaining unit may be filed by an employee organization, public employer, or an employee of the public employer. This petition may be filed only in combination with an election petition. The rules set forth in 4.1(20), 4.2(20), 4.3(20) and 4.4(20) shall apply, except that the board may investigate the petition and, if it determines that the petitioner has not established grounds that the previous board determination of the bargaining unit is inappropriate, the board may dismiss the petition. A petition for reconsideration of a board-established bargaining unit covering state employees may not be filed until after one year of the initial unit determination.

621—4.6(20) Amendment of unit.

4.6(1) *Petition.* A petition for amendment of a board determined bargaining unit may be filed by the public employer or the certified employee organization. The petition shall contain:

a. Name and address of the public employer and the employee organization.

b. An identification and description of the proposed amended unit.

c. The names and addresses of any other employee organizations which claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.

d. Job classifications of the employees as to whom the issue is raised and the number of employees, if any, in each classification.

e. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant facts.

4.6(2) *Procedure—decision.* Insofar as applicable, the rules set forth in 4.2(20) shall apply, except that the board may conduct an investigation and issue a decision and order without hearing.

4.6(3) *Elections; when required.* A question of representation exists, and the board will conduct a representation election, if the job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

621—4.7(20) Unit clarification. A petition to clarify the inclusion or exclusion of job classifications or employees in a board determined bargaining unit may be filed by the public employer, an affected public employee, or the certified employee organization. Such petition must be in the absence of a question of representation. Insofar as applicable, the procedures for such filing shall be as provided in subrules 4.6(1) and 4.6(2).

621—4.8(20) Amendment of certification.

4.8(1) A petition for the amendment of a certified employee organization's certification to reflect an act or occurrence affecting the organization, such as a name change or merger, must be accompanied by affidavit(s) establishing that:

a. The act or occurrence which the requested amendment would reflect was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process, and

b. Substantial continuity of representation has been maintained.

4.8(2) When a petition for amendment of certification is filed pursuant to this rule, the board shall mail copies of a public notice of proposed decision to the parties. The public employer shall post the notice of proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in conspicuous places customarily used for the posting of information to employees. The public employer shall also have copies of the proposed decision available for distribution to the public upon request.

a. Notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses and telephone numbers of the parties or their authorized representatives to whom inquiries by the public should be directed, and state the date by which written objection to the proposed decision must be filed with the board and the address to which the objections should be sent.

b. Objections to the proposed decision must be filed with the board by the date posted in the notice of proposed decision. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address and telephone number. The board shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised the board may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

c. Final board decision shall be reserved until expiration of the time for filing objections. If no objections have been filed, the board may endorse the proposed decision as final.

These rules are intended to implement Iowa Code chapter 20.

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CHAPTER 5
ELECTIONS

621—5.1(20) General procedures.

5.1(1) *Notice of election.* Upon direction of an election, notices of election, in a form provided by the board, shall be posted by the public employer in conspicuous places customarily used for the posting of information to employees. Such notices shall contain a sample ballot and shall set forth the date, time, place and purpose of the election, and such additional information as the board may deem appropriate.

5.1(2) *Eligibility—eligibility list.* Eligible voters are those employees who:

a. Were employed in the bargaining unit during the payroll period immediately preceding the direction of election unless another date is agreed upon by the parties and the board, and

b. Are employed in the bargaining unit on the date of the election. When the election is conducted in whole or in part by mail ballot or is conducted on more than one date, the date of the election shall be the date on which the ballots are to be counted. Where the board issues an order defining the appropriate bargaining unit and an election petition is pending, or in the case of a combined petition, the board shall further order the public employer to submit to the board within seven days an alphabetical list of the names, addresses and job classifications of the employees in the appropriate unit. Where such a list has previously been submitted to the board, it may be utilized under this rule; provided that additions or deletions of employees, changes in address or job classifications, or other changes shall be submitted to the board to reflect the current status of employees in the bargaining unit. The list required by this rule shall be provided by the board to all parties at least ten days prior to the date of the election and shall become the official voting list for any election conducted. The list may further be amended by agreement of the parties immediately prior to the election. In the case of a combined professional and nonprofessional unit, the public employer shall submit lists of employees in the professional category and employees in the nonprofessional category.

5.1(3) *Mail ballots.* The board may, in its discretion, conduct an election in whole or in part by mail ballot. In such cases, the board shall send by ordinary mail an official ballot and a postpaid return-addressed secret envelope to each eligible voter and direct a date by which voted ballots must be received by the board to be counted. The board shall also set a time and place for the counting of such ballots, at which time the parties to the election shall be entitled to be present and challenge for good cause the eligibility of any voter. Mail ballots sent to eligible voters shall consist of a ballot, a secret envelope in which said ballot is to be inserted, and an outer envelope for mailing said ballot and identification of voter for purposes of proposing challenges to the voter's eligibility. In the event of a challenge, both envelopes shall remain sealed until such time as the challenge is resolved. In the event of no challenge, the mailing envelope shall be opened and the envelope containing the secret ballot shall be deposited in the ballot box.

5.1(4) *Time for intervention.* No employee organization may be placed on any ballot unless application for intervention, as provided in 621—subrule 4.1(2), is received by the board within seven calendar days after the direction of an election. Submission of an adequate showing of interest, as provided in 621—subrule 4.3(2), must be received by the board within seven calendar days after the direction of the election, unless an extension of time, upon written request, is granted by the board.

5.1(5) *Withdrawal from ballot.* An employee organization may, upon its request, be removed from any ballot with the approval of the board.

621—5.2(20) Conduct of election.

5.2(1) *General procedure—ballots.* After consulting with the parties to an election the board shall determine the date, place, and other procedural aspects of conducting the election. Elections shall be conducted under the direction and supervision of the board or its election agent and shall be by secret ballot. Ballots shall be provided by the board and shall contain the question required by Iowa Code section 20.15. The question in an election where only one employee organization appears on the ballot shall ask, "Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?", followed by the choices "Yes" or "No"; the question in an election where more than one employee organization appears on the ballot shall state: "Do you wish to be represented for purposes of collective bargaining by:" and shall then list horizontally or vertically thereafter the choices available, including the name of each employee organization and the choice of "Neither" or "No Representative", as is applicable. In decertification elections, ballots shall be provided by the board and shall ask: "Do you desire that [name of certified employee organization] be decertified by the Public Employment Relations Board and cease to be your exclusive bargaining representative?", followed by the choices "Yes" or "No".

5.2(2) *Observers.* The parties to an election may each designate an equal number of representatives, not to exceed one per voting site, to act as its observers during the election and tally of ballots. Unless agreed to by the parties observers shall not be supervisory employees of the public employer.

5.2(3) *Ballot box.* Upon examination by the observers and prior to the opening of the polls, the election agent shall seal the ballot box so that entry thereto is limited to one slot. In the event that the election is continued for more than one polling period or at more than one polling place, the ballot box shall be sealed in its entirety and shall remain in the custody of the election agent until immediately prior to the next polling period or the counting of the ballots.

5.2(4) *Voting procedure—challenges.* An eligible voter shall cast the ballot by marking the voter's choice(s) on the ballot and depositing it in the ballot box. If a voter inadvertently spoils a ballot, the ballot may be returned to the agent, who shall void and retain it and deliver to the voter another ballot. When a voter is unable to mark the ballot due to physical disability or inability to read or write, the agent may privately assist the voter.

An authorized observer or the board's election agent may challenge for good cause the eligibility of any voter, provided such challenge is made prior to the time the voter casts the ballot. The challenged voter may mark the ballot in secret and the election agent shall segregate the ballot by causing it to be placed in the envelope with appropriate markings and deposited in the ballot box.

5.2(5) *Absentee ballot.* An absentee ballot shall be delivered to an eligible voter only upon the voter's written notice to the board of the voter's inability to be present at the election for good cause. The voted ballot must be in the possession of the election agent prior to the close of the manual election in order to be counted and shall be in the official envelope provided for this purpose. Challenges to the eligibility of absentee voters may be made at the time the ballots are commingled.

621—5.3(20) Election results—tally of ballots. At the close of the polls, or at time and place as the board may prescribe, the election agent shall open the ballot box and tabulate the results of the election. Void ballots shall be those which do not indicate the clear intent of the voter or which appear to identify the voter.

621—5.4(20) Postelection procedures.

5.4(1) *Certification of results.*

a. Upon completion of a valid representation certification election in which an employee organization received the votes of a majority of those employees voting, the board shall certify that employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid representation certification election in which only one employee organization appeared on the ballot and that employee organization did not receive the votes of a majority of those voting, the board shall serve notice of noncertification.

c. Upon completion of a valid election in which more than one employee organization appeared on the ballot and no choice on the ballot received the votes of a majority of those employees voting, the board shall conduct a runoff election between the two choices receiving the greatest number of votes. If the runoff election is held less than 30 days after the original election, those eligible to vote shall be those who were eligible to vote in the original election and are still employed in the bargaining unit on the day of the runoff election. If the runoff election is held more than 30 days after the original election, the board may direct the employer to submit a new eligibility list based upon a revised voter eligibility date.

d. Upon completion of a valid election, as provided for in paragraph *"c"* above, the board shall certify as the exclusive bargaining representative the employee organization receiving the votes of a majority of those employees voting; if no employee organization on the runoff ballot receives a majority of the votes of those employees voting, the board shall serve notice of noncertification.

e. If an employee organization fails to comply with the provisions of Iowa Code section 20.25 within 90 days of the completion of a valid election, the board shall serve notice of noncertification; provided, however, that extensions of time to comply may be granted by the board upon good cause shown.

f. Upon completion of a valid decertification election, in which a majority of employees voting cast their ballots in the affirmative, the board shall serve notice of decertification.

g. Upon completion of a valid decertification election, in which a majority of employees voting cast their ballots in the negative, or in the case of a tie, the board shall serve notice of continued certification.

5.4(2) *Challenged ballots; objections.* Whenever challenged ballots are determinative of the outcome of an election or timely objections are filed, a hearing shall be scheduled. Objections to an election must be filed within ten days of service of the tally of ballots on the parties, even when challenged ballots are determinative of the outcome of the election, and must contain a statement of facts upon which the objections are based. The objections shall be filed with the board and a copy shall be served upon each of the other parties to the election, with certificate of service endorsed upon the original filed with the board.

5.4(3) *Objectionable conduct during election campaigns.* The following types of activity, if conducted during the period beginning with the filing of an election petition with the board and ending at the conclusion of the election, and if determined by the board that such activity could have affected the results of the election, shall be considered to be objectionable conduct sufficient to invalidate the results of an election:

a. Electioneering within 300 feet or within sound of the polling place established by the board during the conduct of the election;

b. Misstatements of material facts by any party to the election or its representative without sufficient time for the adversely affected party to adequately respond;

c. Any misuse of board documents, including an indication that the board endorses any particular choice appearing on the ballot;

d. Campaign speeches to assembled groups of employees during working hours within the 24-hour period before the election;

e. Any polling of employees by a public employer which relates to the employees' preference for or against a bargaining representative;

f. Commission of a prohibited practice;

g. Any other misconduct or other circumstance which prevents employees from freely expressing their preferences in the election.

621—5.5(20) Bars to an election. Notwithstanding the filing or pendency of an election petition, the board shall conduct no representation election when one or more of the following conditions exist:

5.5(1) During the one-year period following the date of certification or noncertification subsequent to a valid representation election.

5.5(2) In any case where the board determines that substantial changes in the employer's operations are occurring which will imminently and substantially alter the structure or scope of the bargaining unit.

5.5(3) Whenever a collective bargaining agreement exists, provided such agreement is written and executed by the parties to it; that such agreement is between a public employer and a certified employee organization; that such agreement does not discriminate among groups of employees on the basis of age, race, sex, religion, national origin or physical disability, as provided by law; and provided further, that any such agreement which exists for a duration in excess of two years shall be deemed for the purposes of this section to be for a duration of two years only. This contract bar shall not apply to a representation election in an amendment of unit case.

621—5.6(20) Decertification elections. Petitions for decertification which are filed with the board not less than 180 nor more than 240 days prior to the expiration of an otherwise valid collective bargaining agreement shall be processed by the board notwithstanding the provisions of 5.5(3), and the board shall, pursuant to Iowa Code section 20.15, conduct an election not more than 180 nor less than 150 days prior to the expiration of the collective bargaining agreement.

621—5.7(20) Disclaimer. Notwithstanding the provisions of rule 5.6(20), the board will process a valid decertification petition accompanied by an adequate show of interest as required by subrule 4.3(2) at any time if the certified employee organization files a disclaimer of representation. A disclaimer of representation is a statement signed by an authorized representative of the certified employee organization, stating that the employee organization wishes to disclaim representation of the employees in the certified bargaining unit.

a. Upon receipt of a disclaimer and a valid petition for decertification, the board shall serve copies of the disclaimer and petition upon the employer by certified mail. The board shall prepare a public notice of proposed decision that the employee organization will be decertified and cease to be the certified representative of the employees in the bargaining unit. The public employer shall post the notice of the proposed decertification for a period of not less than one calendar week in a prominent place in the main office of the public employer accessible to the general public and in conspicuous places customarily used for the posting of information to employees. The public employer shall also have copies of the proposed decertification available for distribution to the public upon request.

b. Notice of the proposed decertification shall be on a form provided by the board which shall identify the parties; specify that the employee organization seeks to disclaim representation; specify the unit currently represented by the employee organization; list the names, addresses, and telephone numbers of the parties or their authorized representatives to whom inquiries by the public should be directed; and state the date by which written objections to the proposed decertification must be filed with the board and the address to which the objections should be sent.

c. Objections to the proposed decertification must be filed with the board by the date posted in the notice. Objections shall be in writing and shall set out the specific grounds for objection. The objecting party must be identified and provide a mailing address and telephone number. The board shall promptly advise the parties of the objections. If the objections cannot be informally resolved, they shall be resolved at hearing or the board may direct and conduct a decertification election pursuant to rule 5.6(20).

d. If no objections have been filed, or if filed and the board has determined that the objections lack substance, the board shall order the decertification of the employee organization for the unit specified. If the employee organization is decertified pursuant to this rule, no representation election involving the same employee organization and the same unit may be conducted for a period of one year from the date of decertification.

621—5.8(20) Destruction of ballots. In the absence of litigation over the validity or outcome of an election and after a period of 60 days has elapsed from the date of the certification, decertification, or noncertification of an employee organization pursuant to a certification or decertification election, the board may destroy the ballots involved in such election.

These rules are intended to implement Iowa Code chapter 20. [Rules 5.2(20) and 5.4(20) implement Iowa Code section 20.15.]

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CHAPTER 6
NEGOTIATIONS AND NEGOTIABILITY DISPUTES

621—6.1(20) Scope of negotiations. The scope of negotiations shall be as provided in section nine of the Act. Either party may introduce other matters for negotiation, and negotiation on these matters may continue until resolved by mutual agreement of the parties or until negotiations reach the fact-finding or arbitration stage of impasse; provided, however, that no party may be required to negotiate on nonmandatory subjects of bargaining. Unresolved other matters shall be excluded from the fact-finding or arbitration processes unless submission has been mutually agreed upon by the parties. The agreement is applicable only to negotiations toward the collective bargaining agreement then sought and is not binding upon the parties for future negotiations.

621—6.2(20) Consolidated negotiations. Nothing in these rules shall prohibit, by agreement of the parties, more than one certified bargaining representative from bargaining jointly with a common public employer, or more than one public employer from bargaining jointly with a common certified bargaining representative, or any other combination thereof.

621—6.3(20) Negotiability disputes.

6.3(1) *Defined. "Negotiability dispute"* is a dispute arising in good faith during the course of collective bargaining as to whether a proposal is subject to collective bargaining under the Act.

6.3(2) *Expedited resolution.* In the event that a negotiability dispute arises between the employer and the certified employee organization, either party may petition the board for expedited resolution of the dispute. The petition shall set forth the material facts of the dispute, the precise question of negotiability submitted for resolution, and certificate of service upon the other party. The parties shall present evidence on all issues to the fact finder or arbitrator, including the issue which is the subject of the negotiability dispute. A negotiability dispute raised at the fact-finding hearing shall be upon written objection to the submission of the proposal to the fact finder or arbitrator. The objection shall request the fact finder or arbitrator to seek a negotiability ruling from the board regarding the proposal or state that the objecting party will file a petition for resolution of the dispute with the board. In the event a negotiability dispute arises at the arbitration stage of impasse procedures, either party may petition the board for expedited resolution, which petition shall be filed within seven days of the submission of final offers. Arbitrators and fact finders shall rule on all issues submitted to them including the issue which is the subject of the negotiability dispute unless explicitly stayed by the board. Arbitration awards and fact finder's recommendations issued prior to the final determination of the negotiability dispute will be contingent upon that determination.

6.3(3) *Decisions.* The petition filed pursuant to subrule 6.3(2) shall be given priority by the board. If deemed necessary by the board, the petition may be set for hearing or argument.

621—6.4(20) Acceptance of proposed agreement. Where the parties have reached a proposed (or "tentative") collective bargaining agreement, the terms of that agreement shall be made public, and the employee organization shall give reasonable notice of the date, time and place of a ratification election on the tentative agreement to the public employees; provided, however, that such notice shall be at least 24 hours prior to the election and the election shall be within seven days of the date of the tentative agreement. The vote shall be by secret ballot and only members of the employee organization shall be entitled to vote; provided, however, that the employee organization may, pursuant to its internal procedures, extend voting rights to nonmember bargaining unit employees. The employee organization shall within 24 hours notify the public employer whether the proposed agreement has been ratified.

The public employer shall, within ten days of the tentative agreement, likewise meet to accept or reject the agreement, and shall within 24 hours serve notice on the employee organization of its acceptance or rejection of the proposed agreement; provided, however, that the public employer shall not be required to either accept or reject the tentative agreement if it has been rejected by the employee organization.

The above time limits may be modified by a written mutual agreement between the public employer and the employee organization.

The above time limits shall not apply to proposed agreements between the state and any bargaining unit of state employees.

621—6.5(20) Negotiations report—filing of agreement. Not later than 60 days after conclusion of an agreement, the public employer shall submit to the board a report of negotiations procedures on a form provided by the board and shall attach two copies of the agreement.

These rules are intended to implement Iowa Code chapter 20.

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CHAPTER 7
IMPASSE PROCEDURES

621—7.1(20) General. Except as provided in the second paragraph of subrule 7.5(6), the rules set forth in this chapter are applicable only in the absence of an impasse agreement between the parties or the failure of either to utilize its procedures. Nothing in these rules shall be deemed to prohibit the parties, by mutual agreement, from proceeding directly to binding arbitration at any time after impasse.

621—7.2(20) Fees of neutrals. Transferred to 621—1.8(20,279), IAB 11/14/90, effective 12/19/90.

621—7.3(20) Mediation.

7.3(1) *Request for mediation.* Either party to an impasse may request the board in writing to appoint a mediator to the impasse.

An original and one copy of the request for mediation shall be filed with the board and shall, in addition to the request for mediation, contain:

a. The name, address, and telephone number of the requesting party, and the name, address, business and residential telephone numbers of its bargaining representative or chairperson of its bargaining team.

b. The name, address, and telephone number of the opposing party to the impasse, and the name, address, business and residential telephone numbers of its bargaining representative or chairperson of its bargaining team.

c. A description of the collective bargaining unit or units involved and the approximate number of employees in each unit.

d. A concise and specific listing of the negotiated items upon which the parties have reached impasse.

7.3(2) *Date, signature and notice.* The request for mediation shall be dated and signed by an authorized representative of the requesting party. The requesting party shall also serve a copy of the request upon other parties to the negotiations either by personal delivery or by ordinary mail.

7.3(3) *Appointment of mediator.* Upon receipt of a request for mediation, the board may appoint an impartial and disinterested person as mediator of the dispute and notify all parties of the appointment of the mediator. The board shall determine the effective date of this appointment.

7.3(4) *Confidential nature of mediation.* Any information, either written or oral, disclosed by the parties to the mediator in the performance of mediation duties shall not be discussed by the mediator voluntarily or by compulsion unless approved by the parties involved.

The mediator shall not disclose any information with regard to any mediation conducted on behalf of any party to any cause pending in a proceeding before a court, board, investigatory body, arbitrator or fact finder without the written consent of the public employment relations board. Without such written consent, the mediator shall respectfully decline, by reason of this rule, to divulge any information disclosed by a party in the performance of the mediator's duties.

7.3(5) *Mediation proceedings.* The mediator may hold separate or joint meetings with the parties or their representatives, and those meetings shall not be public. Mediation meetings shall be conducted at a time and place designated by the mediator. If an impasse exists ten days after the effective date of the appointment of a mediator, the mediator shall so notify the board.

7.3(6) *Board mediator.* When the mediator is an employee of the Public Employment Relations Board, that mediator shall not participate in any contested case arising out of any transaction or occurrence relating to those mediation activities.

7.3(7) *Costs of mediation.* The mediator shall submit in writing to the board a list of fees and expenses.

621—7.4(20) Fact-finding.

7.4(1) *Appointment of fact finder.* Upon notification by the mediator that the dispute remains unresolved, or if the dispute remains unresolved ten days after the effective date of the appointment of the mediator, the board shall appoint a fact finder, except in disputes where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 260 and the public employer is a school district, community college, or area education agency. Where the parties and the mediator agree, the board shall appoint the mediator to serve as fact finder. The board may permit the parties to select their fact finder from a list of qualified neutrals maintained by the board. The board retains the authority to appoint a fact finder as provided in Iowa Code section 20.21.

7.4(2) *Powers of the fact finder.* The fact finder shall have the power to conduct a hearing, administer oaths and request the board to issue subpoenas. The subject of fact-finding shall be the impasse items unresolved by mediation. By mutual agreement, the fact finder may also assist the parties in negotiating a settlement.

7.4(3) *Notice of hearing and exchange of proposal.* The appointment of the fact finder shall be effective the date of the commencement of the fact-finding hearing. The board or fact finder shall establish the time, place and date of hearing and shall notify the parties of the same. The parties shall exchange copies of all proposals to be presented to the fact finder at least five days prior to the commencement of the fact-finding hearing; provided, however, that the parties may continue to bargain and nothing in this section shall preclude a party from making a concession or amending its proposals in the course of further bargaining. No party shall present a proposal to the fact finder which has not been offered to the other party in the course of negotiations.

7.4(4) *Briefs and statements.* The fact finder may require the parties to submit a brief or a statement on the unresolved impasse items.

7.4(5) *Hearing.* A fact-finding hearing shall be open to the public and shall be limited to matters which will enable the fact finder to make recommendations for settlement of the dispute.

7.4(6) *Report of the fact finder.* Within 15 days of appointment, the fact finder shall issue to the parties a "Report of Fact Finder" consisting of specific findings of fact concerning each impasse item, and separate therefrom, specific recommendations for resolution of each impasse item. In addition, the report shall recite the impasse items resolved by the parties during fact-finding and withdrawn from further impasse procedures. The report shall also identify the parties and their representatives and recite the time, date, place and duration of hearing sessions. The fact finder shall serve a copy of the report to the parties and file the original with the board.

7.4(7) *Action on fact finder's report.* Upon receipt of the fact finder's report, the public employer and the certified employee organization shall immediately accept the fact finder's recommendations or shall within five days submit the fact finder's recommendations to the governing body and members of the certified employee organization for acceptance or rejection. "Immediately" shall mean a period of not longer than 72 hours from said receipt. Notice to members of the employee organization shall be as provided in 621—subrule 6.4(20).

7.4(8) *Publication of report by board.* If the public employer and the employee organization fail to conclude a collective bargaining agreement ten days after their receipt of the fact finder's report and recommendations, the board shall make the fact finder's report and recommendations available to the public.

7.4(9) *Cost of fact-finding.* The fact finder shall submit to the parties a written statement of fee and expenses with a copy sent to the board. The parties shall share the costs of fact-finding equally.

621—7.5(20) Binding arbitration.

7.5(1) *Request for arbitration.* At any time following the making public by the board of the fact finder's report and recommendations, either party to an impasse may request the board to arrange for binding arbitration. In disputes unresolved after mediation where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 260 and the public employer is a school district, community college, or area education association, such request may be made not less than ten days after the effective date of the appointment of the mediator but must be made not later than April 16 of the year when the resulting collective bargaining agreement is to become effective.

7.5(2) *Form and contents of request.* The request for arbitration shall be in writing and shall include the name, address and signature of the requesting party and the capacity in which acting.

7.5(3) *Service of request.* The requesting party shall serve a copy of the request for arbitration upon the opposing party by ordinary mail.

7.5(4) *Preliminary information.* Within four days of the filing of the request with the board for arbitration, each party shall submit to the board the following information:

a. Final offers shall not be amended. A party shall not submit an offer for arbitration which has not been offered to the other party in the course of negotiations.

b. Two copies of the final offer of the party on each impasse item.

c. Two copies of the agreed upon provisions of the proposed collective bargaining agreement.

d. The name of the parties' selected arbitrator, or name of a single arbitrator where the parties agree to submit the dispute to a single arbitrator.

e. Certificate of service upon the opposing party of items *"b"* and *"d"* above.

7.5(5) *Selection of chairperson.* Within eight days of the filing of the request for arbitration, the arbitrators selected by each party shall attempt to agree upon the selection of a third person to act as chairperson of the arbitration panel. If the parties to the impasse fail to agree upon an arbitration chairperson within the time allotted under this rule, the board shall submit a list of three persons who have agreed to act as arbitration chairperson to the parties. The parties shall then select the arbitration chairperson from the list as provided by the Act.

7.5(6) *Date and conduct of hearings.* Impasse items are deemed submitted to binding arbitration on the date of the commencement of the arbitration hearing, regardless of its duration. In disputes where the public employer is a community college, or where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 260 and the public employer is a school district or area education agency, the submission of impasse items to binding arbitration shall occur not later than May 13 of the year when the resulting collective bargaining agreement is to become effective.

Arbitration hearings shall be open to the public and shall be recorded either by mechanized means or by a certified shorthand reporter. The arbitration hearing shall be limited to those factors listed in Iowa Code section 20.22 and such other relevant factors as may enable the arbitrator or arbitration panel to select the fact finder's recommendation (if fact-finding has taken place) or the final offer of either party for each impasse item. Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider the factors listed in section 20.22.

7.5(7) *Continued bargaining.* The parties may continue to bargain on the impasse items before the arbitrator or arbitration panel until the arbitrator or arbitration panel announces its decision. Should the parties reach agreement on an impasse item, they shall immediately report their agreement to the arbitrator or arbitration panel. The arbitrator or arbitration panel shall add the agreed upon term to the collective bargaining contract and shall no longer consider the final offers of the parties or the fact finder's recommendation on that impasse item.

7.5(8) *Report of the arbitrator or arbitration panel.* Within 15 days after its first meeting (unless such time period is waived by the parties), the arbitrator or arbitration panel shall issue the award and serve each party and the board with a copy by ordinary mail. In reaching the panel decision, the chairperson may communicate telephonically, by mail, or may meet individually or collectively with the other panel members.

7.5(9) *Dismissal of arbitrator or arbitration panel.* In the event of a failure of the arbitrator or arbitration panel to issue the award within 15 days of the first meeting, the arbitrator or chairperson of the arbitration panel shall notify the board and the parties of this failure. Either party may thereafter request a new arbitrator or arbitration panel. Unless the parties agree otherwise, the procedures in subrules 7.5(1) to 7.5(5) shall apply; provided, however, that the parties may submit new final offers and nominate different arbitrators. No arbitrator or arbitration panel shall issue a partial award except by mutual consent of the parties.

7.5(10) *Costs of arbitration.* The arbitrator shall submit to the parties a written statement of fees and expenses with a copy sent to the board. The parties shall share the costs of arbitration equally.

621—7.6(20) Impasse procedures after completion deadline.

7.6(1) *Objections.* Any objection by a party to the conduct of fact-finding or arbitration proceedings which will not be completed by the applicable deadline for completion of impasse procedures shall be filed with the board and served upon the other party. Such filing and service shall take place no later than 20 days prior to the applicable deadline for completion of impasse procedures, 10 days after the effective date of the appointment of the mediator, or 10 days after the filing with the board of a request for arbitration, whichever occurs later. For purposes of this rule, a request for arbitration which is filed prior to the applicable filing period specified in subrule 7.5(1) shall be deemed filed on the first day of that filing period. Failure to file an objection in a timely manner may constitute waiver of such objection, in which case the applicable deadline for completion of impasse procedures shall not apply.

7.6(2) *Response to objection.* The nonobjecting party may, within 10 days following the filing of an objection with the board, file a response asserting that, because of deliberate delay on the part of the objecting party, or unavoidable casualty, misfortune or other events beyond the parties' control, impasse procedures should continue beyond the applicable deadline. A response may additionally or alternatively assert that the deadline relied upon by the objecting party is inapplicable for reasons set forth in the response, or may assert other reasons why impasse procedures should not be terminated. If a response is not filed within the time allowed by this subrule, the board may issue an order terminating further impasse procedures.

7.6(3) *Procedure.* Filing of an objection before the applicable deadline for completion of impasse procedures shall not affect the obligation of each party to continue the impasse procedures. Further, the board may postpone hearing on the objection if it determines that a fact finder's recommendation or arbitration award may be rendered on or before the applicable deadline; in making that determination, the board will attempt to expedite any remaining impasse proceedings, but no party shall be required to waive or shorten any mandatory statutory time periods which apply to that party.

7.6(4) *Hearings.* Insofar as is applicable, hearings on a party's objection shall be conducted pursuant to 621—Chapter 2. The nonobjecting party shall proceed first and shall have the burden to show that fact-finding or arbitration should not be terminated. The board shall then issue a final order that further impasse procedures should be either terminated or completed.

621—7.7(20) Impasse procedures for state employees.

7.7(1) *Procedures.* Statutory procedures in Iowa Code sections 20.20 to 20.22, and independent impasse procedures negotiated by the parties must provide that the impasse be submitted to binding arbitration and the arbitration hearing concluded no later than February 28, and that any arbitrator's award will be issued on or before March 15. This rule does not preclude the parties from mutually agreeing to a date other than February 28, but the agreement must result in an arbitration award on or before March 15.

7.7(2) *Independent procedures.* Independent impasse procedures negotiated by the parties must provide that the impasse will be submitted to binding arbitration, and any hearing thereon concluded no later than February 28, and that any arbitrator's award will be issued on or before March 15.

7.7(3) *Statutory procedures.* In the absence of independent procedures, the procedures in sections 20.20 to 20.22 and rules 7.1(20) to 7.5(20) shall apply, except that a single party request for mediation must be filed no later than December 14 and the appointment of a fact finder by the board will be made by December 24, effective the date of hearing, which shall be no later than January 10. A request for binding arbitration must be filed by February 1, and any impasse must be submitted to the arbitrator(s), and hearing concluded no later than February 28.

7.7(4) *New certifications.* Statutory impasse procedures under these rules shall not be available if the employee organization has been certified later than December 1. This rule does not preclude the parties from negotiating independent impasse procedures if an employee organization is certified after December 1 and the procedures will result in an arbitration award on or before March 15.

7.7(5) *Negotiability disputes.* Disputes concerning the negotiability of any subject of bargaining shall be submitted to the board for determination pursuant to 621—6.3(20) no later than March 1. An arbitration award rendered prior to final determination of the negotiability dispute will be made conditional upon such determination. Notwithstanding the provisions of 621—2.19(20), no stay of impasse procedures will be granted during the pendency of any negotiability dispute, petition for declaratory order, or prohibited practice complaint.

This rule is intended to implement Iowa Code section 20.17.

These rules are intended to implement Iowa Code chapter 20.

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*Effective date of 7.2 delayed by the Administrative Rules Review Committee 45 days after convening of the next General Assembly pursuant to §17A.8(9).

CHAPTER 10
DECLARATORY ORDERS

621—10.1(17A,20) Who may petition. Any person, public employer or employee organization may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency.

621—10.2(20) Contents of petition. A petition for a declaratory order must include:

10.2(1) The name, address and telephone number of the petitioner.

10.2(2) A clear and concise statement of the specific facts upon which the board is to base the declaratory order.

10.2(3) A citation to and the relevant language of the specific statute, rule or order whose applicability is questioned, and any other relevant law.

10.2(4) The specific questions which the petitioner wants answered, stated clearly and concisely.

10.2(5) The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

10.2(6) The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

10.2(7) 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.

10.2(8) The names and addresses of other persons or entities, or a description of any class of persons or entities known by petitioner to be affected by or interested in the questions presented in the petition.

10.2(9) A certificate of service of the petition upon any persons or entities required to be served with a copy by rule 10.7(17A,20).

621—10.3(17A,20) Caption. The following caption is suggested for petitions for declaratory orders:

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:		CASE NO.
(NAME OF THE PARTY REQUESTING THE RULING), PETITIONER.	}	PETITION FOR DECLARATORY ORDER

621—10.4(17A,20) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 10.7(17A,20) to whom notice is required by any provision of law. The board may also give notice to any other persons or entities.

621—10.5(17A,20) Intervention.

10.5(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention which complies with subrule 10.5(3) within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in the proceeding.

10.5(2) Any person who files a petition for intervention which complies with subrule 10.5(3) at any time prior to the issuance of the agency's final order in the matter may be allowed to intervene in the proceeding at the discretion of the board.

10.5(3) A petition for intervention in a declaratory order proceeding must include:

a. The name, address and telephone number of the person seeking intervention.

b. A clear and concise statement of the facts supporting the intervenor's standing and qualifications for intervention.

c. A citation to and the relevant language of any additional statutes, rules or orders and any other additional, relevant law not specified in the petition for declaratory order.

d. The answers to the questions presented in the petition for declaratory order desired by the intervenor and a summary of the reasons urged by the intervenor in support of those answers.

e. The reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

f. 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.

g. The names and addresses of other persons or entities, or a description of any class of persons or entities known by intervenor to be affected by or interested in the questions presented.

621—10.6(17A,20) Briefs. The petitioner or any intervenor may file a brief in support of the position urged by that party. The board may request a brief from the petitioner, any intervenor or any other person or entity concerning the questions raised.

621—10.7(17A,20) Service of petitions and other papers. Every petition for declaratory order, petition for intervention, brief or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding and on all other persons or entities identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing with the board. The party filing a document is responsible for service on all parties and other affected or interested persons.

621—10.8(17A,20) Action on petition. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the board or its designee shall take action on the petition as required by that section.

621—10.9(17A,20) Refusal to issue order.

10.9(1) The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with rule 10.2(20).

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the board's failure to issue a declaratory order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule-making, contested case or other agency or judicial proceeding that may definitively resolve them.

e. 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.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory order.

g. There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.

h. 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 an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties or responsibilities of persons or entities 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 the petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

10.9(2) A refusal to issue a declaratory order shall indicate the ground or grounds for the refusal and constitutes final agency action on the petition.

10.9(3) Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to eliminate the grounds for the prior refusal.

621—10.10(17A,20) Copies of orders. A copy of all orders issued in response to a petition for declaratory order or petition for intervention shall be promptly mailed to the petitioner and all intervenors.

These rules are intended to implement Iowa Code section 17A.9 and chapter 20.

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CHAPTER 11
STATE EMPLOYEE APPEALS OF GRIEVANCE DECISIONS AND DISCIPLINARY ACTIONS

621—11.1(19A,20) Notice of appeal rights. Whenever the director of the Iowa department of personnel (hereinafter referred to as the director) issues a response to an employee on a matter appealable to the public employment relations board (hereinafter referred to as the board) pursuant to Iowa Code section 19A.14 as amended by 1988 Iowa Acts, House File 2399, section 1, in which the director does not grant the relief sought by the employee, the director shall also provide notice to the affected employee of appeal procedures and time limitations governing the appeal.

621—11.2(19A,20) Filing of appeal.

11.2(1) Appeals shall be filed with the board on the State Employee Grievance and Disciplinary Action Appeal Form.

11.2(2) Grievances. An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who is not satisfied with the director's response to the employee's grievance may file an appeal with the board if the grievance alleged either a violation of Iowa Code chapter 19A or the rules of the department of personnel. Such appeal must be filed within 30 calendar days following the date the director's response was issued or should have been issued.

11.2(3) Disciplinary appeals. A nonprobationary merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise reduced in pay, and appeals the action to the director and is not satisfied with the director's response, may file an appeal with the board. Such appeal must be filed within 30 calendar days following the date the director's response was issued or should have been issued.

11.2(4) The board shall serve copies of the appeal upon the director by ordinary mail.

621—11.3(19A,20) Content of the appeal.

11.3(1) The appeal shall contain the following:

1. Name and social security number of the appealing employee;
2. Name of agency/department by which the appealing employee is/was employed;
3. A request for hearing, if desired;
4. A statement of the reasons supporting the appealing employee's dissatisfaction with the director's response;
5. A statement of the desired relief;
6. The name of the appealing employee's representative, if any;
7. Copies of all relevant documents;
8. Signature of the appealing employee;
9. Copy of the director's response to the employee;
10. A statement of the Iowa Code chapter 19A provision and department of personnel rule(s) which has allegedly been violated. (Note: This statement is required only for appeals of grievance decisions, not appeals of disciplinary actions.)

11.3(2) Completion of the State Employee Grievance and Disciplinary Action Appeal Form shall constitute compliance with all subrule 11.3(1) requirements.

621—11.4(19A,20) Content of director's answer to the appeal.

11.4(1) The director shall have 15 days from the date of receipt of notice of the employee's appeal in which to file an answer with the board.

11.4(2) The answer shall contain the following:

1. The names of the appealing employee and the employing agency/department;
2. A statement of the director's findings concerning the grievance or disciplinary action which forms the basis of the appeal. This statement must be complete and concise, and shall include the reasons supporting the director's response to the appealing employee;
3. A specific reply admitting, denying, or explaining each allegation contained in the appealing employee's appeal;
4. All relevant documents contained in the director's record of the proceeding;
5. Designation of and signature by the director or the director's designee.

11.4(3) The parties shall serve on each other one copy of all pleadings filed with the board other than the employee's appeal. Service shall be made according to board rule 2.15(20).

621—11.5(19A,20) Right to a hearing.

11.5(1) The appealing employee has a right to an evidentiary hearing closed to the public unless a public hearing is requested by the employee. If the employee chooses to have a hearing, the board shall appoint an administrative law judge to adjudicate the matter. The administrative law judge shall set the time, date, and place of the hearing. The hearing shall be conducted in accordance with Chapter 2 of the board's rules, and shall be limited to the facts and issues contained in the employee's appeal and the director's answer.

11.5(2) Alternatively, the appealing employee may choose to have the administrative law judge determination based upon the record consisting of all the pleadings and documents filed with the board, without a hearing. If the employee chooses to have a decision based upon the record, the following procedure shall apply:

1. The employee shall submit the State Employee Grievance and Disciplinary Action Appeal Form to the board pursuant to subrule 11.3(1);
2. The director shall be notified and shall answer within 15 days as required in subrule 11.4(1);
3. The employee shall have 10 days following receipt of the director's answer to reply. The record shall then be closed and the hearing officer shall issue the decision based upon the record.

621—11.6(19A,20) Witnesses. Every state agency shall make its employees available to furnish sworn statements or to appear as witnesses at the hearing. When providing statements or testimony, witnesses shall be on official duty status.

621—11.7(19A,20) Finality of decision. The administrative law judge's proposed decision shall become final unless a timely petition for review is filed with the board or the board, on its own motion, determines to review the proposed decision.

621—11.8(19A,20) Review by board.

11.8(1) A petition for the board's review of an administrative law judge's proposed decision shall be filed with the board within 20 days of the filing of the proposed decision. The petitioning party shall serve a copy of the petition for review upon all parties or their attorney(s) of record by personal delivery or by ordinary mail.

11.8(2) Should the board determine to review a proposed decision on its own motion, the board shall provide all parties or their attorney(s) of record with written notice of such determination by personal delivery or by ordinary mail.

11.8(3) Where a petition for review is filed or the board determines to review a proposed decision on its own motion, the board may also, at its own discretion:

1. Require the filing of briefs,
2. Hear oral arguments, or
3. Take any other action necessary for final disposition of the case.

621—11.9(19A,20) Other rules. Any matters not specifically addressed by the rules contained in this chapter shall be governed by the general provisions of the rules of the public employment relations board.

621—11.10(19A,20) Applicability. This chapter shall apply to appeals filed with the board on or after July 1, 1988. Appeals filed prior to that date shall be governed by the board's prior rules governing "Merit Appeals," 621—11.1(20) through 621—11.9(20), filed October 15, 1986, and effective December 10, 1986.

These rules are intended to implement Iowa Code chapters 19A and 20.

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[Filed 1/22/97, Notice 12/18/96—published 2/12/97, effective 3/18/97]

CHAPTER 12
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The public employment relations board adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules on Agency Procedure relating to public records and fair information practices which is printed in the first volume of the Iowa Administrative Code.

621—12.1(20,22) Definitions. As used in this chapter:

"Agency" in these rules means the public employment relations board.

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

621—12.3(20,22) Requests for access to records.

12.3(1) *Location of records.* In lieu of the words "(insert agency head)", insert the words "Chairperson, Public Employment Relations Board, 514 East Locust Street, Suite 202, Des Moines, Iowa 50309". The second and third sentences of subrule 12.3(1) are not adopted.

12.3(2) *Office hours.* In lieu of the words "all customary office hours, which are (insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert the words "the agency's customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays".

12.3(7) *Fees.*

c. Supervisory fee. Delete the words "when the supervision time required is in excess of (specify time period)" and the words "(An agency wishing to deal with search fees authorized by law should do so here.)"

621—12.6(20,22) Procedure by which additions, dissents or objections may be entered into certain records. In lieu of the words "custodian or to (designate office)", insert the words "chairperson of the agency".

621—12.9(20,22) Disclosures without the consent of the subject.

12.9(1) Open records are routinely disclosed without the consent of the subject.

12.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. The following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 621—12.1(20,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and identifying the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual, if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.
f. Disclosures in the course of employee disciplinary proceedings.
g. In response to a court order or subpoena.

621—12.10(20,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of all agency records:

12.10(1) Disclosure to those officers, employees and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

12.10(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

12.10(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

12.10(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

12.10(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

12.10(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

621—12.11(20,22) Consensual disclosure of confidential records.

12.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 621—12.7(20,22).

12.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

621—12.12(20,22) Release to subject.

12.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 621—12.6(20,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

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

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (see Iowa Code section 22.7(5))

d. As otherwise authorized by law.

12.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

621—12.13(20,22) Availability of records.

12.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

12.13(2) *Confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 621—12.4(20,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 12.4(3).

12.13(3) *Chart.** This subrule lists the agency's records in chart form and provides in:

a. Column one, a description of the nature and content of the record or record system.

b. Column two, whether the record or record systems are open for public inspection, confidential, or are partly open and partly confidential.

c. Column three, the legal basis for asserting a record or record system is confidential in whole or in part.

d. Column four, whether the record or records can be accessed by a personal identifier.

e. Column five, a description of the nature and extent of personal information that can be found in the record or record system, if any.

f. Column six, the legal authority, where appropriate, relied upon by the agency for collection of personally identifiable information.

g. Column seven, the method of storage of the record or record system.

621—12.14(20,22) Data processing systems. None of the data processing systems used by the agency permit the electronic or mechanical comparison of personally identifiable information in one record system with personally identifiable information in another record system.

621—12.15(20,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

*See chart following rule 621—12.15(20,22).

Key: O = Open
C = Confidential Records (may or shall be withheld from public inspection)

O/C = Partly Open, Partly Confidential
N/A = Not Applicable

Y = Yes
N = No

P = Paper Medium or microfilm
C = Data Processing medium

Note: All numerical citations are to the Iowa Code unless otherwise shown

Nature & Description of Record	Type of Record	Confidentiality Authority	Access by Personal Identifier?	Contains Personal Info?	Personally Identifiable Collection Authority	How Stored?
I. Complaint Case Files A complaint that any person, organization or public employer has violated the Public Employment Relations Act (Act) may be filed by any person, employee organization or public employer. These files contain information which pertains to the alleged violation of the Act, its investigation and resolution, and appeals within the agency. During the investigatory/ mediation stage the file may contain mediator notes which are confidential.	O/C	22.7(20). 20.1(4), 20.6(5), IAC 621—subrule 7.3(4).	Y/N Y - only if complainant or respondent is an individual.	Y - names, address and telephone number of individuals. May also include transcript testimony and exhibits containing personal information.	20.1(2), 20.6(4), 20.11. IAC 621—8.6(20).	P
II. Bargaining unit, representation, decertification, unit reconsideration, amendment of unit, unit clarification, revocation of certification and amendment of certification case files. These documents are the record of the agency establishment of appropriate bargaining units, conduct of secret ballot elections and monitoring of the merger, affiliation and disaffiliation of certified labor organizations. These files may contain mediator notes which are confidential. Representation and decertification files contain a "show of interest" in which public employees indicate by an original signature whether they wish to be represented by or decertify a certified labor organization. "Show of interest" records are confidential.	O/C	22.7(20). 20.1(4), 20.6(5), IAC 621—subrule 7.3(4). IAC 621—subrule 4.3(3).	Y/N - only if petitioner is an individual.	Y - names, address and telephone number of individuals. May also include transcript testimony and exhibits containing personal information.	20.1(1), 20.13-15, 20.6(4).	P

III. Negotiability Dispute Case Files A petition for an expedited ruling on a negotiability dispute may be filed by a public employer or certified employee organization requesting the agency to determine whether a specific contract proposal is a mandatory, permissive, or illegal subject of bargaining under Section 9 of the Public Employment Relations Act. Such files contain documents concerning the agency's determination of that question.	O	N/A	N	Y - names, addresses, and telephone numbers of the parties' representatives.	20.6(4)	P
IV. Declaratory Order Case Files Any person, public employer or employee organization may petition the agency to issue a declaratory order as to the applicability of a statute, rule or order within the primary jurisdiction of the agency. Such files contain documents concerning the proceedings, including the agency's determination.	O	N/A	Y/N Y - only if petitioner is an individual.	Y - names, addresses and telephone numbers of individuals.	20.6(4)	P
V. Contract Negotiation Impasse Case Files As the first step in the performance of their duty to bargain, the public employer and the certified employee organization shall agree upon impasse procedures to assist the parties in concluding a collective bargaining agreement. These files contain the request for impasse services, relevant correspondence and mediator notes which are confidential.	O/C	22.7(20). 20.1(4), 20.6(5). IAC 621—7.3(4).	N	Y - names, addresses and telephone numbers of individuals or parties' representatives.	20.1(4), 20.19, 20.20-22	P/C
VI. Neutral Files The agency maintains biographical data on qualified mediators, fact-finders and interest arbitrators to assist in resolving contract disputes. The agency also maintains a list of qualified grievance arbitrators to issue decisions concerning grievances arising under a labor agreement and a list of teacher termination adjudicators selected pursuant to Chapter 179, The Code.	O	N/A	Y	Y - names, addresses, telephone numbers and biographical data of neutrals.	20.1(4), 20.6(3), 20.20-22	P/C

VII. Employee Organization Files The Public Employment Relations Act requires each certified employee organization to file certain information with the agency. These files contain an employee organization's constitution and bylaws, annual financial report and audit, and order of certification and amendments thereto, if any.	O	N/A	N	Y - names, addresses and telephone numbers of relevant employee organization officers and representatives.	20.25	P
VIII. State Employee Appeals of Grievance Decisions and Disciplinary Action Case Files Certain state employees have the statutory right to appeal to the agency from a response from the director to the Iowa Department of Personnel regarding the employee's grievance, discharge, suspension or demotion.	O/C	22.7(11). 19A.15.	Y	Y - names, addresses and telephone numbers of individuals. May also include transcript testimony and exhibits containing personal information.	20.1(3) 19A.14(1)(2)	P
IX. Index and Digest of Grievance Arbitration Decisions The agency maintains as a part of its Information Service a digest and subject matter index of decisions issued by grievance arbitrators. This information is located at the agency office, community college libraries, the Drake University and University of Iowa law libraries and the University of Iowa business school library.	O	N/A	Y/N Y - only if grievant is identified in the title of the arbitration decision.	Y - names, addresses and telephone numbers of individuals. May also include transcript testimony and exhibits containing personal information.	20.1(3)	P
X. Wage and Benefit Contract Summaries The Public Employment Relations Act requires the agency to collect and disseminate information concerning the wages, hours and other conditions of employment of public employees. This information, which is identified by employer/certified employee organization, is part of the agency's Information Service located at the agency office, community college libraries, Drake University and University of Iowa law libraries and the University of Iowa business school library.	O	N/A	N	N	20.1(5)	P

XI. Agency Personnel Files The agency maintains files containing information regarding employees, their families and dependents, and applicants for positions with the agency, some of which is confidential.	O/C	22.7(11)	Y/N Y - only for current employees.	Y - names, addresses and telephone numbers of individuals, payroll records, biographical information, medical information, performance reviews and evaluations, disciplinary information, information required for tax withholding and other information concerning the agency/employee relationship.	20.5(1), 20.5(4).	P
XII. Litigation Files These files contain information regarding litigation or anticipated litigation involving the agency. In addition to briefs, correspondence, research materials, etc., these files contain materials which are confidential as attorney work product and attorney-client communications.	O/C	22.7(4)	Y/N Y - if a party to the litigation is an individual.	Y - names, addresses and telephone numbers of individuals. May also include transcript testimony and exhibits containing personal information.	20.1(6), 20.11(10), 20.11(11), 20.11(4).	P
XIII. Internal Agency Records These records include agendas, minutes and materials presented to the agency, including documents generated during the promulgation of rules.	O/C	21.5	N	Y - these records may contain information regarding individuals who participate in agency meetings.	21.3	P
XIV. Administrative Records These records include documents concerning the budget, property inventory, purchasing, time sheets, printing and supply requisitions.	O	N/A	N	N	N/A	P

These rules are intended to implement Iowa Code section 22.11.

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TRANSPORTATION DEPARTMENT[761]

Rules transferred from agency number [820] to [761] to conform with the reorganization numbering scheme in general IAC Supp. 6/3/87. Railway Finance Authority[765] is a division under this "umbrella." See also Table of Corresponding Numbers.

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CHAPTER 10
ADMINISTRATIVE RULES AND DECLARATORY ORDERS

[Prior to 6/3/87, Transportation Department[820]—(01,B) Ch1]

761—10.1(17A) General.

10.1(1) Rescinded, effective 1/7/87.

10.1(2) *Definitions.* The definitions in Iowa Code section 17A.2 and the definition of "small business" in Iowa Code section 17A.4A are hereby adopted. In addition:

"Commission" means the Iowa transportation commission.

"Department" means the Iowa department of transportation.

"Director" means the director of transportation or the director's designee.

"Written criticisms" means:

1. Petitions for rule making, objections filed pursuant to Iowa Code subsection 17A.4(4), and written and oral submissions received during rule making pursuant to Iowa Code paragraph 17A.4(1)*"b."*
2. Petitions for waiver of a rule tendered to the department or granted by the department.
3. Letters to the director criticizing or recommending changes to a rule.

10.1(3) *Address.* The address of the department's administrative rules coordinator is: Administrative Rules Coordinator, Director's Staff, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—10.2(17A) Rule making.

10.2(1) *Notice of Intended Action—approval and content.* Written authorization to publish proposed rules under Notice of Intended Action in the "Iowa Administrative Bulletin" shall be made by the director. The Notice of Intended Action shall contain:

a. Either the complete text of the proposed rules or a summary of the subjects and issues involved.

b. The methods that persons and agencies may use to present their views on the proposed rules. In addition to providing for the submission of written comments, the Notice shall afford any interested person or agency the opportunity to make an oral presentation.

c. Any other information required by statute or rule.

d. Each commissioner shall be sent a copy of the Notice of Intended Action before its publication in the Iowa Administrative Bulletin.

10.2(2) *Notice of Intended Action—submission of written comments and written requests to make an oral presentation.*

a. With regard to proposed rules published under Notice of Intended Action, the department shall accept and consider, from any person or agency, written comments and written requests to make an oral presentation when prepared and submitted in conformance with the following:

(1) Comments and requests shall clearly state the name, address and telephone number of the person or agency authoring the comment or request and the number and title of the proposed rule as given in the Notice of Intended Action.

(2) If an oral presentation is requested, the general content of the presentation shall be indicated.

(3) Comments and requests shall be submitted to the office specified in the Notice of Intended Action. To be considered, they must be received by the office no later than the date specified in the Notice. The date shall be no less than 20 days after publication of the Notice.

b. The receipt and acceptance for consideration of written comments and written requests shall be promptly acknowledged by the department.

(1) Written comments received after the deadline may be accepted by the department although their consideration is not assured.

(2) Written requests to make an oral presentation received after the deadline shall not be accepted.

c. In addition to the formal procedures contained in this rule, the department may solicit viewpoints or advice concerning proposed rules through informal conferences or consultations as the department may deem desirable.

10.2(3) *Adoption and filing of rules.*

a. The director shall adopt proposed rules unless statutes specifically provide for commission adoption. The commission shall approve rules prior to their adoption by the director except as provided in subrule 10.2(5).

b. Upon adoption of proposed rules by the director or the commission, the director shall file them in accordance with Iowa Code section 17A.5.

10.2(4) *Regulatory analysis.* A request for issuance of a regulatory analysis shall be submitted to the department's administrative rules coordinator at the address in subrule 10.1(3).

10.2(5) *Nonsubstantive amendments to rules.* In reliance upon Iowa Code subsection 17A.4(2), rule making concerning nonsubstantive amendments shall be exempted from Iowa Code subsection 17A.4(1) and subrules 10.2(1) and 10.2(2). Because nonsubstantive amendments do not alter the meaning or consequence of a rule, it is determined unnecessary and contrary to the public interest to expend resources in publishing a Notice of Intended Action and providing an opportunity for public comment during the rule-making process. Nonsubstantive amendments may be adopted and filed by the director. Nonsubstantive amendments shall include the following:

a. Correcting the name, address or telephone number of an organizational unit within the department.

b. Updating references to the Iowa Code or the Iowa Acts to reflect the most current citation.

c. Correcting spelling, typographical or grammatical errors.

d. Eliminating references to gender.

10.2(6) *Concise statement.* If requested in accordance with this subrule, the department shall issue a concise statement of the principal reasons for and against a rule that has been adopted, incorporating therein the reasons for overruling considerations urged against the rule.

a. The request shall:

(1) Clearly state the name, address and telephone number of the person or agency authoring the request and the number and title of the rule which is the subject of the request.

(2) Be submitted in writing to the department's administrative rules coordinator at the address in subrule 10.1(3).

*(3) Be delivered to the coordinator or postmarked no later than the thirtieth calendar day following adoption of the subject rule.

b. A requested concise statement shall be issued either at the time of rule adoption or within 35 days after the department's administrative rules coordinator receives the request.

10.2(7) *Registration.*

a. Trade or occupational associations. The state office of a trade or occupational association may register its name and address with the department to receive copies of Notices of Intended Action.

(1) The request must be in writing and indicate the subject matter and the number of copies of Notice of Intended Action it wishes to receive.

(2) The trade or occupational association shall reimburse the department for the actual costs incurred in providing copies to it.

*Effective date delayed until adjournment of the 1991 session of the General Assembly by the Administrative Rules Review Committee at its August 15, 1990, meeting.

b. Small businesses. A small business or an organization of small businesses may register its name and address with the department to receive notification of Notices of Intended Action and of rules adopted and filed without a Notice of Intended Action which may have an impact on small business.

(1) The request must be in writing and may indicate the subject matter of rules it is interested in. An organization requesting registration shall indicate how many small businesses it represents.

(2) At the discretion of the department, notification shall consist of either a copy of the rules or a summary of the subjects and issues involved.

c. Submission and acknowledgment of requests. Requests for registration under this subrule shall be submitted to the department's administrative rules coordinator at the address in subrule 10.1(3). The receipt of requests for registration shall be promptly acknowledged by the department. The acknowledgment shall either:

(1) Inform the requester that it is registered, or

(2) State that the request is incomplete and indicate the additional information required.

761—10.3(17A) Petitions for rule making.

10.3(1) The department shall accept and consider, from any person or agency, petitions for rule making when submitted to the department's administrative rules coordinator at the address in subrule 10.1(3) and prepared in conformance with the following:

a. Format:

IOWA DEPARTMENT OF TRANSPORTATION
800 Lincoln Way, Ames, Iowa 50010

PETITION BY (insert petitioner's name) FOR THE (insert one-adoption, amendment or repeal) OF (insert current rule number, if applicable, and brief description of subject matter)	}	DOCKET NO. _____ PETITION FOR RULE MAKING

(In separate numbered paragraphs, the petition shall include the following.)

1. The petitioner's name, address and telephone number.
2. The nature of the petitioner's interest in the matter.
3. The text or the essential terms and conditions of a proposed new rule, or the rule number and text of a rule proposed for amendment or a repeal. In addition, proposed amendments shall be illustrated to portray the changes in wording requested: Deletions are to be indicated by strike-throughs, and additions by underscoring.
4. The reasons for seeking the requested action, including any facts, views, data or arguments relevant to the request. Copies of statutes, rules or other supporting documents referenced in the petition shall be submitted as appendices to the petition or made available to the department upon request.

*5. If desired, a request to meet informally with the department to discuss the petition.

_____
(Signature of petitioner)

*Effective date delayed until adjournment of the 1991 session of the General Assembly by the Administrative Rules Review Committee at its August 15, 1990, meeting.

b. A petition for amendment or repeal of a rule shall pertain to a rule currently in effect at the time the petition is received by the department.

c. Petitions should be typewritten, although petitions legibly hand-printed in ink shall be accepted.

d. Rescinded IAB 6/8/94, effective 7/13/94.

10.3(2) The date of receipt of a petition is the day it reaches the department's administrative rules coordinator. The coordinator shall promptly notify the petitioner of the date of receipt and the assigned docket number.

10.3(3) If requested in the petition, the department shall schedule an informal meeting with the petitioner to discuss the petition.

10.3(4) The department shall notify the petitioner of the director's or commission's determination to grant or deny the petition. If the petition is denied, the notification shall include the reasons for denial.

761—10.4(17A) Declaratory orders.

10.4(1) The department shall accept and consider, from any person or agency, petitions for the issuance of declaratory orders when submitted to the department's administrative rules coordinator at the address in subrule 10.1(3) and prepared in conformance with the following:

a. Format:

IOWA DEPARTMENT OF TRANSPORTATION
800 Lincoln Way, Ames, Iowa 50010

PETITION BY (insert petitioner's name) FOR THE ISSUANCE OF A DECLARATORY ORDER ON (insert number of statute, rule, etc. and brief description of subject matter)	}	DOCKET NO. _____ PETITION FOR DECLARATORY ORDER

(In separate numbered paragraphs, the petition shall include the following.)

1. The petitioner's name, address and telephone number.
2. The exact words, passages, sentences or paragraphs of statutes, rules, etc. which are the subject of the inquiry.
3. A clear, concise and complete statement of all relevant facts for which the order is requested.
4. The uncertainties or conflicting interpretations which arise when the cited statutes, rules, etc. are applied to the facts.
5. (Optional) The interpretation urged based upon the facts set forth.
6. The reasons for prompting the petition and a full disclosure of the petitioner's interest.
7. Whether the petitioner is currently a party to a rule making, contested case or judicial proceeding involving the controversy or uncertainty.
8. The names and addresses, when known, of other persons who may be affected by the declaratory order.

_____
(Signature of petitioner)

b. Petitions should be typewritten although petitions legibly hand-printed in ink shall be accepted.

c. Rescinded IAB 6/8/94, effective 7/13/94.

10.4(2) The date of receipt of a petition is the day it reaches the department's administrative rules coordinator. The coordinator shall promptly notify the petitioner of the date of receipt and the assigned docket number.

10.4(3) A declaratory order or a statement declining to issue a declaratory order shall be issued by the director.

10.4(4) The director shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

10.4(5) The director may decline to issue a declaratory order for any of the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the agency to issue a declaratory order.

c. The agency does not have jurisdiction over the questions presented in the petition.

d. The questions presented in the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented in the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The questions posed or facts presented in the petition are unclear, vague, incomplete, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a declaratory order.

g. There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.

h. 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 an agency decision already made.

i. 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 or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.

These rules are intended to implement Iowa Code chapter 25B and sections 17A.1 to 17A.9, 17A.19, 307.10 and 307.12.

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CHAPTERS 11 and 12
Reserved

*Effective date of amendments to 761—10.2(17A) and 10.3(17A) delayed until adjournment of the 1991 General Assembly by the Administrative Rules Review Committee at its meeting held August 15, 1990.

CHAPTER 13
CONTESTED CASES
[Prior to 6/3/87, Transportation Department[820]—(01,B) Ch3]

761—13.1(17A) Definitions. The definitions in 761—Chapter 2 and in Iowa Code section 17A.2 are hereby adopted.

761—13.2(17A) Applicability.

13.2(1) This chapter of rules provides the minimum procedural requirements for department involvement in contested cases under Iowa Code chapter 17A.

13.2(2) Rules which apply to a particular type of contested case shall take precedence over this chapter of rules. If there are no other rules applicable to a particular type of contested case, it shall be conducted in accordance with this chapter of rules.

761—13.3(17A) Initiation of contested case.

13.3(1) The department may initiate a contested case proceeding to determine the legal rights, duties or privileges of a person as required by the constitution or a statute. Prior to initiating the contested case proceeding, the department, unless prohibited by statute, may attempt to settle the matter informally.

13.3(2) A person who is aggrieved by an action of the department and who is entitled to an evidentiary (contested case) hearing may:

a. Unless prohibited by statute, request an informal settlement.

b. Initiate a contested case by submitting a request for a contested case hearing.

c. Use both procedures.

13.3(3) A person may also request that the department resolve a controversy in accordance with rule 13.20(17A).

761—13.4(17A) Submission of request for informal settlement or hearing.

13.4(1) A request to the department for an informal settlement or a request for a contested case hearing shall be submitted in writing to the director of the office or division of the department which administers the matter at issue.

13.4(2) The request shall include complete names, addresses and telephone numbers for all persons involved and any attorneys representing them. The request shall also specify the mailing address to be used for all communications from the department.

13.4(3) A statute or rule may provide for submission of requests within a specified time period. A request shall be considered timely submitted if it is postmarked or delivered to the appropriate office or division of the department within the time period specified. Timely submission of a request shall be jurisdictional.

761—13.5(17A) Informal settlement.

13.5(1) An informal settlement may be handled by telephone.

13.5(2) If an informal settlement cannot be reached within a reasonable period of time, the department shall notify the person in writing that there has been a failure to reach an informal settlement, that the department's action or decision is sustained, and that the person may request a contested case hearing.

761—13.6(17A) Contested case decision. After a contested case hearing, a written decision will be issued by the presiding officer.

761—13.7(17A) Appeal. A decision by a presiding officer shall become the final decision of the department and shall be binding on the department and the party whose legal rights, duties and privileges are being determined unless either appeals the decision as provided in this rule.

13.7(1) No additional evidence shall be presented on appeal which shall be decided on the basis of the record made before the presiding officer in the contested case hearing.

13.7(2) The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

13.7(3) An appeal of a presiding officer's decision shall be submitted in writing to the director of the office or division which administers the matter being contested. The appeal shall be deemed timely submitted if it is delivered to the director of the appropriate office or division or properly addressed and postmarked within 20 days after the date of the presiding officer's decision.

13.7(4) The director of the administering office or division shall forward the appeal to the director of transportation.

13.7(5) Failure to timely appeal a presiding officer's decision shall be considered a failure to exhaust administrative remedies.

13.7(6) The director of transportation may make a decision affirming, modifying or reversing the presiding officer's decision, or may remand the case to the presiding officer.

13.7(7) The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

761—13.8(17A) Motion for review. The director of transportation may, on the director's own motion, review the presiding officer's decision. The motion for review is subject to the same time limits as an appeal from a presiding officer's decision. If there is a motion for review, subrules 13.7(6) and 13.7(7) apply.

761—13.9(17A) Rehearings. An application for rehearing of a final decision under Iowa Code section 17A.16 shall be filed with the director of transportation.

761—13.10(17A) Maintenance of records. The department shall retain for three years from the date of the final decision copies of decisions received from presiding officers, decisions issued by the director, and related correspondence.

761—13.11(17A) Use of legal assistants or paralegals. The department may be represented by legal assistants or paralegals at contested case hearings.

These authorized legal assistants or paralegals shall be under the supervision of attorneys from the department's general counsel.

761—13.12(17A) Communications.

13.12(1) Each party to a contested case shall keep the department informed of the party's current address and telephone number, the name, address and telephone number of the party's attorney, if any, and the mailing address to be used for communications from the department.

13.12(2) Mailed notices, communications and decisions regarding the contested case shall be sent by first class or certified mail to the latest address which each party has provided to the department.

761—13.13(17A) Default.

13.13(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

13.13(2) Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

13.13(3) A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within 20 days after the date of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with rule 761—13.7(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate.

13.13(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

13.13(5) Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

13.13(6) "Good cause" for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

13.13(7) A decision denying a motion to vacate is subject to further appeal in accordance with rule 761—13.7(17A).

13.13(8) A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with rule 761—13.7(17A).

13.13(9) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

761—13.14 to **13.19** Reserved.

761—13.20(17A) Additional procedures when the department is not a party.

13.20(1) *Jurisdiction.* When the department is required by statute to administer a controversy to which it is not a party, the following additional procedures shall apply.

13.20(2) *Request.* A person who has an interest in a controversy and who is entitled to an evidentiary (contested case) hearing may submit a written request to the department to resolve the controversy.

a. The request shall state the facts alleged and the relief sought by the requester.

b. The request shall identify by name and address the persons involved and any attorneys representing them. The request shall also specify the requester's telephone number and the mailing address to be used for all communications to the requester from the department.

13.20(3) *Informal settlement.*

a. The department shall contact the persons involved, either by telephone or letter, and shall offer to assist the parties to reach an informal settlement of the controversy.

b. A controversy may be settled informally by the persons involved at any time before the department initiates a contested case proceeding.

c. When a controversy is settled informally, the persons involved shall each notify the department by telephone and confirming letter that the controversy has been resolved.

13.20(4) *Contested case.*

a. When the department is notified by a person involved in the controversy that there has been a failure to reach an informal settlement, or when the department determines that no progress toward a settlement is being made, the department shall send a written notice to the persons involved.

b. The notice shall specify the following: If the department is not notified of a settlement within 20 days after the notice is mailed, the department shall initiate a contested case proceeding.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code section 10A.202.

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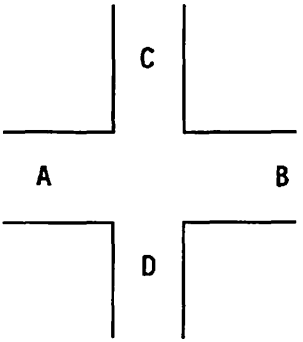
CHAPTERS 14 to 19
Reserved

CHAPTER 136
LIGHTING

[Prior to 6/3/87, Transportation Department[820]—(06,K) Ch 4]

761—136.1(319) Lighting of primary-secondary intersections. The purpose of this rule is to establish the qualification criteria, application procedure and financial responsibilities for the placement of roadway luminaires within the limits of the primary road right-of-way at a rural intersection of a primary road and a paved secondary road.

136.1(1) *Lighting criteria.* A primary-secondary intersection is a candidate for lighting if one of the following is met:



Major traffic flow (primary): A to B and B to A
Minor traffic flow (secondary): C to D and D to C
Possible left turns: A to C, B to D, C to B and D to A

a. The night-to-day accident rate ratio is 2.0 or greater with a minimum of three reportable nighttime accidents in a 12-month period.

b. Substantial lighted commercial or business development that is affecting operations exists adjacent to the intersection.

c. Motorists are experiencing operational problems which might be expected to be reduced by lighting.

d. The current average daily traffic (ADT) is 3500 entering vehicles for the intersection and:

(1) The intersection is channelized or "T," or

(2) A change in the direction of the major route occurs.

e. After making the following calculations, the total in subparagraph (3) below exceeds 3000 points.

(1) Determine the "Roadway/Traffic Factors" for traffic at A and for traffic at B, using the following formula and "Standard Sight Distances for Speed":

$$\text{Roadway/Traffic Factor} = \frac{\text{Standard Passing Sight Distance for Speed}}{\text{Actual Sight Distance}} \times \frac{\text{Actual Approaching Traffic Volume}}{1000}$$

Standard Passing Sight Distances For Posted Speeds

Speed	Distance
55 mph	2000 ft.
50 mph	1800 ft.
45 mph	1700 ft.
40 mph	1500 ft.

(2) Compare the two answers; the larger number is the "Greater Roadway/Traffic Factor."

(3) Calculate points based on the following formula, using current average daily traffic (ADT):

Greater Roadway/Traffic Factor x Traffic Volume from C to D = ___
Greater Roadway/Traffic Factor x Traffic Volume from D to C = ___
Greater Roadway/Traffic Factor x Traffic Volume from C to B x (1.5) = ___
Greater Roadway/Traffic Factor x Traffic Volume from D to A x (1.5) = ___
Roadway/Traffic Factor for A x Traffic Volume from B to D x (1.5) = ___
Roadway/Traffic Factor for B x Traffic Volume from A to C x (1.5) = ___
TOTAL = ___

136.1(2) Reserved.

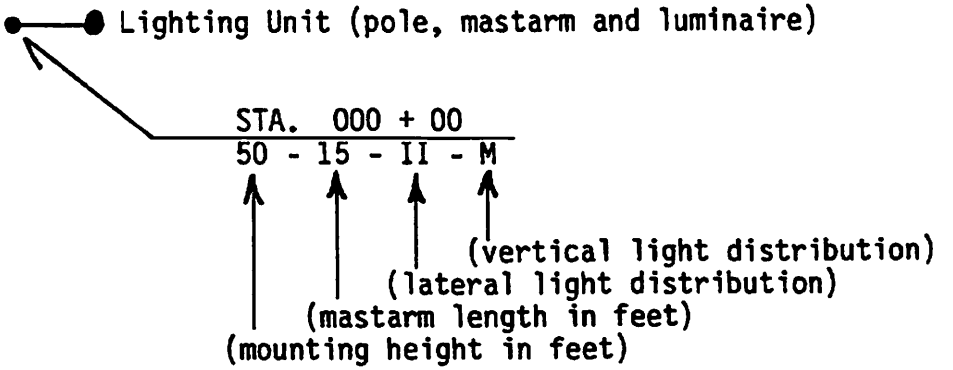
136.1(3) *Procedures.*

a. A request for lighting shall be made by the county to the appropriate district engineer. The request shall indicate the type and size of luminaires proposed, sight distance measurements and posted speed. If the county is requesting that the department participate in the installation costs as a C-STEP (County-State Traffic Engineering Program) project, this should be indicated in the request. A lighting plan shall accompany the request showing:

(1) The complete dimensions of the intersection including pavement and shoulders.

(2) The locations of proposed luminaires and poles.

(3) The mounting heights, mast arm lengths, lateral and vertical light distributions of proposed luminaires and the approximate location for electrical service.



b. The district engineer shall forward the request to the department's office of road design for review.

c. If design requirements are satisfied, the department shall approve the lighting installation.

(1) The county shall be responsible for designing and installing the lighting and for all future energy and maintenance costs.

(2) If the location qualifies for lighting installation and if funds are available, the department shall share the installation costs on the basis of the current C-STEP participation ratio.

(3) If the department does not share the installation costs but the county wishes to install the lighting, the county shall be responsible for the installation costs.

d. If the department will share the installation costs, the highway division director's office shall prepare an agreement for departmental and county approval.

This rule is intended to implement Iowa Code sections 319.1, 319.12 and 319.14.

761—136.2(319) Destination lighting. The purpose of this rule is to establish the application procedure and financial responsibilities for the placement of a roadway luminaire within the limits of primary road right-of-way at a rural intersection of a primary road and a minor road.

136.2(1) *Definition.*

"Minor road," for the purposes of this rule, is an entrance to a primary road from a frontage road, a rural commercial establishment, a governmental agency facility, a generator of a substantial traffic volume, or a secondary road.

136.2(2) Reserved.

136.2(3) *Procedures.*

a. Application shall be made to the appropriate district engineer on Form 810025, "Application for Use of Highway Right-of-Way for Utilities Accommodation." The application shall indicate the type of luminaire and intensity of illumination proposed. A sketch shall accompany the application showing the location of the proposed luminaire and pole and the mounting height of the luminaire.

b. The district engineer shall be responsible for departmental approval of the application. A copy of the application indicating the district engineer's determination shall be returned to the applicant. Approved applications are termed "permits."

c. The applicant shall be responsible for installing the lighting and for all installation, energy and maintenance costs.

This rule is intended to implement Iowa Code sections 319.1, 319.12 and 319.14.

761—136.3 to **136.5** Reserved.

761—136.6(306) Warrants and design requirements for lighting.

136.6(1) *Warrants.* Meeting departmental warrants or criteria for lighting simply establishes the location as a candidate for lighting. It does not obligate the department to provide lighting or to participate in lighting costs.

136.6(2) *Design requirements.* The design of lighting installations shall comply with departmental specifications and standard road plans for highway lighting as they exist at the time of installation of the lighting.

This rule is intended to implement Iowa Code subsections 306.4(1) and 669.14(8).

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[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]
[Filed 8/26/88, Notice 7/13/88—published 9/21/88, effective 10/26/88]

CHAPTERS 137 to 139
Reserved

NOTE: Diagrams to rule 761—136.1(319) and 761—136.2(319) rescinded IAB 9/21/88, effective 10/26/88.

CHAPTER 140
TRAFFIC SIGNALS, SCHOOL SIGNALS AND BEACONS ON PRIMARY ROADS

[Prior to 6/3/87, Transportation Department[820]—(06,K) Ch 5]

761—140.1(321) Erection of traffic signals, school signals, and beacons on primary highways. The purpose of this rule is to establish requirements, procedures and responsibilities for the erection of traffic signals, school signals and beacons on primary highways.

140.1(1) *Requirements.* Traffic signals, school signals or beacons shall not be installed unless the guidelines in Part IV of the "Manual on Uniform Traffic Control Devices for Streets and Highways," as adopted in rule 761—130.1(321), apply.

140.1(2) *Procedure.*

a. All requests are to be submitted to the appropriate district engineer.

b. The applicant shall be informed of the final disposition of the request.

140.1(3) *Responsibilities.* The applicant is responsible for the installation and maintenance of these traffic control devices.

This rule is intended to implement Iowa Code section 321.252.

[Filed 7/1/75]
[Filed without Notice 11/23/76—published 12/15/76, effective 1/19/77]
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CHAPTER 141
TRAFFIC AND ENGINEERING INVESTIGATIONS ON SECONDARY ROADS

[Prior to 6/3/87, Transportation Department[820]—(06,K) Ch 6]
Rescinded IAB 5/5/99, effective 6/9/99

CHAPTER 174
REIMBURSABLE SERVICES AND SUPPLIES
[Prior to 6/3/87, Transportation Department[820]—(06,Q) Ch 9]

761—174.1(307A) The department will bill counties for all functions performed for the counties on emergency relief projects (ER). The counties should ensure that all eligible costs are charged to the project in order that the federal aid section of the office of accounting will include them in billings to the federal highway administration, including work performed by the department.

761—174.2(307A) Services by the department for which reimbursement will be required from the counties.

174.2(1) The county shall reimburse the department for the following items when performed in conjunction with a farm-to-market funded project, and the items shall be charged to the county's farm-to-market fund. A county may also request any of the following items and will be billed the cost thereof on any locally funded project.

a. Structural analysis: A detailed field or office study of an existing or proposed structure to determine condition or load-carrying capacity.

b. Hydraulic analysis: An in-depth field or office review of hydraulic functioning and adequacy of a proposed or existing drainage complex.

c. Shop drawings: A review of details on drawings of steel fabrication prepared by the steel fabricating company.

d. Shop inspection: Inspection of steel fabrication at the assembly point to determine compliance with plans, specifications and approved shop drawings.

e. Bridge soundings: The taking of soundings and identifying depth and type of material encountered below surface level at structure locations on secondary roads.

f. Soil borings and analysis: The taking of soil borings to identify depth and type of material encountered below surface level along existing or proposed roadway, and calculations, based on field data, to be incorporated in completed plan.

g. Physical testing: Inspection, laboratory or field testing, and documentation of results to a county on any material samples for any purpose obtained by the department, county, or consultant.

h. Material exploratory work: A survey of location and quantity of anticipated material resources.

i. Inspection supplies and equipment repairs: All inspection equipment furnished by the laboratory will be on loan to the counties and shall be returned upon completion of the project or the season. All inspection supplies furnished from warehouse stock shall be paid for by the receiving county and shall not be returned for credit. The cost of all equipment repairs performed for a county shall be charged to that county.

j. Manuals and publications: The department will provide each county with a single copy of each publication required to be used by them (i.e., standard specifications). Any additional copies requested by a county will require reimbursement from the county. All publications requested by a county and not required by the department will be at the county's expense.

k. Office supplies: Items which are not required to be submitted by the department for substantiation or operation of the secondary road system.

l. Printing services: Preparation and printing of blueprints, offset prints, photo processes, and other printing performed for counties.

m. Origin and destination studies: Field and office traffic studies.

n. Rental of electronic data processing equipment: Use of department of transportation computers for road, bridge and culvert design, road profile adjustment, and other secondary road work.

o. Schools: Extended instruction on various road subjects, attended by county personnel on application basis.

p. Pile bearing tests: Test loading of piles to determine pile load-bearing capacity.

q. Tabulation of bids: All lettings; by subscription.

r. Checking falsework plans.

174.2(2) Reserved.

These rules are intended to implement Iowa Code chapter 307A.

[Filed 7/1/75]

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CHAPTERS 175 to 179
Reserved

CHAPTER 180
FEDERAL-AID URBAN SYSTEMS
[Previously (06,P1)Ch 2, until letter transfer request of 3/14/83]
[Prior to 6/3/87, Transportation Department[820]—(06,Q) Ch 10]
Rescinded IAB 5/5/99, effective 6/9/99

CHAPTERS 181 to 200
Reserved

761—615.29(321) Mandatory revocation.

615.29(1) The department shall revoke a person's license upon receipt of a record of the person's conviction for an offense listed under Iowa Code section 321.209 or upon receipt of an order issued pursuant to Iowa Code subsection 901.5(10).

615.29(2) The department shall revoke a person's license under Iowa Code subsection 321.209(2) upon receipt of a record of the person's conviction for a felony:

a. Which provides specific factual findings by the court that a motor vehicle was used in the commission of the offense,

b. Which is accompanied by information from the prosecuting attorney indicating that a motor vehicle was used in the commission of the crime, or

c. Where the elements of the offense actually required the use of a motor vehicle.

615.29(3) The revocation period shall be at least one year except:

a. The revocation period for two convictions of reckless driving shall be at least five days and not more than 30 days.

b. The revocation period for a first offense for drag racing shall be six months if the violation did not result in personal injury or property damage.

c. The revocation period for an order issued pursuant to Iowa Code subsection 901.5(10) is 180 days.

This rule is intended to implement Iowa Code sections 321.209, 321.212, 321.261 and 707.6A.

761—615.30(321) Revocation for out-of-state offense.

615.30(1) The department may revoke an Iowa resident's license when the department is notified by another state that the person committed an offense in that state which, if committed in Iowa, would be grounds for revocation. The notice may indicate either a conviction or a final administrative decision. The period of the revocation shall be the same as if the offense had occurred in Iowa.

615.30(2) Rescinded IAB 11/20/96, effective 12/25/96.

This rule is intended to implement Iowa Code section 321.205.

761—615.31(321) Revocation for violation of a license restriction. Rescinded IAB 11/18/98, effective 12/23/98.

761—615.32(321) Extension of revocation period. The department shall extend the period of license revocation for an additional like period when the person is convicted of operating a motor vehicle while the person's license is revoked.

This rule is intended to implement Iowa Code sections 321.218 and 321J.21.

761—615.33(321) Revocation of a minor's license.

615.33(1) The department shall revoke a minor's restricted license upon receiving a record of the minor's conviction for two or more moving violations.

615.33(2) The department shall revoke a minor's school license upon receiving a record of the minor's conviction for two or more moving violations.

This rule is intended to implement Iowa Code subsection 321.178(2) and section 321.194.

761—615.34(321J) Other revocations. Rescinded IAB 11/18/98, effective 12/23/98.

761—615.35 Reserved.

761—615.36(321) Effective date of suspension, revocation, disqualification or bar. Unless otherwise specified by statute or rule, a suspension, revocation, disqualification or bar shall begin 30 days after the department's notice of suspension, revocation, disqualification or bar is served.

This rule is intended to implement Iowa Code sections 321.208, 321.209, 321.210, and 321.556.

761—615.37(321) Service of notice.

615.37(1) The department shall send a notice of denial, cancellation, suspension, revocation, disqualification or bar by certified mail with a return acknowledgment required to the person's address as shown on departmental records.

615.37(2) If service by mail is unsuccessful, or in lieu of service by mail, the notice may be delivered by a peace officer, a departmental employee, or any person over 18 years of age.

615.37(3) The person serving the notice shall certify the delivery, specifying the name of the receiver, the address and the date, or shall certify nondelivery.

615.37(4) The department shall pay fees for personal service of notice by a sheriff as specified in Iowa Code section 331.655. The department may also contract for personal service of notice when the department determines that it is in the best interests of the state.

615.37(5) The denial, cancellation, suspension, revocation, disqualification or bar shall become effective on the date specified in the notice.

This rule is intended to implement Iowa Code sections 321.16, 321.211, 321.556, and 331.655.

761—615.38(17A,321) Hearing and appeal process.

615.38(1) *Applicability.* This rule applies to:

a. License denials, cancellations and suspensions under Iowa Code sections 321.177 to 321.215 and 321A.4 to 321A.11 except denials under Iowa Code subsection 321.177(10) and suspensions under Iowa Code sections 321.210B, 321.213A and 321.213B and 1998 Iowa Acts, chapter 1088, section 1.

b. License revocations under Iowa Code sections 321.193 and 321.205.

c. Disqualifications from operating a commercial motor vehicle.

d. License bars under Iowa Code section 321.556.

615.38(2) *Submission of request or appeal.*

a. A person subject to a sanction listed in subrule 615.38(1) may contest the action by following the provisions of 761—Chapter 13 as supplemented by this rule.

b. A request for an informal settlement, a request for a contested case hearing, or an appeal of a presiding officer's decision shall be submitted to the director of the office of driver services at the address in 761—600.2(17A).

c. The request or appeal shall include the person's name, date of birth, driver's license or permit number, complete address and telephone number, and the name, address and telephone number of the person's attorney, if any.

615.38(3) *Informal settlement or hearing.*

a. The person may request an informal settlement. Following an unsuccessful informal settlement procedure, or instead of that procedure, the person may request a contested case hearing.

b. Notwithstanding paragraph *"a"* of this subrule, a request received from a person who has participated in a driver improvement interview on the same matter shall be deemed a request for a contested case hearing.

c. A request for an informal settlement or a request for a contested case hearing shall be deemed timely submitted if it is delivered to the director of the office of driver services or postmarked within the time period specified in the department's notice of the sanction.

(1) Unless a longer time period is specified in the notice or another time period is specified by statute or rule, the time period shall be 20 days after the notice is served.

(2) If the department fails to specify a time period in the notice, the request may be submitted at any time.

615.38(4) *Appeal.* An appeal of a presiding officer's decision shall be submitted in accordance with 761—13.7(17A).

615.38(5) *Stay of sanction.*

a. When the department receives a properly submitted, timely request for an informal settlement, request for a contested case hearing or appeal of a presiding officer's proposed decision regarding a sanction listed in subrule 615.38(1), it shall, after a review of its records to determine eligibility, stay (stop) the sanction pending the outcome of the settlement, hearing or appeal unless prohibited by statute or rule or unless otherwise specified by the requester/appellant.

(1) If the stay is granted, the department shall issue and send to the person a notice granting the stay. The stay is effective on the date of issuance. The notice allows the person to drive while the sanction is stayed if the license is valid and no other sanction is in effect.

(2) A person whose stay authorizes driving privileges shall carry the notice of stay at all times while driving.

b. Of the sanctions listed in subrule 615.38(1), the department shall not stay the following, and the person's driving privileges do not continue:

(1) A suspension for incapability.

(2) A denial.

(3) A disqualification from operating a commercial motor vehicle.

(4) A suspension under 1998 Iowa Acts, chapter 1112, section 5.

This rule is intended to implement Iowa Code chapter 17A and sections 321.177 to 321.215, 321.556, and 321A.4 to 321A.11.

761—615.39(321) Surrender of license. A person whose Iowa license has been canceled, suspended, revoked or barred or who has been disqualified from operating a commercial motor vehicle shall surrender the license to the designated representative of the department on or before the effective date of the sanction.

This rule is intended to implement Iowa Code sections 321.201, 321.208, 321.212, 321.216, 321.556, and 321A.31.

761—615.40(321) License reinstatement or reissue. A person who becomes eligible for a license after a denial, cancellation, suspension, revocation, bar or disqualification shall be notified by the department to appear before a driver license examiner to obtain or reinstate the license. The license may be issued if the person has:

615.40(1) Filed proof of financial responsibility under Iowa Code chapter 321A, when required, for all vehicles to be operated. The class of license issued will depend on the examinations passed and other qualifications of the applicant. Regardless of the class of license issued, the license shall be valid only for the operation of the specific motor vehicles covered under the proof of financial responsibility filed by the applicant.

615.40(2) Paid the civil penalty when required. The civil penalty is specified in Iowa Code Supplement section 321.218A or 321A.32A.

615.40(3) Complied with the specific instructions given in the department's notice terminating the sanction.

615.40(4) Successfully completed the required driver license examination.

615.40(5) Paid the reinstatement fee when required. The reinstatement fee is specified in Iowa Code section 321.191.

615.40(6) Paid the appropriate license fee or duplicate license fee. These fees are specified in Iowa Code sections 321.191 and 321.195.

This rule is intended to implement Iowa Code sections 321.186, 321.191, 321.195, 321.208, 321.212, and 321A.17 and Iowa Code Supplement sections 321.218A and 321A.32A.

761—615.41 Reserved.

761—615.42(321) Remedial driver improvement action under 1998 Iowa Acts, chapter 1112, section 5.

615.42(1) The department shall require remedial driver improvement action when a person holding an instruction permit or intermediate license under 1998 Iowa Acts, chapter 1112, section 5, is convicted of a moving violation or has a contributive accident.

615.42(2) Completion of remedial driver improvement action means completion of a driver improvement interview with the department plus any suspension ordered by the department as a result of the interview.

615.42(3) Participation in the driver improvement interview by both the licensee and the licensee's parent or guardian may be required. The interview shall be held by a reviewing officer appointed by the director of the office of driver services. The interview may include one or more of the following: a discussion of motor vehicle laws, a discussion of driving behavior, a vision screening, a knowledge examination, and a driving examination.

615.45(2) *Application.*

a. To obtain a temporary restricted license, an applicant shall submit a written request for an interview with a driver's license hearing officer. The request shall be submitted to the office of driver services at the address in 761—600.2(17A).

b. If the driver's license hearing officer approves the issuance of a temporary restricted license, the officer shall furnish to the applicant application Form 430100, which is to be completed and submitted to the office of driver services.

c. A temporary restricted license issued for employment may include permission for the licensee to transport dependent children to and from a location for child care when that activity is essential to continuation of the licensee's employment.

615.45(3) *Statements.* A person applying for a temporary restricted license shall submit all of the following statements that apply to the person's situation. Each statement shall explain the need for the license and shall list specific places and times for the activity which can be verified by the department.

a. A statement from the applicant.

b. A statement from the applicant's employer unless the applicant is self-employed including, when applicable, verification that the applicant's use of a child care facility is essential to the applicant's continued employment.

c. A statement from the health care provider if the applicant or the applicant's dependent requires continuing health care.

d. A statement from the educational institution in which the applicant is enrolled.

e. A statement from the substance abuse treatment program in which the applicant is participating.

f. A copy of the court order for community service and a statement describing the assigned community service from the responsible supervisor.

g. A statement from the child care provider.

615.45(4) *Additional requirements.* An applicant for a temporary restricted license shall also:

a. Provide a description of all motor vehicles to be operated under the temporary restricted license.

b. File proof of financial responsibility under Iowa Code chapter 321A, if required, for all motor vehicles to be operated under the temporary restricted license.

c. Pay the required civil penalty specified in Iowa Code Supplement section 321.218A or 321A.32A.

615.45(5) *Issuance and restrictions.*

a. When the application is approved and all requirements are met, the applicant shall be notified by the department to appear before a driver's license examiner. The applicant shall pass the appropriate examination for the type of vehicle to be operated under the temporary restricted license. An Iowa resident shall also pay the reinstatement and license fees.

b. The department shall determine the restrictions to be imposed by the temporary restricted license. The licensee shall apply to the department in writing with a justification for any requested change in license restrictions.

615.45(6) *Denial.* An applicant who has been denied a temporary restricted license or who contests the license restrictions imposed by the department may contest the decision in accordance with rule 761—615.38(321).

These rules are intended to implement Iowa Code chapter 321A and sections 252J.8, 321.177, 321.178, 321.184, 321.185, 321.186, 321.189, 321.191, 321.193, 321.194, 321.201, 321.205, 321.209, 321.210, 321.210A, 321.212, 321.213A, 321.213B, 321.215, 321.218, 321.513, and 321.560 and Iowa Code Supplement sections 321.218A and 321A.32A.

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CHAPTERS 616 to 619
Reserved

◊Two ARCs

CHAPTER 620
OWI AND IMPLIED CONSENT
[Prior to 6/3/87, Transportation Department[820]—(07,C)Ch 11]

761—620.1(321J) Definitions. Rescinded IAB 1/8/92, effective 2/12/92.

761—620.2(321J) Information. Information, requests for assistance, and answers to questions relating to this chapter of rules may be obtained from the Office of Driver Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204, or at its location in Park Fair Mall, 100 Euclid Ave., Des Moines; telephone 1-800-532-1121.

761—620.3(321J) Issuance of temporary restricted license.

620.3(1) *Eligibility and application.*

a. The department may issue a temporary restricted license to a person who is eligible under Iowa Code section 321J.4 (except subsection 8), 321J.9, 321J.12 or 321J.20. The department shall not issue a temporary restricted license to a person who has a current suspension or revocation for any other reason, or who is otherwise ineligible.

b. To apply for a temporary restricted license, an applicant shall, at any time before or during the revocation period, submit application Form 430100 to the office of driver services at the address in 761—620.2(321J). The application form should be furnished by the arresting officer. It may also be obtained upon oral or written request to the office of driver services or by submitting Form 432018 to driver services with the appropriate box checked.

c. A temporary restricted license issued for employment may include permission for the licensee to transport dependent children to and from a location for child care when that activity is essential to continuation of the licensee's employment.

620.3(2) *Statements.* A person applying for a temporary restricted license shall submit all of the following statements that apply to the person's situation. Each statement shall explain the need for the license and shall list specific places and times for the activity which can be verified by the department.

a. A statement from the person's employer unless the person is self-employed including, when applicable, verification that the person's use of a child care facility is essential to the person's continued employment.

b. A statement from the person.

c. A statement from the health care provider if the person or the person's dependent requires continuing health care.

d. A statement from the educational institution in which the person is enrolled.

e. A statement from the substance abuse treatment program in which the person is participating.

f. A copy of the court order for community service and a statement describing the assigned community service from the responsible supervisor.

g. A statement from the child care provider.

620.3(3) *Additional requirements.* A person applying for a temporary restricted license shall also comply with all of the following requirements:

a. Provide a description of all motor vehicles to be operated under the temporary restricted license.

b. Submit proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles to be operated under the temporary restricted license.

c. Provide certification of installation of an approved ignition interlock device on every motor vehicle operated.

d. Pay the $200 civil penalty.

620.3(4) *Issuance and restrictions.*

a. When the application is approved and all requirements are met, the applicant shall be notified by the department to appear before a driver's license examiner. The applicant shall pass the appropriate examination for the type of vehicle to be operated under the temporary restricted license. An Iowa resident shall also pay the reinstatement and license fees.

b. The department shall determine the restrictions to be imposed by the temporary restricted license. The licensee shall apply to the department in writing with a justification for any requested change in license restrictions.

620.3(5) *Denial.* A person who has been denied a temporary restricted license or who contests the restrictions imposed by the department may request an informal settlement conference by submitting a written request to the director of the office of driver services at the address given in 761—620.2(321J). Following an unsuccessful informal settlement or instead of that procedure, the person may request a contested case hearing in accordance with rule 620.4(321J).

761—620.4(321J) Hearings and appeals.

620.4(1) *Contested case hearing.*

a. A person may request a contested case hearing by checking the appropriate box on Form 432018 and submitting it to the department or by submitting a written request to the director of the office of driver services at the address given in 761—620.2(321J). The request shall include the person's name, date of birth, driver license number, complete address and telephone number.

b. A request for a hearing to contest the denial of a temporary restricted license or to contest the restrictions may be submitted at any time.

c. A request for a hearing to contest a revocation shall be submitted within ten days after receipt of the revocation notice. The request shall be deemed timely submitted if it is delivered to the director of the office of driver services or properly addressed and postmarked within this time period.

d. Failure to timely request a hearing on a revocation is a waiver of the right to a hearing under Iowa Code chapter 321J, and the revocation shall become effective on the date specified in the revocation notice.

e. After a hearing, a written decision will be issued by the presiding officer.

620.4(2) *Appeal.* A decision by a presiding officer shall become the final decision of the department and shall be binding on the department and the person who requested the hearing unless either appeals the decision in accordance with this subrule.

a. The appeal shall be decided on the basis of the record made before the presiding officer in the contested case hearing and no additional evidence shall be presented.

b. The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

c. An appeal of the presiding officer's decision shall be submitted in writing by sending the original and one copy of the appeal to the director of the office of driver services at the address given in 761—620.2(321J).

d. An appeal shall be deemed timely submitted if it is delivered to the director of the office of driver services or properly addressed and postmarked within ten days after receipt of the presiding officer's decision.

e. The director of the office of driver services shall forward the appeal to the director of transportation. The director of transportation may affirm, modify or reverse the decision of the presiding officer, or may remand the case to the presiding officer.

f. Failure to timely appeal a decision shall be considered a failure to exhaust administrative remedies.

620.4(3) *Final agency action.* The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

620.4(4) *Default.*

a. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

c. A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within ten days after receipt of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with subrule 620.4(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate.

d. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

e. Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

f. "Good cause" for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

g. A decision denying a motion to vacate is subject to further appeal in accordance with subrule 620.4(2).

h. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 620.4(2).

i. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

620.4(5) *Petition to reopen a hearing.*

a. A petition to reopen a hearing pursuant to Iowa Code section 17A.16 shall be submitted in writing to the director of the office of driver services at the address in 761—620.2(321J). If a petition is based on a court order, a copy of the court order shall be submitted with the petition. If a petition is based on new evidence, the petitioner shall submit a concise statement of the new evidence and the reason(s) for the unavailability of the evidence at the original hearing.

b. A petition to reopen a hearing may be submitted at any time even if a hearing to contest the revocation was not originally requested or held.

c. A person may appeal a denial of the petition to reopen. The appeal shall be deemed timely if it is delivered to the director of the office of driver services at the address in 761—620.2(321J) or properly addressed and postmarked within 20 days after issuance of the decision denying the petition to reopen.

761—620.5(321J) Reinstatement. When the revocation period has ended, a person shall be notified by the department to appear before a driver's license examiner to obtain a motor vehicle license. The license may be issued if the person has:

620.5(1) Filed proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles to be operated.

620.5(2) Paid the $200 civil penalty.

620.5(3) Provided proof of satisfactory completion of a course for drinking drivers and proof of completion of substance abuse evaluation and treatment or rehabilitation services on a form and in a manner approved by the department.

620.5(4) Successfully completed the required driver license examination.

620.5(5) Paid the specified reinstatement fee.

620.5(6) Paid the appropriate license or permit fee.

620.5(7) Provided proof of deinstallation of the ignition interlock device if one was installed for a temporary restricted license.

761—620.6(321J) Issuance of temporary restricted license after revocation period has expired. The department may issue a temporary restricted license to a person whose period of revocation under Iowa Code chapter 321J has expired but who has not met all the requirements for license reinstatement. The period of issuance shall be determined by the department, but it shall not exceed six months from the end of the original revocation period.

620.6(1) An applicant for a temporary restricted license under this rule must meet one of the following two conditions:

a. The applicant must demonstrate to the satisfaction of the department that a course for drinking drivers was not readily available to the person during the revocation period and that the applicant has enrolled in a course for drinking drivers. The applicant must furnish the dates the class will begin and end.

b. The applicant must demonstrate to the satisfaction of the department that substance abuse evaluation and treatment or rehabilitation services have not been completed because of an inability to schedule them or because they are ongoing.

620.6(2) An applicant for a temporary restricted license under this rule must meet all other conditions for issuance of a temporary restricted license under rule 761—620.3(321J) and Iowa Code section 321J.20, including installation of an ignition interlock device.

761—620.7 to **620.9** Reserved.

761—620.10(321J) Revocation for deferred judgment. The revocation period under Iowa Code subsection 321J.4(2) shall be 90 days.

761—620.11 to **620.14** Reserved.

761—620.15(321J) Substance abuse evaluation and treatment or rehabilitation services. When the department revokes a person's license under Iowa Code chapter 321J, the department shall also order the person to submit to substance abuse evaluation and, if recommended, treatment or rehabilitation services. A provider of substance abuse evaluation and treatment or rehabilitation programs shall be licensed by the Iowa department of public health, division of substance abuse. A provider of a substance abuse evaluation who is not licensed by the Iowa department of public health may be granted provisional authority by the Iowa department of public health to conduct a substance abuse evaluation required under Iowa Code chapter 321J. To obtain provisional authority, the provider must apply for a license to the Iowa department of public health accompanied by a recommendation from the district court having jurisdiction for the offense. Provisional authority will expire on July 1, 1998.

620.15(1) *Reporting.*

a. A provider of a substance abuse program shall report to the department on a form and in a manner approved by the department when a person who has been ordered to attend the program has satisfactorily completed the program.

b. Reporting to the department shall be in accordance with Iowa Code sections 125.37, 125.84 and 125.86 and the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR Part 2, effective June 9, 1987.

620.15(2) *Payment.* Payment of substance abuse evaluation and treatment or rehabilitation costs shall be in accordance with Iowa department of public health rules.

761—620.16(321J) Drinking drivers course. When the department revokes a person's license under Iowa Code chapter 321J, the department shall order the person to enroll, attend and satisfactorily complete a course for drinking drivers, as provided in Iowa Code section 321J.22.

620.16(1) *Reporting.*

a. A community college conducting a drinking drivers course shall report to the department on a form and in a manner approved by the department when a person who has been ordered to attend the course has successfully completed it.

b. Reserved.

620.16(2) *Payment.* A person ordered to complete a drinking drivers course is responsible for payment of course fees and expenses in accordance with Iowa Code section 321J.22.

These rules are intended to implement Iowa Code chapters 17A and 321J and sections 321.376 and 707.6A.

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CHAPTERS 621 to 624
Reserved

CHAPTER 820
HIGHWAY GRADE CROSSING SAFETY FUND

[Substance formerly (06,C)Ch 3]
[Prior to 6/3/87, Transportation Department [820]—(10,B)Ch 4]

761—820.1(327G) Definitions. The following terms when used in this chapter of rules shall have the following meanings:

AAR signal unit. The relative maintenance difficulty value assigned to component parts of an active warning device. Units and interpretations are designated by the Association of American Railroads Signal Manual, Part 203 (1984).

Active warning devices. Traffic control devices activated by the approach or presence of a train, such as flashing light signals, flashing light signals with cantilever assemblies, and flashing light signals with automatic gate arms, all of which actively warn motorists of a train.

Maintenance costs of active warning devices. Costs incurred by a railroad associated with the repair or replacement of obsolete, worn out, damaged, or missing component parts of an approved active warning device. Maintenance costs shall include repair or replacement of damaged, vandalized, or stolen component parts only for that amount which exceeds the amount recovered from the liable party or the liable party's insurer.

Safety fund. The highway grade crossing safety fund established in Iowa Code section 327G.19, and administered by the department.

This rule is intended to implement Iowa Code sections 327G.15 and 327G.19.

761—820.2(327G) Use of fund. The safety fund may be used for participation in a portion of maintenance costs associated with active warning devices, the installation of new active warning devices, or the replacement of obsolete ones.

This rule is intended to implement Iowa Code sections 327G.15 and 327G.19.

761—820.3(327G) Use of fund for maintenance costs.

820.3(1) *Maintenance cost participation.* The safety fund may be used to participate in the annual maintenance costs of active warning devices ordered or agreed to be installed on or after July 1, 1973, as stated in the individual order or agreement.

a. Orders or agreements which provide for revision in the maximum amount that can be expended from the safety fund, by reason of amendment of Iowa Code section 327G.15, shall be binding.

b. Orders or agreements which contain that provision were amended to read: The fund's participation for calendar years preceding 1977 shall be equal to that of the railroad but limited to a maximum of $450 for any one year, for any one crossing, and for calendar year 1977 and subsequent years, the fund may participate in an amount up to 75 percent of annual maintenance costs of active warning devices based upon a cost for each eligible AAR signal unit.

c. Orders or agreements issued on or after March 8, 1978, shall provide that the safety fund may be used to participate in up to 75 percent of the annual maintenance costs of active warning devices, based upon a cost for each eligible AAR signal unit.

820.3(2) *Determination of eligible AAR signal units.*

a. The railroad shall tabulate the number of AAR signal units for each warning device which is eligible under subrule 820.3(1) of this chapter, and shall furnish the number to the rail and water division.

b. The rail and water division shall review the railroad's tabulation for conformance with AAR guidelines.

820.3(3) *Determination of unit maintenance costs.*

a. Each railroad having eligible warning device installations shall compile the actual maintenance costs for its entire warning device system in Iowa for the calendar year. A portion of the railroad's warning device system in adjacent states may be included if the railroad's signal districts are not wholly within Iowa. The maintenance costs to be compiled shall be 100 percent of allowable costs under account numbers 11-11-19, 21-11-19, 39/40-11-19, 41-11-19, and 61-11-19 plus 50 percent of allowable costs under account numbers 11-31-59, 21-31-59, 41-31-59, and 61-31-59 of the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, 49 CFR Part 1201, Subpart A (October 1, 1988). The compiled costs may include applicable labor additives and materials handling charges allowed in federal highway administration directives. Each railroad shall also tabulate the number of AAR signal units in its system.

b. For each calendar year, each railroad shall compile the actual maintenance costs and number of AAR units in accord with paragraph 820.3(3)*"a"* of this chapter. This compilation shall be submitted to the rail and water division by February 15 of each year for the preceding year and may be audited by the department.

c. The department shall compute an average unit maintenance cost for the preceding year to be used by all railroads for billing purposes.

d. The average unit cost computed for the preceding year shall be the basis for determining the safety fund's participation in the annual maintenance costs of all active warning devices eligible for participation in that year. However, the fund's percentage of participation shall not exceed 75 percent of the annual maintenance costs.

e. Before April 15 of each year, each railroad shall submit one billing to the rail and water division covering maintenance costs for the preceding year for all eligible warning device installations. Prior to reimbursement the department may perform an audit to determine conformity of the billed costs with the order or agreement. The department shall make proper reimbursement to each eligible railroad; however, if a railroad fails to submit a billing before April 15, the railroad may not be reimbursed. If, when all billings are received, it is determined that the safety fund is inadequate to reimburse all railroads in the amount of their total billings, the department shall reimburse each railroad on a prorated basis.

f. If a warning device has been installed less than one calendar year, the maintenance costs shall be prorated from the date the installation was placed in operation to the end of that calendar year.

820.3(4) *Cost to railroad.* The balance of the annual maintenance costs not paid from the safety fund shall be the responsibility of the railroad.

This rule is intended to implement Iowa Code sections 327G.15 and 327G.19.

761—820.4(327G) Use of fund for warning device installation/replacement.

820.4(1) *Percentage of participation.* After reimbursement of annual maintenance costs, any balance in the safety fund may be used to participate in a maximum of 90 percent of the project costs to install or replace active warning devices. The remaining 10 percent of the costs shall be paid by the jurisdiction having primary authority over the highway, street or alley at the crossing, unless otherwise agreed upon by the parties to the agreement.

820.4(2) *Priorities.* Use of the balance in the fund shall be determined as follows: Priority one—installation of new active warning devices; priority two—replacement of obsolete active warning devices.

This rule is intended to implement Iowa Code sections 327G.15 and 327G.19.

761—820.5(327G) Procedures to use safety funds.

820.5(1) *Project application.* The board of supervisors of a county, the council of a city, or the highway division of the department, hereinafter referred to as the jurisdiction, may submit candidate projects to the rail and water division.

820.5(2) *Selection of projects.* The department shall identify all candidate projects as either priority one or priority two as defined in rule 820.4(327G) and shall evaluate these projects in accordance with 761—Chapter 812, IAC.

a. Priority two projects may be considered ahead of priority one projects if the rail and water division determines that a more hazardous condition exists at a priority two project location.

b. The rail and water division shall notify the jurisdiction whether or not the project is selected and whether funds are available. Projects not selected shall be considered by the rail and water division for funding in the following year.

820.5(3) *Request for negotiations.* If a project is selected and funds are available, the jurisdiction shall submit a written request to the department to enter into negotiations with the railroad. The written request from a city or county shall be in the form of a resolution of the council or board of supervisors.

820.5(4) *Negotiations for agreements.* Upon receipt of the resolution or written request, the rail and water division shall initiate negotiations with the railroad. When concurrence is attained, a written agreement shall be consummated between the railroad, the rail and water division, and the jurisdiction.

a. Prior to execution of the agreement, the department may perform a preaudit evaluation of the railroad.

b. The preaudit evaluation may include: An examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the project and to be charged for subsequent maintenance of active warning devices; an examination of the railroad's cost factors to ensure their propriety and allowability; and examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

820.5(5) *Provisions to be contained in the agreement.* The written agreement shall specify the portion of the expenses which shall be paid by each party to the agreement including the costs associated with subsequent maintenance of the active warning device. The agreement shall specify the contract period and the method of payment from the safety fund. The installation, inspection, operation, and maintenance responsibilities of each party to the agreement for the active warning device shall be stated. The agreement may contain other provisions unique to a particular installation.

820.5(6) *Resolution of disagreement.* If an agreement cannot be reached, either the railroad or the jurisdiction may request a hearing. The request shall be submitted in writing to the rail and water division.

820.5(7) *Processing of executed agreement.* Upon final execution by the rail and water division, the agreement shall be transmitted to the jurisdiction by the rail and water division. The jurisdiction shall transmit the agreement to the railroad and authorize the railroad to order necessary materials and proceed with the work.

820.5(8) *Inspection and certification of installed warning devices.* Upon completion of the project, the railroad shall notify the rail and water division. If, upon inspection, the active warning device satisfies applicable specifications and standards, the rail and water division shall issue a letter of approval to the railroad.

820.5(9) *Final billing.* The railroad shall submit a final detailed billing for the project work to the rail and water division to be reviewed by the rail and water division and the jurisdiction for reasonable conformance with the agreement. The billing shall then be processed by the rail and water division for payment from the safety fund to the railroad.

820.5(10) *Payments and audits.* Payment from the safety fund shall be made as provided in the agreement. Before payment is authorized, the department may perform an audit to determine the conformity of the billed construction or maintenance costs with the agreement.

This rule is intended to implement Iowa Code sections 327G.15, 327G.16, 327G.17, and 327G.19.

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CHAPTER 821
HIGHWAY-RAILROAD GRADE CROSSING SURFACE REPAIR FUND

[Substance formerly in (06,C)Ch 3]
[Prior to 6/3/87, Transportation Department [820]—(10,B)Ch 5]

761—821.1(327G) Definitions. The following terms when used in this chapter of rules shall have the following meanings:

821.1(1) *Grade crossing surface repair.* Repair or maintenance of that portion of the grade crossing surface above the top elevation of the ties, unless it is determined that the surface cannot be improved without complete renovation of the crossing in which case the renovation shall constitute surface repair.

821.1(2) *Jurisdiction.* The authority having primary control over a highway, street, or alley.

821.1(3) *Repair fund.* The grade crossing surface repair fund established in Iowa Code section 327G.29, and administered by the department.

This rule is intended to implement Iowa Code sections 327G.29 and 327G.30.

761—821.2(327G) Procedures for the use of grade crossing surface repair funds.

821.2(1) *Notification to department.* If a railroad and a jurisdiction enter into negotiations for grade crossing surface repair and desire to use the repair fund, written notification of the action shall be sent to the rail and water division by both parties.

a. The notification may be in the form of a single statement signed by both parties and shall include the total estimated cost of the anticipated repair.

b. The notification shall include the American association of railroads—department of transportation (AAR-DOT) crossing number.

c. Notification shall be accepted by the rail and water division in order of receipt.

821.2(2) *Availability of funds.* The rail and water division shall notify the jurisdiction if funds are available in the repair fund. If funds are available, the rail and water division shall furnish the jurisdiction with three copies of a standard draft agreement for grade crossing surface repair.

821.2(3) *Submission of agreement to the department.* If the jurisdiction and the railroad reach an agreement for grade crossing surface repair whereby each contributes 20 percent of the cost, all three copies of the agreement shall be transmitted to the rail and water division by the jurisdiction. The agreement shall include the AAR-DOT crossing number.

821.2(4) *Allocation of funds.* If funds are available, the department shall allocate 60 percent of the total estimated cost of the repair from the repair fund, after receipt of a fully executed agreement.

821.2(5) *Resolution of disagreement.* If an agreement cannot be reached, either the railroad or the jurisdiction may request a hearing. The request shall be submitted in writing to the rail and water division.

821.2(6) *Need for additional information.* The department shall determine if the agreed-upon work constitutes surface repair of the crossing and shall consult with the jurisdiction or the railroad if further justification or information is needed.

821.2(7) *Approval and preaudit of the agreement.* If the agreed-upon work constitutes surface repair of the crossing, the department shall approve the agreement. An amount equal to 60 percent of the cost of the agreed-upon work shall then be obligated from the repair fund.

a. Prior to approval of the agreement, the department may perform a preaudit evaluation of the railroad.

b. The preaudit evaluation may include: An examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the surface repair project; an examination of the railroad's cost factors to assure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

821.2(8) *Work authorization.* Upon approval by the rail and water division, two copies of the agreement shall be transmitted to the jurisdiction. The jurisdiction shall then transmit one copy of the approved agreement to the railroad and authorize the railroad to order necessary materials and proceed with the work. The third copy shall be retained by the rail and water division.

821.2(9) *Certification of project completion.* Upon completion of the agreed-upon work, the jurisdiction shall complete Form 640003, "Certificate of Completion and Final Acceptance of Agreement Work," certifying project completion and shall send it to the rail and water division.

821.2(10) *Project billing.* The railroad shall submit to the jurisdiction a final detailed billing covering the actual and necessary costs incurred by the railroad for the agreed-upon work. The jurisdiction shall review the billing for reasonable conformance with the agreement. The billing, if approved by the jurisdiction, shall be sent to the rail and water division for payment from the repair fund.

821.2(11) *Final payment—department.* The department, prior to approval of the billing, may perform an audit of the submitted billing to determine the allowability and propriety of the billing costs in accordance with the executed agreement. Upon approval of the billing, the department shall pay to the railroad from the repair fund an amount equal to 60 percent of the actual cost of the agreed-upon work.

821.2(12) *Final payment—jurisdiction.* Upon approval of the billing, the rail and water division shall notify the jurisdiction of the approval. The jurisdiction shall pay to the railroad an amount equal to 20 percent of the actual cost of the agreed-upon work.

This rule is intended to implement Iowa Code sections 327G.29, 327G.30, and 327G.31.

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CHAPTERS 822 to 829
Reserved

CHAPTER 830
RAIL ASSISTANCE PROGRAM

[Prior to 6/3/87, Transportation Department [820]—(10,C)Ch 1]

761—830.1(327H) Definitions. The following terms when used in this chapter shall have the following meanings:

Branchline. A rail line that carries less than five million gross ton miles per mile per year, including its terminal and yard facilities, spurs, sidings, switches, and connections.

Economic analysis. An analysis of the present value of the project's estimated economic benefits versus the present value of the project's estimated economic costs, to estimate the economic efficiency of resource utilization for a proposed project from a social perspective.

Economic development project. A project involving the restoration, improvement, conservation, or construction of a branchline or mainline and resulting in the nonspeculative creation of new jobs or income or the retention of existing jobs or income that would otherwise be lost to Iowa.

Financial analysis. An analysis of the distribution of estimated financial benefits of the project. It shall include an analysis of the financial benefits to the public resulting from the project versus the financial costs of public contributions to the project. Where feasible, it shall also include an estimate of the financial benefits to the carrier resulting from the project versus the financial costs to the carrier of its participation in the project. It may also include a cash flow analysis of the carrier's ability to perform the project and to repay any loans.

Mainline. A rail line that carries at least five million gross ton miles per mile per year, including its terminal and yard facilities, spurs, sidings, switches, and connections.

Other sources. A financial participant in a project other than the federal local rail assistance program or the Iowa rail assistance program.

Rail assistance project. A project involving the restoration, improvement, conservation or construction of a branchline or mainline used in common carrier freight service.

761—830.2(327H) General information.

830.2(1) The department shall administer state and federal funds available for projects under this chapter and shall determine the percentages of these funds to be used for each project. State funds are governed by Iowa Code chapter 327H.

830.2(2) Information, requests for assistance and applications are available from: Rail and Water Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—830.3(327H) Rail assistance projects.

830.3(1) *Eligibility.*

a. A project must meet the definition of "rail assistance project" in rule 830.1(327H) to be eligible for rail assistance project funding.

b. To be eligible, a rail assistance project must be listed in the "Iowa Railroad Analysis Update" or its amendments although an unlisted project may be considered on the basis of immediate need.

830.3(2) *Application.*

a. To be listed as an eligible project, a written proposal shall be submitted to the department's rail and water division with a request for an analysis and a determination of eligibility. Copies of the project analysis are available upon request.

b. To be considered for funding during the next calendar year, the application shall be submitted by July 31, 1989; each year thereafter the application deadline shall be June 30.

c. A request for assistance based on immediate need may be submitted at any time and the analysis and processing of the application will be completed within a reasonable period of time. The application shall include documentation proving that the normal application procedure would result in either loss of rail service or significant impairment of rail service safety.

830.3(3) *Participation requirements.* A rail assistance project shall require a minimum participation of 20 percent of eligible costs from other sources.

830.3(4) *Evaluation and approval.*

a. The department shall evaluate each rail assistance project application and shall rank the projects in priority order. Priority shall be based on immediacy of need, funding availability, economic analysis, financial participation by other sources, financial analysis and other identifiable benefits to the state. An application for completion of a phased project may be given funding preference.

b. The department and the applicant shall negotiate a contract specifying the obligations and responsibilities of each. The contract shall be submitted to the commission for approval. If appropriate, the department shall submit the contract to the federal railroad administration and shall apply for federal funds.

761—830.4(327H) Economic development projects.

830.4(1) *Eligibility.*

a. A project must meet the definition of "economic development project" in rule 830.1(327H) to be eligible for economic development project funding.

b. The applicant for an economic development project must be a county or a city.

c. The location decision for a project must be contingent upon economic development funding.

d. The factors listed in Iowa Code section 315.11 shall be considered when determining project eligibility.

830.4(2) *Application.* The applicant city or county shall submit the application for an economic development project to the department's office of advance planning.

830.4(3) *Participation requirements.* An economic development project shall require a minimum participation of 20 percent of eligible costs from other sources.

830.4(4) *Evaluation and approval.*

a. The department shall evaluate each economic development project application within a reasonable period of time and may consult with other agencies or organizations having economic development responsibilities.

b. If, upon completion of a project review, the application meets the eligibility criteria for an economic development project, the office of advance planning shall present the application to the commission for action at its next meeting.

c. The decision to fund an economic development project application shall be the responsibility of the commission.

(1) The commission may fund all or any part of an application and may make a conditional funding commitment. In making its decision, the commission shall consider the amount of total capital investment per dollar requested, the amount of dollars requested per job created or retained, the amount of financial participation in the project from other sources, other potential benefits of the project, and the transportation need and justification.

(2) The commission may deny funding for a project that will not result in net job creation or job retention from a statewide point of view; for instance, a project that simply involves the relocation of jobs or other economic activity within the state.

d. After commission approval, the department and the applicant shall negotiate a final contract. The contract shall specify the responsibilities for project planning, design, right of way, contracting, construction and materials inspection, documentation, ownership, maintenance and security of financing.

e. The commission may revoke a funding commitment, seek repayment of funds loaned or granted, or take both actions when the applicant fails to fulfill the terms of the contract.

f. Funds committed for a project are for a maximum dollar amount.

Cost overruns are the responsibility of the applicant.

761—830.5 Reserved.

761—830.6(327H) Implementation.

830.6(1) *Preaudit.* Prior to execution of the contract, the department may perform a preaudit evaluation of the applicant or any other source. The preaudit evaluation may include: An examination of accounting methods and procedures to determine the ability to segregate and accumulate costs to be charged against the project and to be charged for subsequent maintenance of the rail line; an examination of cost factors to ensure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining auditability.

830.6(2) *Eligible costs.* Costs eligible for reimbursement shall be stated in the contract. Contract administration expenses incurred by other sources are not eligible for reimbursement.

830.6(3) *Subcontracts.* A negotiated subcontract to be billed as a reimbursable project cost by other sources is subject to departmental approval before the subcontract work is performed.

830.6(4) *Project reporting.* The applicant or other sources shall submit to the rail and water division written notice when work begins on a project, monthly progress reports, itemized billing statements pursuant to the contract, written notice of project completion, and a final billing statement of all project costs.

830.6(5) *Project monitoring.* The rail and water division shall monitor the project work through periodic on-site inspections and shall conduct a final inspection of work completed and material used. The department may conduct a final audit of all project costs.

These rules are intended to implement Iowa Code chapter 327H.

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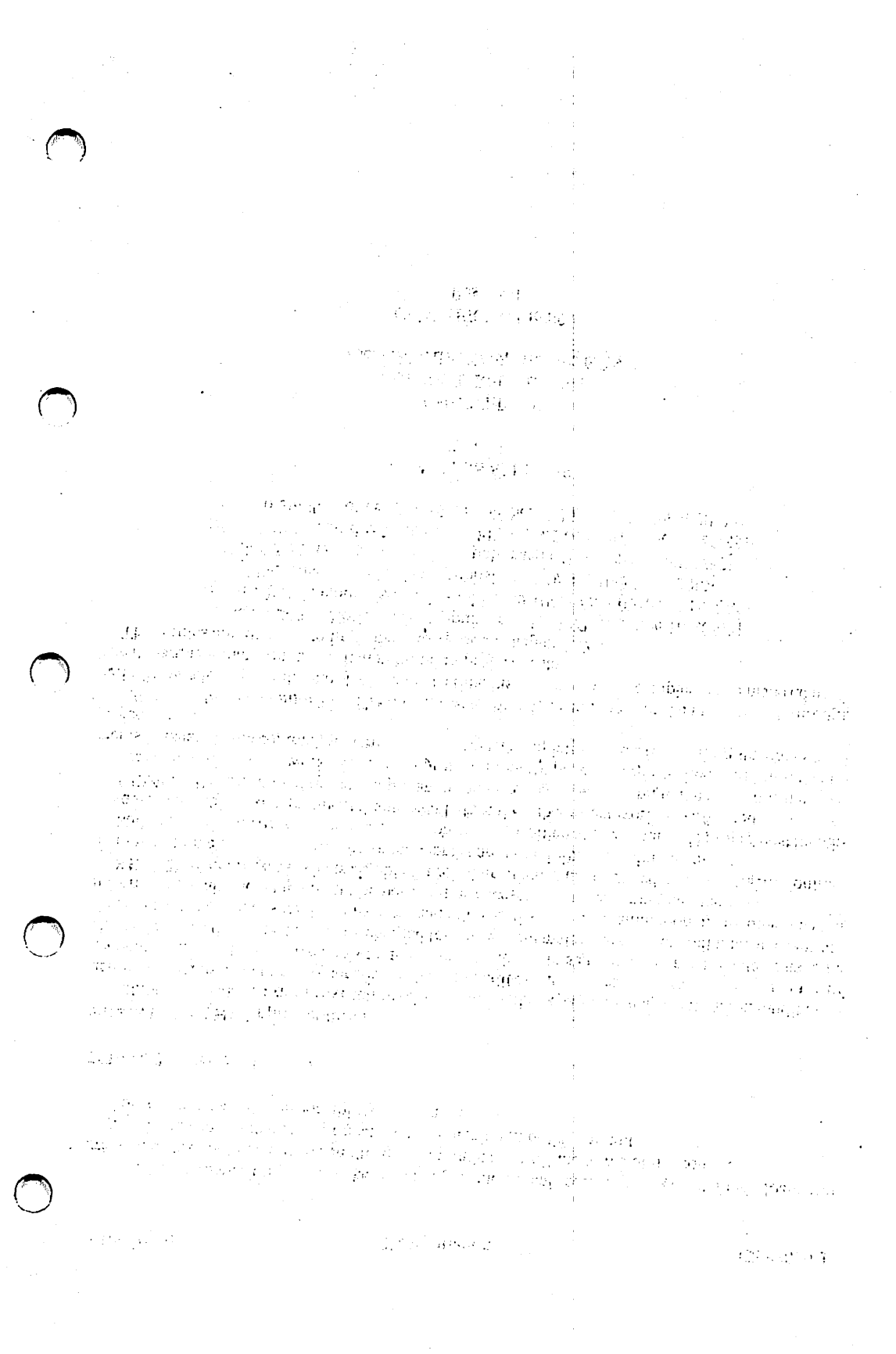
CHAPTERS 831 to 839
Reserved

CHAPTER 840
RAIL RATE REGULATION
Rescinded IAB 5/5/99, effective 6/9/99

CHAPTERS 841 to 899
Reserved



VETERANS AFFAIRS COMMISSION[801]

Created by 1992 Iowa Acts, chapter 1140, section 8
[Prior to 8/21/91, see Veterans Affairs Department[841]]
[Prior to 1/6/93, see Veterans Affairs Division[613]]

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges and applicable regulations of the agency.

These rules are intended to implement Iowa Code chapter 22.

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CHAPTER 7
Reserved

CHAPTER 8
CONTESTED CASES

801—8.1(17A,35) Scope and applicability. This chapter applies to contested case proceedings related to decisions for which the Iowa commission of veterans affairs has statutory authority.

801—8.2(17A,35) Definitions.

"Aggrieved party" means any agency, organization or individual who alleges their rights have been denied by action of the commission.

"Chairperson" means chairperson of the commission.

"Commission" means Iowa commission of veterans affairs.

"Proposed decision" means the recommended findings of fact, conclusions of law, decision and order in a contested case in which the commission did not preside.

801—8.3(17A,35) Complaint procedure.

8.3(1) Complaints relating to the Iowa Veterans Home. Applicants or members of the Iowa Veterans Home must first exhaust the appeal process set out in rules 10.45(35A,35D) and 10.46(35A,35D), respectively.

8.3(2) Content of complaints. Complaints to the commission should state the name and address of the aggrieved party, identify the specific agency action which is disputed, the issues in dispute, and request a hearing, if applicable.

8.3(3) The chairperson shall review the appeal to determine if the issue is within the commission's scope.

8.3(4) Within 15 calendar days of receipt of a request for hearing, the chairperson shall transfer the request to the department of inspections and appeals pursuant to rules 481—10.3(10A) and 10.4(10A) and shall notify the aggrieved party of this transmittal. The department of inspections and appeals shall provide the hearing in accordance with rules promulgated by that department at 481—Chapter 10.

8.3(5) Appeals.

a. Parties have 30 calendar days from the mailing date of the decision by the department of inspections and appeals to appeal the decision to the commission. If no appeal is filed, the hearing decision becomes final 30 days from the date of decision.

b. Appeals to the commission shall be filed with the chairperson at the location identified in 801—subrule 1.2(1).

c. On appeal, the commission shall permit each party to file exceptions, present briefs and, with the consent of the commission, present oral arguments to the commission. The commission shall establish a deadline for submission of the written exceptions, briefs, and requests for continuances and shall notify the parties of the deadline.

d. The commission has the authority to fully and fairly develop the record and may inquire into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material.

e. The commission shall base its decision on the evidence contained in the record made before the department of inspections and appeals and may permit the parties to submit new evidence at its discretion upon a showing of why the new evidence was not reasonably available at the original hearing.

f. Request for continuance shall be made in writing and the reasons for the request shall be stated. The request shall be filed with the commission at the address given in 801—subrule 1.2(1).

g. The commission's decision on appeal is effective immediately unless otherwise specified in the decision.

8.3(6) Judicial review. A party who seeks judicial review shall first exhaust all administrative remedies as follows:

a. A party shall appeal the decision of the administrative law judge as provided in subrule 8.3(5) and receive a decision from the commission as provided in this subrule.

b. Petition for judicial review of the commission's decision shall be filed within 30 calendar days after the decision is issued.

These rules are intended to implement Iowa Code section 35A.3.

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CHAPTER 9
Reserved

CHAPTER 10
IOWA VETERANS HOME

[Prior to 2/29/84, Social Services[770] Ch 134]
[Prior to 2/11/87, Human Services[498] Ch 10]
[Prior to 1/20/93, Human Services[441] Ch 10]

PREAMBLE

The Iowa Veterans Home is a long-term health care facility located in Marshalltown, Iowa, operated by the Commission of Veterans Affairs.

801—10.1(35D) Definitions relevant to Iowa Veterans Home. The following definitions are unique to rules pertaining to the Iowa Veterans Home.

"Acute alcoholic" means any disturbance of emotional equilibrium caused by the consumption of alcohol resulting in behavior not currently controllable.

"Acutely mentally ill" means any disturbance of emotional equilibrium manifested in maladaptive behavior and impaired functioning caused by genetic, physical, chemical, biological, psychological, social or cultural factors which requires hospitalization.

"Addicted to drugs" means a state of dependency as medically determined resulting from excessive or prolonged use of drugs as defined in Iowa Code chapter 124.

"Adjutant" means the chief executive assistant of the commandant in charge of admissions, member financial affairs, benefits programming and veterans affairs.

"Admissions committee" means the committee appointed by the commandant to review applications to determine eligibility for admission and appropriate level and category of care.

"Applicant" means a person who is applying for admission into the Iowa Veterans Home.

"Assets" means items of value held by, or on behalf of, an applicant or member. Assets include, but are not limited to, cash, savings and checking accounts; stocks; bonds; contracts for sale of property; homestead or nonhomestead property. Nonrecurring windfall payments such as, but not limited to, inheritances; death benefits; insurance or tort claim settlements; and cash payments received from the conversion of a nonliquid asset to cash shall be considered assets upon receipt.

"At once" or *"timely"* means within ten calendar days.

"Clinical coordinator" means the chief executive assistant of the commandant in charge of clinical programming.

"Commandant" means the chief executive officer of the Iowa Veterans Home.

"Commission" means the Iowa commission of veterans affairs.

"Continuously disruptive" means any behavior, on a recurring basis, which has been documented by Iowa Veterans Home staff, that causes harm to a member or staff or conflicts with the member responsibilities set forth in subrule 10.12(1).

"Countable asset" means an asset to be considered in calculation of member support obligation.

"Dangerous to self or others" means any activity by a member which would result in injury to the member or others.

"Dependent" means a person for whose financial support an applicant or member is legally responsible or obligated.

"Diversion" means income that is transferred to a spouse before the member support is determined.

"DVA" means the U.S. Department of Veterans Affairs.

"Free time" means 15 days of furlough time each calendar year for which the member is not charged for care during absence.

"Full support" means the maximum daily rate of support times the billable days of care received in any month less any offsets.

"Honorable discharge" means separation or retirement from active military, naval or air force armed service after the satisfactory completion of the period of service to which a person was obligated at time of entry into service, or release from that obligation because of service-connected disabilities. Honorable discharge includes general discharges.

"Income" means money gained by labor or service, or money paid periodically to an applicant or member. Income includes, but is not limited to, disability, retirement pensions or benefits; interest, dividends, payments from long-term care insurance, or other income received from investments; income from property rentals; certain moneys related to real estate contracts; earnings from regular employment or self-employment enterprises.

"IVH" means the Iowa Veterans Home.

"Legal representative" for purposes of applicant or member personal and care decisions means durable power of attorney for health care, guardian, or next-of-kin (spouse, adult children, parents, adult siblings), as provided in Iowa Code chapters 144A, 144B, and 633. For applicant or member financial decisions, "legal representative" means conservator, power of attorney, fiduciary or representative payee.

"Licensed physician" means a doctor of medicine or osteopathic medicine who is licensed to practice in the state of Iowa.

"Member" means a patient or resident of IVH.

"Member support" means the dollar amount which is billed monthly to the member or legal representative for the member's care.

"PASARR" means preadmission screening and annual resident review.

"Resource" means assets and income.

"Spouse" means a person of the opposite sex who is the legal or common-law wife or husband of a veteran.

"Surviving spouse" means a person of the opposite sex who is the legal or common-law widow or widower of a veteran.

"Veteran" means a person who served in the active military, naval, coast guard, or air force armed services of the United States, and who was discharged or released therefrom under conditions other than dishonorable. Honorable and general discharges qualify a person as a veteran.

In addition, veteran includes a person who served in the merchant marine or as a civil service crew member between December 7, 1941, and August 15, 1945.

"Voluntary discharge" means when a member wishes to terminate the member's association with IVH on a permanent basis. This includes discharge for medical reasons which have been approved by a qualified physician. All other discharges are involuntary.

801—10.2(35D) Eligibility requirements. Veterans and spouses of veterans shall be eligible for admission to IVH in accordance with the following:

10.2(1) Veterans shall be eligible for admittance to IVH in accordance with the following conditions:

a. The individual does not have sufficient means for the individual's support, or the individual is disabled by reason of disease, wounds, old age or otherwise and is in need of one of the multilevels of care available at IVH and is unable to defray the expenses of the necessary care, except as described at paragraph *"d."*

b. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

c. An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

d. Individuals who have sufficient means for their own care but who are otherwise eligible to become members of IVH may, if there is room for individuals described in paragraph *"a"* above, be admitted and allowed to remain at IVH upon payment of the cost of the individual's care in accordance with rules 10.14(35D) to 10.23(35D).

e. The individual must be eligible for care and treatment at a DVA medical center.

f. Individuals admitted to the domiciliary level of care must meet DVA criteria stated in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, M-5, Part 8, Chapter 1.05(e), (i) and (j) (1), (2) and (3), and have prior DVA approval if the individual's income level exceeds the established cap.

10.2(2) Spouses and surviving spouses shall be admitted in accordance with the following:

a. The spouse or surviving spouse shall have been married to a veteran for at least one year preceding date of application or date of death of veteran.

b. The spouse of a veteran is eligible for admittance to IVH only if the veteran is admitted.

c. The surviving spouse of a deceased veteran is eligible for admittance to IVH if the deceased veteran would also be eligible for admittance to IVH if still living.

d. Spouses and surviving spouses admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

10.2(3) An individual who was not a member of the United States armed forces may be eligible for admittance in accordance with the limitations described in subrule 10.2(1), if the following conditions are met:

a. The individual was a member of the armed services of a nation with which the United States was allied during a time of conflict.

b. The individual is eligible for admission to a DVA medical center in accordance with U.S.C. Title 38, Chapter 17, Medical Care, Subchapter 2, Section 1710.

801—10.3(35D) Application. All applicants shall apply for admission to IVH in accordance with the following subrules:

10.3(1) All applicants shall make application to IVH through the county commission of veterans affairs in the applicant's county of residence.

10.3(2) Application shall be made on the "Veteran Application for Admission to the Iowa Veterans Home," Form 475-0409, or on the "Spouse's Application for Admission to the Iowa Veterans Home," Form 475-0410. Separate application shall be required for an eligible veteran and the spouse of the veteran when both veteran and spouse are applying for admission. The applications may be obtained at:

a. The county commission of veterans affairs' office.

b. DVA medical centers located in or serving veterans in the state of Iowa.

c. Mental health institutions operated by the state of Iowa.

d. IVH.

10.3(3) The applicant shall be scheduled for a physical examination by a licensed physician and the results of the examination shall be entered on the application by the examining physician. If the applicant has had a complete physical examination within 30 days of application, a copy of this physical shall suffice. Information must be authenticated by physician's original signature.

10.3(4) The following items shall be attached to the application before it is forwarded to IVH:

a. An affidavit signed by two members of the county commission of veterans affairs and notarized by the appropriate county official attesting to the best of their knowledge and belief that the applicant is a resident of that county and is an eligible applicant.

b. An original or a certified copy of the veteran's honorable discharge from the armed forces of the United States.

c. If the applicant is a married or surviving spouse, a copy of the marriage certificate or evidence of a common-law marriage on which a prudent person would rely.

d. An original or a certified copy of applicant's birth certificate if not in receipt of Social Security.

e. A copy of divorce decrees or death certificate for the spouse, if applicable.

f. A completed "Personal Functional Assessment," Form 475-0837.

g. A completed "Supplement to Application for Admission to the Iowa Veterans Home," Form 475-0843.

h. A completed "Financial Affidavit," Form 475-0839.

10.3(5) Once the requirements of subrules 10.3(2), 10.3(3) and 10.3(4) have been met, the county commission of veterans affairs shall forward the completed application to the adjutant's office at IVH. No county shall require additional requirements for the application for admission beyond the requirements stated in these rules. Neither shall a county require additional forms to be filled out or provided by the applicant other than the forms required by these rules.

10.3(6) Eligibility determinations are subject to approval by the commandant.

801—10.4(35D) Application processing.

10.4(1) Applications received by the adjutant's office shall be reviewed for completeness. The county commission of veterans affairs shall be required to submit additional information if needed.

10.4(2) The admissions committee shall assign the level and category of care required by the applicant. If a special care unit or treatment is required, this shall be designated.

10.4(3) Regardless of whether or not the applicant can be immediately admitted, the applicant shall be notified by the adjutant through the county commission of veterans affairs of the applicant's designated level and category of care. An applicant who does not wish to be admitted to the designated level and category of care may submit evidence to show that another level or category of care may be more appropriate. However, once the admissions committee makes a final determination, the applicant who does not wish to be admitted under the designated level or category of care may withdraw the application in writing or have the application denied.

10.4(4) When space is not immediately available in the level and category of care assigned or on the appropriate special care unit, the applicant's name shall be placed on the appropriate waiting list for that level and category of care or special care unit in the order of the date the application was received.

10.4(5) When space is available at time of application, or when space becomes available in accordance with the designated waiting list, the applicant shall be scheduled for admittance to IVH as follows:

a. An applicant whose physical examination or personal functional assessment, or both if applicable, was completed more than six months prior to the scheduled date of admittance may be required to obtain another physical examination by a licensed private or DVA physician or complete a current personal functional assessment, or both if applicable. This information shall be reviewed to determine that the applicant is capable of functioning at the previously determined level of care and category.

b. An applicant who requires a different level and category of care than previously determined shall be admitted to the level of care required if a bed is available or shall have the applicant's name placed on the waiting list for the appropriate level and category of care in accordance with the date the original application was received.

c. If there is a question regarding the level and category of care for which the applicant qualifies, the applicant shall be scheduled for a preadmission examination with appropriate staff in order to make a determination of appropriate level and category of care. If there is a question of whether or not the applicant can be appropriately treated within the scope of existing programs or facility license or both, the applicant shall be scheduled for a preadmission screening by appropriate staff.

d. A preadmission packet, including "Contractual Agreement," Form 475-0694; information regarding member rights and responsibilities; applicable policies; and advance directives shall be mailed to the applicant when admission is scheduled.

e. If planned admission is to a Title XIX certified area, the PASARR must be completed and approval obtained prior to admission.

801—10.5(35D) Applicant's responsibilities. Prior to admission to IVH, the applicant or a person acting on the applicant's behalf shall:

10.5(1) Report any change in the applicant's condition that could affect the previously determined level of care.

10.5(2) Report changes in mailing address, county or state of residency.

10.5(3) Provide additional information, verification or authorization for verification concerning the applicant's circumstances, condition of health, and resources if required.

10.5(4) Participate in a preadmission evaluation for level of care if required.

801—10.6(35D) Admission to IVH.

10.6(1) The applicant shall be notified through the county commission of veterans affairs to appear for admission to IVH.

10.6(2) Upon arrival at IVH the applicant or legal representative shall report to the adjutant's office for an admission interview.

10.6(3) During the interview the adjutant or designee shall review the following items with the applicant or legal representative:

a. The applicant's resources.

b. The member support, billing process and banking services.

c. The "Contractual Agreement," Form 475-0694.

10.6(4) In order to meet the requirements of subrule 10.6(3), the applicant or legal representative shall complete and sign the following forms as applicable:

a. Financial Disclosure Authorization-Resident, Form 475-0757.

b. Financial Disclosure-Guardian/Conservator Consent, Form 475-0753.

c. Release of Condition Information, Form 475-0700.

d. Permission for Treatment, Form 475-0814.

e. Financial Affidavit, Form 475-0839.

f. Expenditure Authorization from Conservator, Form 475-1273.

10.6(5) An applicant becomes a member at that point in time when the applicant or legal representative signs and dates the "Contractual Agreement," Form 475-0694, or otherwise authorizes, in writing, acceptance of the terms of admittance specified in the Contractual Agreement.

10.6(6) Each member shall be placed on a unit providing the appropriate level and category of care based on individual needs.

a. A member requiring a change in placement based on individual care needs shall be transferred to a unit which provides the appropriate level and category of care within the scope of its licensure.

b. Members shall have priority over new admissions for placement on a unit when a vacant bed becomes available.

10.6(7) Care at IVH shall be provided in accordance with Iowa Code chapter 135C; 481—Chapter 57, Residential Care Facility; 481—Chapter 59, Nursing Facility; and State Veterans Homes, Veterans Health Administration, M-5, Part 8, Chapter 2, 2.06, 2.07 and 2.09, November 4, 1992.

801—10.7 to 10.10 Reserved.

801—10.11(35D) Member rights.

10.11(1) Member rights shall be in accordance with those listed in 481—Chapter 57 for members residing in the residential care facility level of care, 481—Chapter 59 for members residing in the nursing facility level of care, and those noted in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, pertaining to residents of state veterans homes.

10.11(2) A member has the right to share a room with the member's spouse when both member and spouse consent to the arrangement and both require the same level of care.

10.11(3) If a member is incompetent and not restored to legal capacity, or if the attending physician determines that a member is incapable of understanding and exercising these rights, the rights devolve to the member's legal representative.

10.11(4) In some cases, a member may be determined to be in need of a fiduciary or agent by the DVA, the Social Security Administration or by a similar funding source. In these cases the commandant or designee may serve as agent subject to Iowa Code section 135C.24. All rights and responsibilities regarding the financial awards shall devolve to the commandant or designee.

801—10.12(35D) Member responsibilities.

10.12(1) The member or legal representative has the responsibility:

a. To timely report the existence of or changes in the member's income, spouse's income, assets or marital status, including the conversion of nonliquid assets to cash or liquid assets. The member shall also complete the change report which is enclosed with the monthly member support bill.

b. To apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, private pension programs, or any combination), and accept the available billing programs offered at IVH.

c. To provide information concerning the physical condition and, to the best of the member's knowledge, accurate and complete information concerning present physical complaints, past illnesses, hospitalizations, medications and other matters related to the member's health.

d. To report unexpected changes in the member's condition to the attending physician or other clinician.

e. To make it known if the member clearly comprehends a contemplated course of treatment and the member's role in that treatment. If a member feels that a particular treatment is of no benefit, the member is responsible for reporting this to staff so that other alternatives may be considered.

f. To participate in treatment planning, cooperate with the treatment team in carrying out the treatment plan, and to participate in the evaluation of the member's care.

g. To be considerate of the rights of other members and staff and control behavior in respect to smoking, noise, and number of visitors.

h. To treat other members and staff with dignity and respect.

i. To respect the property of other members, staff, and IVH. A member or legal representative may be held financially responsible for any property damaged or destroyed by the member.

j. To ask questions about anything that the member may not understand about the member's care or IVH.

k. To accept the consequences of the member's actions if the member refuses treatment or fails to follow prescribed care.

l. To follow the rules and regulations of IVH regarding member care and conduct as set out in subrule 10.40(1).

m. To keep scheduled appointments with staff. If unable to do so, the member is responsible for notifying appropriate staff.

n. To maintain personal hygiene, including clothing, and maintain personal living area based on the member's physical and mental capabilities.

o. To follow all fire, safety and sanitation regulations as established by IVH and applicable regulatory agencies.

p. To provide information and verification of resources. A member or legal representative must fulfill the member support obligation for member health care.

q. To carry Medicare Part B insurance if eligible. IVH shall buy the medical insurance portion of Medicare Part B if member is not eligible to receive Medicare Part B under Social Security.

10.12(2) The member or legal representative is responsible for the full payment of the member's support charges within the calendar month that the monthly support bill is received. Failure to pay a monthly support bill within 30 days of issuance may result in discharge from IVH unless prior arrangements have been made.

10.12(3) In those instances when a legal representative is responsible for the handling of the member's resources, the legal representative shall keep any records necessary and provide all information or verification required for the computation of member support as set out in rule 10.14(35D). Failure of the legal representative to do so may result in the discharge of the member. In some cases, IVH may act to have the commandant or designee established as the member's fiduciary or agent as set out in subrule 10.11(4). In those cases when a guardian or conservator of a member fails to keep necessary records or provide needed information or verification or to meet the member support obligation, IVH may notify the court of problems and request to establish another individual as guardian or conservator. The conservator of a member shall submit a copy of the annual conservatorship report to IVH.

10.12(4) When a member temporarily needs a level of care that is not offered by IVH, the member shall be referred by IVH medical staff to a DVA medical center or to another medical facility. When a member goes to a DVA medical center, that member is responsible for the payment of any DVA charges except those charges exempted by the commandant.

a. If a member who is treated at a DVA medical center has coinsurance to supplement Medicare, this coinsurance shall be used for the DVA medical center charges. IVH shall be responsible for all DVA medical center charges if the member does not carry coinsurance supplement.

b. If a member chooses a medical facility other than a DVA medical center or other medical facility as referred by IVH medical staff, the member is responsible for costs resulting from care at the medical facility chosen.

801—10.13 Reserved.

801—10.14(35D) Computation of member support. As a condition of admittance to and residency in IVH, each member is required to contribute toward the cost of that member's care based on that member's resources and ability to pay.

10.14(1) A monthly member support bill shall be sent to the member or legal representative charging the member for care in the previous month with any necessary adjustment for prior months. A member may be required to pay member support charges from the member's liquid assets, long-term care insurance benefits, or from the member's income. The monthly member support charge shall be the billable days, as set out in subrule 10.14(3), multiplied by the appropriate per diem from rule 10.15(35D). This amount shall be reduced by any offsets as set out in subrules 10.15(2) and 10.15(3). The member or legal representative shall pay an amount not to exceed the amount calculated based on the resources available for the cost of care as set out in this chapter.

10.14(2) Title XIX residents. If a member is certified as eligible and participating in the Title XIX program, the amount of payment shall be determined by the department of human services income maintenance worker.

10.14(3) Billable days (non-Title XIX). Billable days for members not participating in the Title XIX program shall be counted as follows:

a. All days in the month for which the member received care (in-house).

b. All days away from IVH on pass status.

c. All furlough days in excess of the 15 free days up through the fifty-ninth furlough day. Any furlough days in excess of 59 days shall be considered billable, but the member must pay the full member support, not the amount determined by resources.

d. The first ten days of each hospitalization. On the eleventh day the member's bed shall be held without charge until the termination of hospital stay and member returns to IVH.

801—10.15(35D) Per diems.

10.15(1) For members not participating in the Title XIX program, the per diem by which the billable days shall be multiplied shall be established as follows:

a. Nursing and infirmary levels of care.

(1) The charge for care is the per diem submitted by IVH to department of human services for the Title XIX certified units as calculated in January and July of each year for the preceding six months.

(2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.

(3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.

b. Domiciliary level of care.

(1) The total cost of care per member shall be determined in January and July of each year for the preceding six months and calculated in a manner similar to the nursing level of care. This cost shall be the charge for care.

(2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.

(3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.

10.15(2) Veteran members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance for whom IVH receives a per diem from the U.S. DVA (under Title 38). IVH shall consider this per diem as a third-party reimbursement to the charge for care and shall be an offset to the member support bill. The offset of the per diem received (billed to DVA) shall be shown as an offset for the month billed.

10.15(3) For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The daily per diem charge shall be reduced by an amount equal to the "usual" Medicare premium calculated as a per diem. This offset shall be available only to members eligible for Medicare insurance.

10.15(4) For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The member support charge shall be reduced in accordance with subrules 10.15(2) and 10.15(3), if applicable. The member shall then contribute all remaining available resources up to the charge for care.

Members receiving DVA pension and aid and attendance shall be considered as having used the amount equal to aid and attendance first in payment for their care at IVH.

10.15(5) Payment of support is due on the tenth of the month in which the monthly support bill is received, or ten business days after the member's last income deposit for that month.

a. If payment is not received by IVH within 30 days following the due date, a notice of discharge may be issued.

b. If there are extenuating circumstances, the member or legal representative should meet with the commandant or designee to work out a schedule of payments.

801—10.16(35D) Assets. The following rules specify the treatment of assets, as defined in rule 10.1(35D), in the payment of member support as described in rule 10.14(35D). Only liquid assets shall be considered in the payment of member support.

10.16(1) For members living on Title XIX certified units who have applied for and are eligible to receive Title XIX medical assistance, rule 441—75.5(249A) shall apply. Financial eligibility for Title XIX shall be determined by the department of human services income maintenance worker.

10.16(2) For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance, the following rules apply:

a. Assets considered. The assets considered shall include all assets owned by the member, or if married, both the member and the spouse living in the community, except for the following:

(1) The homestead is exempt as follows: The exempt homestead is defined as the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. Contiguous means that portions of the homestead cannot be separated from the home by intervening property owned by others. However, the homestead is considered contiguous if portions of it are separated from the home only because of roads or other public rights-of-way. Property that is not exempt as part of the homestead shall be treated in accordance with the rules of this chapter.

The homestead, as defined, can retain its exempt status for a period of time not to exceed 36 months, while the member, spouse and dependents are temporarily absent, provided the following conditions are met:

1. There is a specific purpose for the absence.
2. The member, spouse or dependents intend to return to the homestead when the reason for the absence has been accomplished.
3. The member, spouse or dependents can reasonably be expected to return to the home during the 36-month time limitation.
4. If a person is an applicant at the time the homestead becomes vacant due to the absence of the applicant, spouse or dependents, the first month of the 36-month period is the month of admission to IVH.
5. If a person is a member when the homestead becomes vacant due to the absence of the member, spouse or dependents, the first month of the 36-month period is the month following the month in which the homestead is vacated.
6. Any homestead that does not qualify for this exemption or any homestead that is vacant for a period of time exceeding the 36-month limit shall be treated in accordance with subrule 10.16(3).

(2) Household goods, personal effects and motor vehicles.

(3) The value of any burial spaces held for the purpose of providing a place for the burial of the member, spouse or any other member of the immediate family.

(4) Exempt income-producing property includes, but is not limited to, tools, equipment, livestock, inventory and supplies, and grain held in storage.

(5) Other property essential to the means of self-support of either the member or spouse as to warrant its exclusion under the Supplemental Security Income program.

(6) Assets of a blind or disabled person who has a plan for achieving self-support as determined by the division of vocational rehabilitation or the department of human services.

(7) Assets of Native Americans belonging to certain tribes arising from judgment fund and payments from certain land and subsurface mineral rights.

(8) Any amounts arising from Public Law 101-239 which provides assistance to veterans under the Agent Orange product liability litigation.

(9) Assistance under the Disaster Relief Act and Emergency Assistance Act or other assistance provided pursuant to federal statute as a result of a presidential disaster declaration and interest earned on these funds for the nine-month period beginning on the date these funds are received or for a longer period where good cause is shown.

(10) An amount that is irrevocable and separately identifiable, not in excess of $7500 principal, for the member or spouse to meet the burial and related expenses of that person.

(11) Federal assistance paid for housing occupied by the spouse living in the community.

(12) Assistance from a fund established by a state to aid victims of crime for nine months from receipt when the client demonstrates that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.

(13) Relocation assistance provided by a state or local government to a member or spouse comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which is subject to the treatment required by Section 216 of the Act.

(14) Any other asset excluded by statute.

b. Assets of a single member. When liquid assets, not exempted in paragraph *"a"* above, are equal to or exceed $1400, those liquid assets shall be considered an available resource for payment of member support. These assets will be considered available for payment of member support until such time that the remaining liquid assets total less than $500.

c. Assets of a married member with spouse in a care facility. If a member's spouse is residing in a nursing facility, including IVH, the member will be treated as a single member for asset determination purposes. If the spouse is residing in a residential care facility, the rules pertaining to a spouse living in the community apply.

d. Assets of a married member with spouse living in the community. When liquid assets, not exempted in paragraph *"a"* above, are equal to or exceed $1400, those liquid assets shall be considered an available resource for payment of member support. These assets will be considered available for payment of member support until such time that the remaining liquid assets total less than $500.

The assets attributed to the member shall be one-half of the documented assets of both the member and spouse living in the community as of the first day of admission to IVH. However, if one-half of the resources is less than the amount set by 441 IAC 75.5(3)*"d"* and *"f,"* Public Law 100-365 and Public Law 100-485, then that amount shall be protected for the spouse living in the community. Resources attributed to the spouse living in the community will be one-half of the total resources up to a maximum as established by statute.

(1) If the member has transferred assets to the spouse living in the community under a court order for the support of the spouse, the amount transferred shall be the amount attributed to the spouse to the extent it exceeds the specified limits above.

(2) After the month in which the member is admitted, no attributed resources of the spouse living in the community shall be deemed available to the member during the continuous period in which the member is at IVH. Resources which are owned wholly or in part by the member and which are not transferred to the spouse living in the community shall be counted in determining member support. The assets of the member shall not count for member support to the extent that the member intends to transfer and does transfer the assets to the spouse living in the community within 90 days.

(3) Report of results. IVH shall provide the member and spouse and legal representative, if applicable, a report of the results of the attribution. The report shall state that either has a right to appeal the attribution in accordance with rule 10.45(35D).

e. Exception based on estrangement. When it is established by a disinterested third-party source and confirmed by the commandant or designee that the member is estranged from the spouse living in the community, member support shall be determined on the basis of resources of a single member.

10.16(3) When a member owns an available, nonliquid, nonexempt asset, the value of which would affect the computation of member support as described in rule 10.14(35D), the asset shall be liquidated. The value of that asset shall be considered in the computation of member support. The following paragraphs are to be considered when liquidating assets:

a. Net market value, or equity value, is the gross price for which property or an item can be sold on the open market less any legal debts, claims or liens against the property or item. IVH shall consider the condition and location of an item or property and local market conditions in determining the gross sales price of the item or property. In order for a loan or claim to be considered a lien or encumbrance against an asset, the loan or claim must be made under circumstances that result in the creditors having a recorded legal right to satisfy the debt.

b. An asset must be available in order for it to be treated in accordance with the rules of this chapter. An asset is considered available when:

(1) The member owns the property in part or in full and has control over it; that is, it can be occupied, rented, leased, sold or otherwise used and disposed of at the member's discretion; and

(2) The member has a legal interest in a liquidated sum and has the legal ability to make the sum available for member support.

c. A member must take all appropriate action to gain title and control of any asset of which the value would affect the computation of member support.

d. The value of the asset may be adjusted if the member or legal representative:

(1) Advertises the asset for sale, through appropriate methods, on a continual basis.

(2) Lists the asset with a real estate broker or other agent appropriate to the asset.

(3) Asks a reasonable price which is consistent with the asking price of similar items of property in the community.

(4) Does not refuse a reasonable offer.

(5) Does not sell the asset for an unreasonably low price.

e. Cash proceeds from the sale of an asset, conversion of an asset to cash, or receipt of any cash asset as defined in rule 10.1(35D) shall be used in the computation of member support beginning with the calendar month of receipt.

801—10.17(35D) Divestment of assets.

10.17(1) "Intentional divestment of assets" means:

a. To knowingly sell, give or transfer by member or legal representative for less than fair market value, any asset, the value of which would affect member support; or

b. To knowingly and voluntarily place an asset, the value of which would affect member support, under a trust or other legal instrument that ends or limits the availability of that asset.

10.17(2) Transfers of resources shall be presumed to be divestiture unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose. In addition to giving away or selling assets for less than fair market value, examples of transferring resources include, but are not limited to, establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource or any other transfer as defined in the Supplemental Security Income program.

a. Convincing evidence to establish that the transaction was not a divestiture may include documents, letters, and contemporaneous writings, as well as other circumstantial evidence.

b. In rebutting the presumption that the transfer was a divestiture, the burden of proof is on the individual to establish:

(1) The fair market value of the compensation;

(2) That the compensation was provided pursuant to an agreement, contract, or expectation in exchange for the resource; and

(3) That the agreement, contract, or expectation was established at the time of transfer.

10.17(3) An applicant or legal representative shall not knowingly and intentionally divest an asset, as set out in subrule 10.17(1), within the period established by Title XIX statute prior to admission, with the intention of reducing the applicant's member support or of obtaining admission to IVH.

When it is determined by the commandant or designee that an applicant did intentionally divest an asset, upon admission that applicant shall be charged member support as if divestment did not occur.

10.17(4) A member or legal representative shall not knowingly and intentionally divest an asset, as described in subrule 10.17(1), while a member with the intention of reducing the member support.

When it is discovered that a member or legal representative improperly divested an asset(s), that member shall be charged member support as if divestment did not occur.

801—10.18(35D) Commencement of civil action. The commandant or designee may file a civil action for money judgment against a member or discharged member or the member's legal representative for support charges when the member or discharged member fails to pay member support in accordance with 801—Chapter 10.

801—10.19(35D) Income. This rule describes the treatment of income, as defined at rule 10.1(35D), in the computation of member support as described at rule 10.14(35D).

10.19(1) For members living on Title XIX certified units who are eligible for Title XIX medical assistance, rule 441—75.5(249A) shall apply. For those members participating in the Title XIX medical assistance program, the difference between the $90 personal needs allowance and the Title XIX personal needs allowance shall be returned to the member out of individual member participation.

10.19(2) For members living on units which are not Title XIX certified and members living on Title XIX certified units who are not eligible for Title XIX, the following shall apply:

a. The following types of income are exempt in the computation of member support:

(1) The earned income of the spouse or dependents.

(2) Unearned income restricted to the needs of the spouse or dependents (Social Security, DVA, etc.).

(3) Any other income that can be specifically identified as accruing to the spouse or dependents.

(4) Nonrecurring gifts, contributions or winnings, not to exceed $60 in a calendar quarter.

(5) Interest income of less than $20 per month from any one source.

(6) State bonus for military services.

(7) Any earnings received by a member for that member's participation in money-raising activities administered by veterans organizations or auxiliaries.

(8) Any money received by a member from the sale of items constructed or grown at IVH as part of a therapy program.

(9) The first $125 received by a member in a month for participation in the incentive therapy or other programs as described at rule 10.30(35D), for members in the domiciliary level of care. For members in the nursing level of care, the first $65 shall be exempted.

(10) Personal loans.

(11) In-kind contributions to the member.

(12) Title XIX payments.

(13) Yearly DVA compensation clothing allowance for those who qualify.

(14) Other income as specifically exempted by statute.

(15) Any income similar in its origin to the assets excluded in subparagraphs 10.16(2)"*a*"(6) and (7).

b. Personal needs allowance. All members shall have a monthly income intended to cover the purchase of clothing and incidentals.

(1) All income up to the first $90 shall be kept as a personal needs allowance.

(2) The personal needs allowance shall be subtracted from the member's income prior to determination of moneys to which the spouse may be entitled.

c. Any type of income not specifically exempted shall be considered for the payment of member support as provided in rule 10.14(35D).

d. Determining income from property.

(1) Nontrust property. Where there is nontrust property, income paid in the name of one person shall be available only to that person unless the document providing income specifies differently. If payment of income is in the name of two persons, one-half is attributed to each. If payment is in the name of several persons, the income shall be considered in proportion to their ownership interest. If the member or spouse can establish different ownership by a preponderance of evidence, the income shall be divided in proportion to the ownership.

(2) Trust property. Where there is trust property, the payment of income shall be considered available as provided in the trust. In the absence of specific provisions in the trust, the income shall be considered as stated above for nontrust property.

e. The amount of income to consider in the computation of member support shall be as follows:

(1) Regular monthly pensions and entitlements. The amount of income to be considered is the amount of the monthly entitlement or pension received.

(2) Investments or nonrecurring lump-sum payments. Net unearned income from investments or nonrecurring lump-sum payments shall be determined by deducting income-producing costs from the gross unearned income. Income-producing costs include, but are not limited to, brokerage fees, property manager's salary, maintenance costs and attorney fees.

(3) Property sold on contract. The amount of income to consider shall be the amount received minus any payments for mortgage, taxes, insurance or assessments still owed on the property.

(4) Earned income from a rental, sole or partnership enterprise. The amount of income to consider shall be the net profit figure as determined for the Internal Revenue Service on the member's income tax return.

EXCEPTION: The deductions of the previous year's state and federal taxes and depreciation on the income tax return are not allowable deductions for the purpose of the computation of member support. If a tax return is not available, the member or legal representative shall provide all information and verification needed in order to correctly compute member support.

(5) Partnership income. The member's share of the net profit shall be determined in the same manner as the partnership percentage as determined for Internal Revenue Service's purposes.

10.19(3) Member income diversion to dependent spouse not living at IVH. A portion of the member's income shall be diverted to the spouse according to the following:

a. Spouse living in the community. One-half the income in exclusion of an amount equal to aid and attendance and after reduction of personal needs allowance.

b. Spouse in another nursing home not on Title XIX. The same amount as a spouse living in the community in accordance with paragraph 10.19(3)"*a.*"

c. Spouse in nursing home on Title XIX. Member shall be treated as single. If member is in receipt of DVA pension, the amount of income provided Title XIX spouse would be the DVA pension dependency amount.

d. Spouses living in a residential care facility. Spouses shall be treated under the same rules as a spouse living in the community in accordance with paragraph 10.19(3)*"a."*

e. All current court order proceedings and guardian/conservatorship appointments regarding financial obligations, except child support or alimony, shall be honored.

10.19(4) Income disbursements.

a. All monthly diversions to spouse or valid court orders shall be mailed as designated or on a monthly basis.

b. All checks shall be mailed no later than the eighth day of any given month to proper recipient or, at IVH's option, five business days after the member's last income deposit for that month.

c. Monthly income disbursements to a community spouse may be delayed or canceled if there is an overdue amount owed for support payments.

801—10.20(35D) Other income.

10.20(1) When a member receives regular monthly payments of unearned income, it shall be included in the resources available for the payment of member support.

10.20(2) When a member receives periodic recurring income which is received less frequently than monthly, this countable income, after the deduction of any allowable income-producing expenses, shall be considered in the month received.

10.20(3) When a member receives a nonrecurring retroactive payment from a specific entitlement source for a prior period of time, it shall be considered as income in the month received.

10.20(4) Income from a particular source is considered terminated as of the date the member receives the last income payment from that source or the date that a sole or partnership enterprise ends, whichever is later.

10.20(5) When income from a particular source decreases in a calendar month, the decrease in income shall be considered in the computation of that month's member support. Income from a particular source is considered to be decreased as of the date the member receives the first income payment in the decreased amount.

10.20(6) When income from a particular source increases in a month, the increase in income shall be considered in the computation of that month's member support. Income from a particular source is considered to be increased as of the date the member receives the first income payment in the increased amount.

10.20(7) Recurring lump-sum payments shall be treated as income in the month received.

10.20(8) Nonrecurring lump-sum payments earned prior to admission, regardless of when received, shall not be counted as income but may be considered as an available liquid asset.

10.20(9) Any income as defined in rule 10.20(35D) that exceeds the member support billing for that month shall thereafter be considered a liquid asset available under rule 10.16(35D).

801—10.21(35D) Fraud. Applicants, members or legal representatives who knowingly conceal the existence of resources may be subject to the billing of full member support, discharge for failure to pay for member's care or denial of admission. Further, members who knowingly conceal liquid assets or income which would have affected member support shall be charged for the amount not previously billed due to the fraudulent act. If upon admission it is determined that medical or other pertinent information provided during the application process was fraudulent, notice of discharge may be issued. In addition, any applicant, member or legal representative suspected of fraud may be referred to the department of inspections and appeals, division of investigations, for possible criminal or civil action. The attorney general's office shall conduct the investigation.

801—10.22(35D) Overcharges. When it is discovered that a member was charged for support in excess of the amount actually due, the member shall receive a refund or credit to the member's account. If the member is discharged or deceased, a refund shall be conveyed to the member or legal representative.

801—10.23(35D) Penalty.

10.23(1) All members who have resources in excess of the full support rate shall be charged the full member support rate. If any member does not apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, or any combination), fails to report resources accurately in order to not pay full support, or refuses to accept the available billing programs offered at IVH, that member shall be charged up to full member support as if these responsibilities had been followed. Failure to comply with these rules may result in discharge from IVH.

10.23(2) If a member is required to pay full member support under these rules, the monthly charge shall be calculated as the per diem in paragraph 10.15(1)*"a"* or 10.15(1)*"b"* times the billable days less any offsets. This amount, in total, shall be due regardless of resources available. If a member is required to pay member support based on additional resources, these figures shall be obtained from the appropriate agencies.

801—10.24 to **10.29** Reserved.

801—10.30(35D) Incentive therapy and nonprofit rehabilitative programs. Members may be offered the opportunity to perform services for IVH through the incentive therapy program as part of their plan of care. Participating members shall be compensated for their involvement in the incentive therapy program according to applicable guidelines established by the U.S. Department of Labor, Wage, and Hour Division, and the commandant or designee if members enrolled in nonprofit rehabilitative programs receive an income from such programs, that income shall be treated in the same manner as the incentive therapy program or IVH policy.

This rule is intended to implement Iowa Code section 35D.7(3).

801—10.31 to **10.34** Reserved.

801—10.35(35D) Handling of pension money and other funds. Each member who has not been assigned a guardian, conservator, fiduciary or representative payee or has not designated a power of attorney while competent or as otherwise specified, may manage that member's own personal financial affairs. Upon the receipt of written authorization from the member or legal representative to the commandant or designee, the commandant or designee may assist the member in the management of the member's financial affairs.

10.35(1) Pension money or other funds deposited with IVH are not assignable except as specified at subrule 10.19(3) or 10.40(2)*"b"*(1).

10.35(2) If authorized by a member, the commandant or designee may act on behalf of that member in receiving, disbursing, and accounting for personal funds of the member received from any source subject to the requirements of Iowa Code section 135C.24. The authorization may be given or withdrawn in writing by the member or legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

10.35(3) IVH shall maintain a commercial account with a federally insured bank for the personal deposits of its members. The account shall be known as the IVH membership account. The commandant or designee shall record each member's personal deposits individually and shall deposit the funds in the membership account where the members' deposits shall be held in the aggregate. Interest shall accrue on those accounts that are on deposit the last working day of a quarter.

10.35(4) If authorized in writing by the member or legal representative, the commandant or designee may make withdrawals against that member's personal account to pay regular bills and other expenses incurred by the member. The authorization may be given or withdrawn in writing by the member or legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

10.35(5) The commandant or designee shall maintain a written record of each member's funds which are received by or deposited with IVH. The member or legal representative shall receive a monthly statement showing deposits, withdrawals, disbursements, interest and current balances. If the commandant or designee is made representative payee for the member's financial transactions, this statement shall be maintained in the member's administrative file.

10.35(6) Except as otherwise specified, funds deposited with IVH shall be released to the member or legal representative upon request with a statement showing deposits, disbursements, interest, and the final balance at the time the funds are withdrawn. When the member continues to maintain residency at IVH, the funds shall be released and statement provided within three working days following the request. When a member is being discharged from IVH, the funds shall be released and a statement provided no later than the tenth day of the month following the month of discharge.

10.35(7) Upon the death of a member with personal funds deposited with IVH, IVH must convey promptly the member's funds to any outstanding funeral home bill, the individual paying last funeral expenses, or whoever is administering the member's estate. A final accounting of those funds must also be provided to the individual administering the member's estate. If value of the member's estate is so small as to make the granting of administration inadvisable, IVH must hold, then deliver all money plus interest within one year to the proper heirs equally or adhere to member's request in last will and testament.

This rule is intended to implement Iowa Code sections 35D.11(2) and 35D.12(2).

801—10.36(35D) Passes, furloughs, and room retention.

10.36(1) *Non-Title XIX members.*

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge/Furlough Against Medical Advice," Form 475-0940.

b. Passes are required if the member expects to be absent past midnight. A pass shall not exceed 96 hours. If a member expects to be gone more than 96 hours, a furlough is required.

c. Upon return from a pass or furlough, the member must spend 24 hours in residence at IVH before another pass or furlough is issued. The commandant or designee may, in an emergency situation such as family illness or death, grant exceptions.

d. All furloughs other than free time shall require payment of member support charges as though the member were in residency. Failure to pay regular member support charges shall result in discharge of the member. Furlough length may be changed by notification from the member or legal representative to the commandant or designee.

e. Medical furloughs. Furloughs spent in approved medical facilities away from IVH shall not be counted against the 59-day furlough time limit as set out in paragraph 10.14(3)*"c."*

Hospital furloughs shall be granted and the charges for such furloughs shall be as follows: During the first ten days of any hospital stay, the member shall pay the regular and usual assessed charge of the level of care of the bed held. Beginning on the eleventh day through the remainder of the hospitalization, the member shall not be charged. Each monthly member support bill shall reflect any adjustments related to hospitalization. Members discharged from IVH shall have the account closed before the first of the month following the discharge.

Furloughs to other medical facilities for the purpose of treatment shall be treated as hospital furloughs.

f. General furloughs.

(1) Fifteen days of furlough time each calendar year shall be free time.

(2) The member shall be charged the usual support charge for furlough time over 15 days up to and including 59 days.

(3) The member shall be charged the full member support for the level of care in which the member resides for furlough time over 59 days.

(4) Free time and other furlough time are not cumulative from one calendar year to another calendar year.

(5) Free time the member has not utilized or cannot utilize shall not be credited toward the member's support.

(6) Support charges for the member on furlough wishing to retain the member's room or bed shall be due and payable as though the member were in residency as set forth in paragraph 10.36(1)*"d."*

g. When a member is on pass, the member shall remain on in-house status for DVA per diem purposes and IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

h. When a member is on furlough, IVH is not financially responsible for any medical charges for the member.

10.36(2) *Members who are receiving Title XIX benefits.*

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge/Furlough Against Medical Advice," Form 475-0940.

b. A pass or furlough as set out in paragraph 10.36(1)*"b"* (whichever is appropriate) is required if a member expects to be absent past midnight. Free time does not apply to Title XIX members.

c. The member's bed shall be held while the member is visiting away from IVH for a period not to exceed 18 days in any calendar year. There is no restriction as to the amount of days taken in any one month or during any one visit, as long as the days taken in the calendar year do not exceed 18. Additional days shall be allowed if the member's physician recommends in the plan of care that additional days would be rehabilitative.

d. A member or a legal representative who wishes to exceed the 18 visitation days and retain the member's bed, but does not have physician recommendation for an extension, must make arrangements with the adjutant or designee for payment of the rate determined by the department of human services income maintenance worker for all days in excess of the 18 visitation days. If prior arrangements and payment are not made, member may be discharged in accordance with subrule 10.12(2).

e. A bed shall be held for a hospitalized member. The member's client participation shall be an exception to department of human services' rules as the member's bed will be held free of charge after the first ten days of a hospital stay until member returns or is discharged.

f. IVH is not financially responsible for any medical charges for the member when visiting away from IVH.

801—10.37 to **10.39** Reserved.

801—10.40(35D) Requirements for member conduct. The commandant shall administer and enforce all requirements for member conduct. Subject to these rules and Iowa Code section 135C.23, the commandant may transfer or discharge any member from IVH when the commandant determines that the health, safety or welfare of the members or staff is in immediate danger, and other reasonable alternatives have been exhausted.

10.40(1) In addition to the member responsibilities as set out in rule 10.12(35D), each member shall also comply with the following requirements:

a. The use of intoxicants or alcoholic beverages on IVH premises is prohibited unless prescribed by a physician.

b. The bringing of alcoholic beverages or illicit substances on IVH premises is prohibited.

c. Firearms or weapons of any nature shall be turned in to the adjutant or designee for safekeeping. The adjutant or designee shall decide if an instrument is a weapon.

d. Smoking in members' rooms is prohibited. Members who smoke shall do so within designated smoking areas.

e. Continuously disruptive behavior on the part of a member, such as fighting with other members, visitors or staff, assault or theft, is grounds for transfer or discharge.

10.40(2) When a member is found in violation of the requirements of conduct established in subrule 10.40(1), the following steps may be taken:

a. A period of counseling from an appropriate staff member.

b. IVH control of the member's personal funds as follows:

(1) The pension money and other incomes and available liquid assets shall be deposited by the commandant or designee in a separate account for and on behalf of the member. The commandant or designee shall, under the procedures established in subrules 10.35(3) and 10.35(4), make withdrawals and disbursements to meet the regular bills and other expenses of the member.

(2) If, after a period of up to six months, the member's behavior is orderly and sober, the deposit shall be returned to the member.

(3) If the member is discharged from IVH, the balance of the deposit shall be paid to the member or financial legal representative within 30 days of discharge.

c. Discharge from IVH in accordance with subrule 10.40(3).

10.40(3) The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member's violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. In an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

The member's county commission of veterans affairs and the legal representative shall be informed in writing of the decision to discharge. Written notification shall also be issued to appropriate governmental agencies including the commission, department of inspections and appeals, and the department of elder affairs long-term care ombudsman to ensure that the member shall not be in danger of health, safety or welfare upon release.

10.40(4) A member who has been previously discharged under the provisions of subrule 10.40(2) or 10.40(3) shall be readmitted to IVH only upon the approval of the commandant or designee. If not approved, the applicant shall receive written notice of the denial. A copy of the denial notice shall be forwarded to the commission and the appropriate county commission of veterans affairs. Any decision to deny readmittance is subject to the review of the commission.

801—10.41(35D) County of settlement upon discharge. A member does not acquire legal settlement in the county in which IVH is located unless the member is voluntarily or involuntarily discharged from IVH, continuously resides in the county for a period of one year subsequent to the discharge and during that year is not readmitted to IVH and does not receive any services from IVH.

801—10.42(35D) Disposition of personal property and funds.

10.42(1) A discharged member will remove all personal property at the time of discharge or within 30 days. Personal property not removed within 30 days after discharge shall become the property of IVH to dispose of as the commandant or designee directs. Personal property may be forwarded at the member's expense to the member's last-known address. When the member is discharged from IVH, the member's funds shall be released to the member or legal representative with a statement provided no later than the tenth day of the month following the month of discharge.

10.42(2) Following written notification to the legal representative, a deceased member's personal property remaining at IVH 30 days after written notification shall become the property of IVH to dispose of as the commandant or designee directs. If there is a known legal representative, the property may be shipped to the legal representative at the expense of the estate or legal representative.

10.42(3) Upon death of a member with personal funds deposited at IVH, IVH will convey the member's funds with a final statement to the legal representative administering the member's estate. When an estate is not opened or in cases where no executor is appointed, IVH will attempt to locate the deceased member's heirs and deliver the funds and property to the heirs within one year after date of death.

801—10.43 and **10.44** Reserved.

APPEAL PROCESS

801—10.45(35A,35D) Applicant appeal process. An applicant who believes that any of the provisions of 801—Chapter 10 have not been upheld, or have been upheld unfairly, may file an appeal directly with the commandant containing a statement of the grievance and requested action. The commandant shall investigate and may hold an informal hearing with the applicant and other involved individuals. Subrules 10.46(4) to 10.46(8) apply subsequently. The commandant shall notify the applicant of the decision in writing within ten working days of receipt of the grievance.

801—10.46(35A,35D) Member appeal process. A member who believes that any of the provisions of 801—Chapter 10 have not been upheld or have been upheld unfairly may file an appeal.

10.46(1) A member shall discuss the problem and action desired with the assigned social worker within five working days of the incident which caused the problem. The social worker shall investigate the situation and attempt to resolve the problem within five working days of the discussion with the member. If the assigned social worker has allegedly caused the grievance, the member may file the grievance directly with the clinical coordinator.

10.46(2) If unable to resolve the problem, or if the member is dissatisfied with the solution, the social worker shall assist the member with filing a formal grievance and shall submit a report of the facts and recommendations to the clinical coordinator within five working days of the discussion with the member. The clinical coordinator shall inform the member of the decision in writing within five working days of receipt of the social worker's report.

10.46(3) If the member is not satisfied with the clinical coordinator's decision, or if no decision is given within the time specified in subrule 10.46(2), the member may appeal to the commandant within ten working days of the clinical coordinator's decision or, if no decision is given, within ten working days of the time limit specified in subrule 10.46(2). The grievance shall be submitted in writing and contain a statement of the cause of the grievance and requested action. A copy of the clinical coordinator's decision shall be attached to the grievance statement, if applicable. The commandant shall investigate the grievance and may hold an informal hearing with the member, clinical coordinator, and other involved individuals. The commandant shall notify the member and the clinical coordinator of the decision in writing within ten working days of receipt of the grievance.

10.46(4) If the member is not satisfied with the decision of the commandant, or if no decision is given within the time limits specified in subrule 10.46(3), the member may appeal to the commission within ten working days of the commandant's decision. The member and commandant shall be notified in writing within five working days of the commission's receipt of the appeal. The commission shall schedule a hearing with the member, commandant, and other involved individuals to determine the facts and make a final decision.

10.46(5) The member may appoint any individual to represent the member in the appeal process, at the member's expense.

10.46(6) No reprisals of any kind shall be taken against a member for filing an appeal.

10.46(7) The member may obtain judicial review of the commission's final decision in accordance with Iowa Code chapter 17A.

10.46(8) The time limits specified in the above subrules may be extended when mutually agreed upon by the persons involved in the appeal process.

Rules 10.45(35A,35D) and 10.46(35A,35D) are intended to implement Iowa Code subsection 35A.3(4) and Iowa Code chapter 35D.

801—10.47 to **10.49** Reserved.

GROUNDS AND FACILITY ADMINISTRATION

801—10.50(35D) Visitors. Visitors are welcome to IVH subject to the following conditions:

10.50(1) Member visitation hours are from 8 a.m. to 11 p.m. daily. Visiting hours may be extended on an individual basis with the approval of the commandant or designee.

10.50(2) Visitors are subject to the policies and procedures as established by IVH rules.

10.50(3) Tours of IVH may be arranged by contacting the commandant or designee.

10.50(4) Firearms, drugs, or alcoholic beverages are permitted on IVH grounds only with the permission of the commandant or designee.

10.50(5) Any disruptive behavior on the part of a visitor shall result in modification, denial or termination of visit.

10.50(6) Trespass. Visitors shall not enter IVH grounds with the intent to commit a public offense, remain upon the grounds or in IVH buildings without justification after being notified or requested to abstain from entering, or to remove or vacate therefrom by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of IVH and its grounds.

10.50(7) Any visitor violating any of the rules within this chapter may be restricted from IVH for a period of time to be determined by the commandant or designee.

801—10.51(35D) Mail.

10.51(1) Each competent member shall be afforded a choice in the methods of handling member's mail and in meeting the member's responsibilities for reporting resources for computation of member support purposes. A member found to be mentally incompetent shall have that member's mail handled in a manner as to respect that member's dignity and still meet the needs of IVH for complete information regarding resources.

10.51(2) Each competent member shall be allowed to handle that member's mail to the degree of responsibility chosen by the member. A member may:

a. Elect to receive all mail personally and provide the adjutant's office with financial documentation, or

b. Designate that the member shall receive personal mail items but mail received at IVH from entitlement sources or concerning assets shall be routed to the adjutant or designee.

801—10.52(35D) Interviews and statements.

10.52(1) Releases to the news media shall be the responsibility of the commandant. Authority for dissemination and release of information shall be designated to other persons at the discretion of the commandant.

10.52(2) Interviews of members within IVH by the news media or other outside groups are permitted only with the prior written consent of the member to be interviewed or the member's legal representative. At the request of the person or group who wishes to conduct an interview, the commandant shall seek to obtain the required consent from the member or the member's legal representative.

801—10.53(35D) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the commandant or designee. The commandant or designee shall evaluate the donation in terms of the nature of the contribution to the facility program. The commandant or designee shall be responsible for accepting the donation and reporting the gift to the commission. All monetary gifts shall be acknowledged in writing to the donor.

801—10.54(35D) Photographing and recording of members and use of cameras.

10.54(1) Photographs and recordings of members within IVH by news media or other outside groups are permitted only with the prior written consent of the member to be photographed or recorded, or the member's legal representative. At the request of the person or group who wishes to make photographs or recordings, the commandant shall seek to obtain the required consent from the member or the member's legal representative.

10.54(2) Every effort shall be made to preserve the inherent dignity of the member and to preclude exploitation or embarrassment of the member or the family of the member.

801—10.55(35D) Use of grounds and facilities.

10.55(1) Persons wishing to use the facilities and grounds for civic purposes, programs for members, meetings, and similar purposes, must contact the commandant or designee at least two weeks in advance of the requested date. The commandant or designee may disapprove a request when the requested facilities are scheduled for use by or for the members, or when the activity would disrupt the normal operation of IVH. Previous arrangements to use the facilities or grounds may be canceled by the commandant or designee in the event of an emergency or when changes in the schedule require the use of the facilities or grounds for the members. Persons who use the facilities or grounds shall be held responsible for leaving the facilities or grounds in satisfactory condition and for any damages caused by or resulting from use.

10.55(2) Members of outside organizations permitted to use facilities or grounds shall observe the same rules as visitors to the facility.

801—10.56(35D) Nonmember use of cottages. Cottages may be made available to persons on the staff of IVH or to other members of the public with the commandant's approval and at the established rate.

10.56(1) Expenses incurred as a result of damage or need for exceptional cleaning/sanitizing procedures, or both, may result in additional charges to the visitor as determined by IVH.

10.56(2) Posted occupancy capacities shall not be exceeded and may be grounds for denial of use.

10.56(3) Pets are not allowed inside the cottages. Visitors may maintain portable pet kennels outside.

801—10.57(35D) Operating motor vehicles on grounds.

10.57(1) The operator of a motor vehicle shall have a valid license for the type of vehicle being driven upon IVH grounds.

10.57(2) All persons operating a motor vehicle on IVH grounds shall comply with the applicable state and local laws and IVH policies.

10.57(3) No driver of a motor vehicle or motorcycle shall disobey the instructions of any traffic-control device, warning, or sign placed.

10.57(4) No person shall drive any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of person or property. The person operating the motor vehicle or motorcycle shall have same under control and shall reduce the speed to 20 miles per hour on IVH grounds and reduce the speed to a lower, reasonable rate when approaching and passing a person walking in the traveled portion of a street.

10.57(5) No person shall stop, park, or leave standing any type vehicle in established fire lanes, emergency vehicle areas, and other essential lanes. No person shall park any type vehicle on roadways.

10.57(6) No person shall leave any type vehicle unattended by not locking doors or removing keys.

10.57(7) Failure to comply with rules may cause limitation or curtailment of driving privileges on IVH grounds for an indefinite period.

10.57(8) Motor vehicles belonging to members may be parked in member-designated parking on IVH grounds.

This chapter is intended to implement Iowa Code subsection 35A.3(4) and chapter 35D.

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WORKERS' COMPENSATION DIVISION[876]

[Prior to 9/24/86, see Industrial Commissioner[500]. Renamed Division of Industrial Services under the "umbrella" of Employment Services Department by 1986 Iowa Acts, Senate File 2175]
[Prior to 1/29/97 see Industrial Services Division[343]. Reorganized under "umbrella" of the Department of Workforce Development[871] by 1996 Iowa Acts, chapter 1186]
[Prior to 7/29/98 see Industrial Services Division[873]]

CHAPTER 4
CONTESTED CASES

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 4]

876—4.1(85,85A,85B,86,87,17A) Contested cases. Contested case proceedings before the workers' compensation commissioner are:

4.1(1) Arbitration (Iowa Code section 86.14).
4.1(2) Review of award or settlement (review-reopening, section 86.14).
4.1(3) Benefits under section 85.27.
4.1(4) Death and burial benefits (sections 85.28, 85.29, 85.31).
4.1(5) Determination of dependency (sections 85.42, 85.43, 85.44).
4.1(6) Equitable apportionment (section 85.43).
4.1(7) Second injury fund (section 85.63 et seq.).
4.1(8) Vocational rehabilitation benefits (section 85.70).
4.1(9) Approval of fees under section 86.39.
4.1(10) Commutation (section 85.45 et seq.).
4.1(11) Employee's examination (section 85.39).
4.1(12) Employer's examination or sanctions (section 85.39).
4.1(13) Determination of compliance with chapters 85, 85A, 85B, 86, and 87.
4.1(14) Applications for alternate medical care (section 85.27).
4.1(15) Determination of liability, reimbursement for benefits paid and recovery of interest (section 85.21).
4.1(16) Matters that would be a contested case if there were a dispute over the existence of material facts.
4.1(17) Any other issue determinable upon evidential hearing which is under the jurisdiction of the workers' compensation commissioner.

This rule is intended to implement the provisions of Iowa Code sections 17A.2(2) and 86.8 and the statutory sections noted in each category of the rule.

876—4.2(86) Separate evidentiary hearing or consolidation of proceedings. In addition to applying the provision of Iowa rule of civil procedure 105, a person presiding over a contested case proceeding in a workers' compensation matter may conduct a separate evidentiary hearing for determination of any issue in the contested case proceeding which goes to the whole or any material part of the case. An order determining the issue presented shall be issued before a hearing is held on the remaining issues. The issue determined in the separate evidentiary hearing shall be precluded at the hearing of the remaining issues. If the order on the separate issue does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.

When any contested case proceeding shall be filed prior to or subsequent to the filing of an arbitration or review-reopening proceeding and is of such a nature that it is an integral part of the arbitration or review-reopening proceeding, it shall be deemed merged with the arbitration or review-reopening proceeding. No appeal to the commissioner of a deputy commissioner's order in such a merged proceeding shall be had separately from the decision in arbitration or review-reopening unless appeal to the commissioner from the arbitration or review-reopening decision would not provide an adequate remedy.

Entitlement to denial or delay benefits provided in Iowa Code section 86.13 shall be pled, and if pled, discovery shall be limited to matters discoverable in the absence of such pleading unless it is bifurcated. The claimant may bifurcate the denial or delay issue by filing and serving a notice of bifurcation at any time before a case is assigned for hearing, in which case discovery on that issue may proceed only after the final decision of the agency on all other issues.

This rule is intended to implement Iowa Code sections 86.13, 86.18 and 86.24.

876—4.3(85,85A,86,87) Compliance proceedings. If the workers' compensation commissioner shall have reason to believe that there has not been compliance with the workers' compensation law by any person or entity, the commissioner may on the commissioner's own motion give notice to the person or entity and schedule a hearing for the purpose of determining whether or not there has been compliance by the person or entity. The notice shall state the time and place of the hearing and a brief statement of the matters to be considered. Following the hearing the commissioner may issue a finding regarding compliance. In the event a failure to comply is found, the commissioner may order compliance within a specified time and under specified circumstances. The workers' compensation commissioner may file a certified copy of the order in an appropriate district court and may file a certified copy of the order with the Iowa insurance division [commerce department] with a request for action by the insurance division upon failure to comply with the order.

Nothing in this rule shall prevent the workers' compensation commissioner from conducting an informal conference with any person or entity concerning problems of compliance prior to the initiation of a compliance proceeding.

876—4.4(86) Request for hearing. Unless otherwise ordered a hearing shall not be held in proceedings under 4.1(8) to 4.1(12), unless requested in writing by the petitioner in the original notice or petition or by the respondent within ten days following the time allowed by these rules for appearance.

876—4.5(86) Commencement by commissioner. In addition to an aggrieved party, the commissioner may initiate proceedings under 4.1(9). The proceeding may be held before a deputy commissioner or the commissioner. The workers' compensation commissioner shall be the only person to commence a proceeding under 4.1(13), unless such authority is specifically delegated by the workers' compensation commissioner to a deputy commissioner concerning a specific matter.

876—4.6(85,86,17A) Original notice and petition. A petition or application must be delivered or filed with the original notice unless original notice Form 100, Form 100A or Form 100B of the division of workers' compensation is used.

The original notice Form 100, Form 100A, Form 100B, Form 100C, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in 4.1(85,85A,85B,86,87,17A). The Form 100 is to be used for all contested case proceedings except as indicated in this rule. The Form 100A is to be used for the contested case proceedings provided for in subrules 4.1(11) and 4.1(12). The Form 100B is to be used for the contested case proceeding provided for in subrule 4.1(8). The Form 100C is to be used for the contested case proceeding provided for in subrule 4.1(14) and rule 4.48(17A,85,86). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, the Form No. 9 or Form No. 9A must be filed in addition to any other document. The petition for declaratory ruling, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

At the same time and in the same manner as service of the original notice and petition the claimant shall serve a patient's waiver using Form 309-5173 (authorization for release of information regarding claimants seeking workers' compensation benefits) which shall not be revoked until conclusion of the contested case.

A separate date of injury shall be alleged and a separate original notice and petition shall be filed on account of each injury, gradual injury, occupational disease or occupational hearing loss alleged by an employee. If more than one injury, gradual injury, occupational disease or occupational hearing loss is included in the same original notice and petition, the workers' compensation commissioner shall enter an order requiring filing of separate original notices and petitions. If a required correction is not made by a date specified in the order, the original notice and petition shall automatically be dismissed without prejudice without entry of further order. See rule 4.36(86). If correction is made within the specified time, the initial filing shall be sufficient to have tolled the statute of limitations.

Claimant shall cooperate with respondents to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

This rule is intended to implement the provisions of Iowa Code sections 85.27, 85.45, 85.48, and 17A.12.

876—4.7(86,17A) Delivery of notice, orders and decisions. Delivery of the original notice shall be made by the petitioning party as provided in Iowa Code section 17A.12(1) except that a party may deliver the original notice on a nonresident employer as provided in Iowa Code section 86.36. A proposed or final decision or order may be delivered by the division of workers' compensation to any party by regular mail.

This rule is intended to implement the provisions of Iowa Code sections 86.36, 17A.3(2), and 17A.12.

876—4.8(86) Filing of notice.

4.8(1) A contested case is commenced by filing the original notice and petition with the workers' compensation commissioner. No action shall be taken by the workers' compensation commissioner on any contested case against an adverse party unless the adverse party has answered or unless it can be shown by proper proof that the adverse party has been properly served. The original notice and petition if required by 4.6(85,86,17A) shall be accompanied by proof that the petitioner has deposited copies of such documents with the U.S. post office for delivery by certified mail, return receipt requested, upon the respondent or has submitted such copies to a proper person for delivery of personal service as in civil actions.

4.8(2) Filing fee.

a. On or after July 1, 1988, for all original notices and petitions for arbitration or review-reopening seeking weekly benefits filed on account of each injury, gradual injury, occupational disease or occupational hearing loss alleged by an employee, a filing fee of $65 shall be paid at the time of filing. No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits under Iowa Code section 85.27; burial benefits, Iowa Code section 85.28; determination of dependency, Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment, Iowa Code section 85.43; second injury fund, Iowa Code sections 85.63 to 85.69; vocational rehabilitation benefits, Iowa Code section 85.70; approval of legal, medical and other fees under Iowa Code section 86.39; commutation, Iowa Code sections 85.45 to 85.48; employee's examination, Iowa Code section 85.39; employee's examination or sanctions, Iowa Code section 85.39; application for alternate care, Iowa Code section 85.27; determination of liability, reimbursement for benefits paid and recovery of interest, Iowa Code section 85.21; and petitions for declaratory orders or petitions for interventions filed pursuant to 876—Chapter 5. An amendment that is filed on or after July 1, 1988, which alleges an additional injury date will be treated like an original notice and petition. No filing fee is due when an amendment corrects an erroneous injury date.

b. One filing fee of $65 shall be required for as many original notices and petitions as are filed on the same day on account of one employee against a single alleged employer or against entities alleged to be employers in the alternative or alleged to be dual employers. If filing fees have been overpaid, the amount overpaid shall be refunded to the party who made the overpayment.

c. One filing fee of $65 shall be required for as many original notices and petitions as are filed on the same day against multiple alleged employers on account of one employee; provided, however, that to qualify for one filing fee all original notices and petitions against all employers must involve an identity of body parts, that is, must all relate to the same scheduled member or members or all relate to the body as a whole or all relate to the same scheduled member or members and body as a whole.

d. If original notices and petitions filed on account of one employee are not filed on the same day, a $65 filing fee is required for each original notice and petition even though it would have qualified for a shared filing fee if filed on the same day as other original notices and petitions.

e. If the correct filing fee or fees are not paid at the time of filing of the original notice and petition, the workers' compensation commissioner shall enter an order requiring payment of the correct filing fee or fees. If the required correction is not made by a date specified in the order, the original notice and petition shall automatically be dismissed without prejudice without entry of further order. See rule 4.36(86). If correction is made within the specified time, the initial filing shall be sufficient to have tolled the statute of limitations.

If no filing fee is paid at the time of filing of the original notice and petition, the workers' compensation commissioner shall return the original notice and petition to the party filing it. Filing an original notice and petition without paying the fee shall not toll the statute of limitations. Tendering an amount less than $65 will be considered failure to pay a filing fee.

f. The filing fee may be taxed as a cost to the losing party in the case. If the filing fee would impose an undue hardship or be unjust in the circumstances for the losing party, the filing fee may be taxed as costs to the winning party in the case. If an original notice and petition is erroneously accepted for filing without payment of the correct filing fee or fees, any unpaid fees may be taxed as costs. See rule 4.33(86).

g. The filing fee shall be paid at the same time the petition is filed. Checks should be made payable to the "Iowa Division of Workers' Compensation." If the payment of the filing fee is made by an insufficient funds check or a check on which payment is stopped or a check on which payment is otherwise not honored, it will be treated as a failure to pay the correct filing fee. See 4.8(2)*"e."* One check may be submitted for payment of more than one filing fee if more than one filing fee is due from a petitioner for cases filed on account of an employee. Separate checks must be submitted for each petitioner's case or cases.

h. The workers' compensation commissioner may accept for filing an original notice and petition without prepayment of the filing fee if in the discretion of the workers' compensation commissioner the petitioner is unable to pay the fee at the time of filing. A deferral of payment of the filing fee shall only be granted upon written application by the petitioner. The application shall be filed at the same time the original notice and petition is filed. The application shall be in the form required by the workers' compensation commissioner and shall include an affidavit signed by the petitioner. When payment of the filing fee is deferred, provisions for payment of the filing fee must be included in any settlement submitted to the workers' compensation commissioner for approval or taxed as costs. When the application for deferral of payment of the filing fee is denied, the filing fee shall be paid as ordered. See 4.8(2)*"e."*

i. Rescinded IAB 1/29/97, effective 3/5/97.

This rule is intended to implement Iowa Code section 17A.12.

876—4.9(17A) Appearance and responses, pleading and motions. Responses to pleadings and motions shall be made as follows:

4.9(1) *Respondent—appearance.* A respondent shall appear within 20 days after the service of the original notice and petition upon such respondent.

4.9(2) *Motions.* Motions attacking a pleading must be served before responding to a pleading or, if no responsive pleading is required, upon motion made by a party within 20 days after the service of the pleading on such party.

4.9(3) *Pleading.* Answer to a petition must be served on or before the appearance date prescribed in accordance with 4.9(1).

4.9(4) *Time after motions attacking pleadings and special appearances.* If a motion attacking a pleading is so disposed of as to require further pleading, such further pleading shall be served within ten days after notice of the action of the workers' compensation commissioner or deputy workers' compensation commissioner. If the further pleading requires a response, the response shall be filed within ten days after service of the further pleading.

4.9(5) *Amendments to pleadings.* A party may amend a pleading as a matter of course at any time before the party's discovery is closed, or if no order is entered closing the party's discovery, at any time before the case is assigned for hearing. Otherwise, a party may amend a pleading only by leave of the workers' compensation commissioner or deputy workers' compensation commissioner or by written consent of the adverse party. Leave to amend, including leave to amend to conform to proof, shall be freely given when justice so requires.

4.9(6) *Form, submission and ruling on motions.* All motions, including pre-answer motions, motions for summary judgment and applications for adjudication of law points, shall have appended to them a concise memorandum brief and argument. All motions and applications for adjudication of law points except motions for summary judgment shall be deemed submitted without hearing on the record presented on the tenth day following filing. Motions for summary judgment shall be deemed submitted as provided in Iowa Rule of Civil Procedure 237. Resistances to motions and applications for adjudication of law points shall have appended to them a concise memorandum brief and argument, and shall be filed on or before the date of submission. Briefs and arguments are waived unless appended to the motion, application or resistance.

An order may be entered consolidating any motion for ruling with hearing of the contested case. Any party desiring a ruling on a motion prior to hearing may concisely set forth the necessity of prior ruling in the motion, application or resistance. If a pre-answer motion alleging lack of jurisdiction is overruled or consolidated with hearing of the contested case, the party shall plead to the merits and proceed to hearing of the contested case without submitting to the jurisdiction of the workers' compensation commissioner. If a motion attacking a pleading is consolidated with hearing of the contested case, the party shall respond to the pleading in the same manner as if the motion had been overruled.

4.9(7) *Consolidation.* Any party may file a motion to consolidate common questions of fact and law surrounding an injury or a series of injuries. The motion shall be deemed approved if no resistance to the motion is filed with the workers' compensation commissioner within ten days of the filing of the motion. No order granting the motion will be filed by the workers' compensation commissioner. As an alternative, the parties may make an oral motion to consolidate common questions of fact or law at the time of the pretrial hearing. A ruling on the motion will be included with the order issued from the pretrial hearing.

4.9(8) *Withdrawal of counsel.* Counsel may withdraw if another counsel has appeared or if the client's written consent accompanies the withdrawal.

Under all other circumstances, counsel may withdraw only upon the order of the workers' compensation commissioner after making written application. Counsel shall give the client written notice that the client has the right to object to the withdrawal by delivering written objections and a request for a hearing to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319, within ten days following the date the notice was mailed or personally delivered to the client. Counsel's application shall be accompanied by proof that a copy of the application and notice was sent by certified mail addressed to the client's last-known address or was delivered to the client personally. If no objections are timely filed, the withdrawal will become effective when approved by the workers' compensation commissioner. If objections are timely filed, a hearing on the application will be held. No withdrawal under this subrule will be effective without the approval of the workers' compensation commissioner. The filing of an application to withdraw stays all pending matters until a ruling is made on the application.

4.9(9) *Requests for default.* Requests or motions for default shall be as provided in Iowa Rules of Civil Procedure 230 to 236 except that entry of default shall be by order of the workers' compensation commissioner or a deputy workers' compensation commissioner.

This rule is intended to implement the provisions of Iowa Code section 17A.12.

876—4.10(86,87) Insurance carrier as a party. Whenever any insurance carrier shall issue a policy with a clause in substance providing that jurisdiction of the employer is jurisdiction of the insurance carrier, the insurance carrier shall be deemed a party in any action against the insured.

This rule is intended to implement Iowa Code section 87.10.

876—4.11(86) Signatures on documents and papers. All documents and papers required by these rules, the Iowa rules of civil procedure as applicable, or a statutory provision shall be signed by the party if unrepresented or the party's attorney if represented. The party's signature in addition to the attorney's signature shall be necessary only when otherwise required by these rules, the Iowa rules of civil procedure as applicable, and any statutory provision.

This rule is intended to implement Iowa Code section 17A.12.

876—4.12(86) Service on parties. Any document or paper not delivered under 4.6(85,86,17A) and 4.7(86,17A) which is to be filed, or which seeks relief from or action of or against another party, or which makes argument, or which has any significant effect on any contested case, shall be served on each party of record under 4.13(86).

876—4.13(86) Method of service. Except as provided in 4.6(85,86,17A) and 4.7(86,17A), service of all documents and papers to be served according to 4.12(86) and 4.18(85,86,17A) or otherwise upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the workers' compensation commissioner. Service upon the attorney or party shall be made by delivery of a copy to or mailing a copy to the last-known address of the attorney or party, or if no address is known, by filing it with the division of workers' compensation. Delivery of a copy within this rule means: Handing it to the attorney or party; leaving it at the office of the attorney or party's office or with the person in charge of the office; or if there is no one in charge of the office, leaving it in a conspicuous place in the office; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house, or usual place of abode with some person of suitable age and discretion who is residing at the dwelling or abode. Service by mail under this rule is complete upon mailing. No documents or papers referred to in this rule shall be served by the workers' compensation commissioner.

876—4.14(86) Filing of documents and papers. All documents and papers required to be served on a party under rule 4.12(86) shall be filed with the workers' compensation commissioner either before service or within a reasonable time thereafter. However, unless otherwise ordered by the workers' compensation commissioner or deputy workers' compensation commissioner, no deposition, notice of deposition, notice of service of interrogatories, interrogatories, request for production of documents, request for admission, notice of medical records and reports required to be served by 4.17(86), and answers and responses thereto shall be filed with or accepted for filing by the workers' compensation commissioner unless its use becomes otherwise necessary in the action, in which case it shall be attached to the motion or response to motion requiring its use, or unless offered as evidence at hearing of the contested case.

This rule is intended to implement Iowa Code section 86.18.

876—4.15(86) Proof of service. Proof of service of all documents and papers to be served on another party under 4.12(86) shall be filed with the division of workers' compensation promptly, and in any event, before action is to be taken thereon by the workers' compensation commissioner or any party unless a responsive pleading has been filed. The proof shall show the date and manner of service and may be by written acknowledgment of service, by certification of a member of the bar of this state, by affidavit of the person who served the papers, or by any other proof satisfactory to the workers' compensation commissioner.

876—4.33(86) Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery.

This rule is intended to implement Iowa Code section 86.40.

876—4.34(86) Dismissal for lack of prosecution. It is the declared policy that in the exercise of reasonable diligence, all contested cases before the workers' compensation commissioner, except under unusual circumstances, shall be brought to issue and heard at the earliest possible time. To accomplish such purpose the workers' compensation commissioner may take the following action:

4.34(1) Any contested case, where the original notice and petition is on file in excess of two years, may be subject to dismissal after the notice in 4.34(2) is sent to all parties and after the time as provided for in the notice.

4.34(2) After the circumstances provided in 4.34(1) occur, all parties to the action, or their attorneys, shall be sent notice from the division of workers' compensation by certified mail containing the following:

a. The names of the parties;

b. The date or dates of injury involved in the contested case or appeal proceeding;

c. Counsel appearing;

d. Date of filing of the petition or appeal;

e. That the contested case proceeding will be dismissed without prejudice on the thirtieth day following the date of the notice unless good cause is shown why the contested case proceeding should not be dismissed.

4.34(3) The action or actions dismissed may at the discretion of the workers' compensation commissioner and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, be reinstated. Applications for such reinstatement, setting forth the grounds, shall be filed within three months from the date of dismissal.

This rule is intended to implement Iowa Code sections 86.8, 17A.3(1)*"b"* and 86.18 and 1986 Iowa Acts, Senate File 2175.

876—4.35(86) Rules of civil procedure. The rules of civil procedure shall govern the contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A, or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner."

This rule is intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, and 86.8.

876—4.36(86) Compliance with order or rules. If any party to a contested case or an attorney representing such party shall fail to comply with these rules or any order of a deputy commissioner or the workers' compensation commissioner, the deputy commissioner or workers' compensation commissioner may dismiss the action. Such dismissal shall be without prejudice. The deputy commissioner or workers' compensation commissioner may enter an order closing the record to further activity or evidence by any party for failure to comply with these rules or an order of a deputy commissioner or the workers' compensation commissioner.

This rule is intended to implement the provisions of Iowa Code section 86.8.

876—4.37(86,17A) Waiver of contested case provisions. The parties who wish to waive the contested case provisions of chapter 17A shall file a written stipulation of such waiver with the workers' compensation commissioner before such waiver shall be recognized. The waiver shall specify the provisions waived such as a consent to delivery, waiver of original notice, or waiver of hearing.

876—4.38(17A) Recusal.

4.38(1) The workers' compensation commissioner, a chief deputy workers' compensation commissioner or a deputy workers' compensation commissioner shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case;

g. Has even the appearance of impropriety; or

h. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.38(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and rule 4.38(3).

4.38(3) In a situation where the workers' compensation commissioner, chief deputy workers' compensation commissioner or deputy workers' compensation commissioner knows of information which might reasonably be deemed to be a basis for recusal and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.38(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.38(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19, subsection 7. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for recusal but must establish the grounds by the introduction of evidence into the record.

If the workers' compensation commissioner, chief deputy workers' compensation commissioner or deputy workers' compensation commissioner determines that recusal is appropriate, that person shall withdraw. If that person determines that withdrawal is not required, that person shall enter an order to that effect.

This rule is intended to implement Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19.

876—4.39(17A,86) Filing by facsimile transmission (fax). All documents filed with the agency pursuant to this chapter and Iowa Code section 86.24 except an original notice and petition requesting a contested case proceeding (see Iowa Code section 17A.12(9)) may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax is the date the document is received by the agency. The agency will not provide a mailed file-stamped copy of documents filed by fax.

876—4.40(73GA,ch1261) Dispute resolution. The workers' compensation commissioner or the workers' compensation commissioner's designee (hereinafter collectively referred to as the workers' compensation commissioner) shall have all power reasonable and necessary to resolve contested cases filed under Chapter 4 of these rules. This power includes, but is not limited to, the following: the power to resolve matters pursuant to initiation of mandatory dispute resolution proceedings by the workers' compensation commissioner; the power to resolve matters pursuant to a request by the parties; the power to impose sanctions; and the power to require conduct by the parties. However, no issue in a contested case may be finally resolved under this rule without consent of the parties.

An employee of the division of workers' compensation who has been involved in dispute resolution shall not be a witness in any contested case proceeding under this chapter.

4.40(1) Mandatory proceedings. The workers' compensation commissioner may require that the parties participate in dispute resolution in the following situation:

a. The oldest one-fourth of contested cases which are not scheduled for hearing.

b. All cases where discovery deadlines have been set pursuant to a prehearing order and the deadlines have passed.

c. All cases where the principal dispute is medical benefits.

4.48(7) *Employer liability.* Application cannot be filed under this rule if the liability of the employer is an issue. If an application is filed where the liability of the employer is an issue, the application will be dismissed without prejudice. (Petitions for alternate care where liability of the employer is an issue should be filed pursuant to rule 4.1(85,85A,85B,86,87,17A).)

4.48(8) *Notice of hearing.* The workers' compensation commissioner will notify the parties by ordinary mail or by facsimile transmission (fax) of the time, place and nature of hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice will specify whether the hearing will be by telephone or in person.

4.48(9) *Discovery and evidence.* All discovery must be completed prior to the contested case hearing. See subrule 4.48(10) on motions on discovery matters. Any written evidence to be used by the employer or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of the hearing. Written evidence shall be limited to ten pages per party.

4.48(10) *Motions.* All motions except as provided in this subrule will be considered at the hearing. A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The workers' compensation commissioner will make no rulings on discovery matters or motions.

4.48(11) *Briefs.* Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to three pages.

4.48(12) *Hearing.* The hearing will be held either by telephone or in person in Des Moines, Iowa. The employer shall have the right to request an in-person hearing if the employee has requested a telephone hearing in the application. The employer shall on the record respond to the allegations contained in the application. The hearing will be electronically recorded. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing.

If the hearing was electronically recorded, copies of the tape will be provided to the parties. A transcript shall be provided by the appealing party pursuant to Iowa Code subsection 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner unless the parties submit an agreed transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code subsection 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

4.48(13) *Represented party.* A party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and its insurance carrier shall be treated as one party unless their interests appear to be in conflict and a representative of either the employer or its insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

4.48(14) *Decision.* A decision will be issued within 10 working days of receipt of a proper application when a telephone hearing is held or within 14 working days of receipt of a proper application when an in-person hearing is held.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8 and 86.17.

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CHAPTER 5
DECLARATORY ORDERS

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 5]

876—5.1(17A) Petition for declaratory order. Any person may file a petition with the workers' compensation commissioner for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the workers' compensation commissioner, at the office of the workers' compensation commissioner. A petition is deemed filed when it is received by that office. The workers' compensation commissioner shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency 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 WORKERS' COMPENSATION COMMISSIONER

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.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, 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.
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 petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 876—5.7(17A).

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.

876—5.2(17A) Notice of petition. Within five working days after receipt of a petition for a declaratory order, the workers' compensation commissioner shall give notice of the petition to all persons not served by the petitioner pursuant to rule 876—5.6(17A) to whom notice is required by any provision of law. The workers' compensation commissioner may also give notice to any other persons.

876—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 30-day time for agency action under rule 876—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 workers' compensation commissioner.

5.3(3) *Filing and form of petition for intervention.* A petition for intervention shall be filed at the office of the workers' compensation commissioner. Such a petition is deemed filed when it is received by that office. The workers' compensation commissioner will 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 must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in Original Petition). Petition for intervention by (Name of Intervenor).	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 in 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 intervenor's representative, and a statement indicating the person to whom communications should be directed.

876—5.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The workers' compensation commissioner may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

876—5.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209.

876—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 upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention 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 Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209.

5.6(3) *Method of service, time of filing, and proof of service.* Method of service and proof of service shall be as provided by rules 876—4.13(86) and 4.15(86). All documents are considered filed when received by the agency.

876—5.7(17A) Consideration. Upon request by petitioner, the workers' compensation commissioner must schedule a brief and informal meeting between the original petitioner, all intervenors, and the workers' compensation commissioner or a member of the staff of the workers' compensation commissioner to discuss the questions raised. The workers' compensation commissioner may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the workers' compensation commissioner by any person.

876—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 workers' compensation commissioner or the commissioner'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 the order or refusal is filed unless another date is specified in the order.

876—5.9(17A) Refusal to issue order.

5.9(1) The workers' compensation commissioner 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 workers' compensation commissioner to issue an order.
3. The workers' compensation commissioner 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 agency 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 an agency 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 workers' compensation commissioner 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 agency 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 workers' compensation commissioner's refusal to issue a ruling.

876—5.10(17A) Contents of 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, policies, decisions, 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.

876—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.

876—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 workers' compensation commissioner, 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 workers' compensation commissioner. The issuance of a declaratory order constitutes final agency action on the petition.

876—5.13(17A) Filing fee. No filing fee is due for filing a petition for declaratory order or a petition for intervention. See 876—paragraph 4.8(2)*"a."*

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

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CHAPTER 12
FORMAL REVIEW AND WAIVER OF RULES

876—12.1(17A) Requests to review. Any interested person, association, agency, or political subdivision may submit a written request to the workers' compensation commissioner requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the workers' compensation commissioner, the agency 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 agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

876—12.2(17A) Review of rules. In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency'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 petitions for waiver of the rule received by the agency or granted by the agency. 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 agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

876—12.3(17A) Form of criticism. The Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209, is designated as the office where interested persons may submit written criticism regarding an administrative rule of the Workers' Compensation Division[876]. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, be signed by the complainant, not be part of any other filing with the workers' compensation commissioner or department of workforce development, and have a valid legal basis for support. All criticisms received on any rule will be kept in a separate record for a period of five years by the workers' compensation commissioner and be a public record open for public inspection. All criticisms must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER

CRITICISM BY (NAME OF PERSON SUBMITTING CRITICISM).	}	CRITICISM OF (SPECIFY RULE THAT IS CRITICIZED).

Reasons for criticism:
Name, address, telephone number and signature of person submitting criticism.

876—12.4(17A) Requests for waiver of rules. Requests for waiver of a rule in the Workers' Compensation Division[876] of the Iowa Administrative Code shall be made to the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209. All requests for waiver of a rule must be in writing and are a public record open for inspection. The person requesting the waiver must submit all facts relied upon in requesting the waiver. The person requesting waiver of the rule must provide clear and convincing evidence that compliance with the rule will create an undue hardship on the person requesting the waiver. A concise memorandum brief and argument, if any is filed, shall be attached to the request for waiver at the time the request is filed. The workers' compensation commissioner shall grant or deny the waiver within 60 days of the date the request is filed with the agency. The workers' compensation commissioner shall deny the request if the request is for waiver of a statute. If the request for waiver relates to a time requirement of a rule, the request must be received before the time specified in the rule has expired. The workers' compensation commissioner may deny the request if the request does not comply with the provisions of this rule. All requests for waiver must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER

(NAME OF PERSON REQUESTING WAIVER).	}	REQUEST FOR WAIVER OF (SPECIFY RULE FOR WHICH WAIVER IS REQUESTED).

Reasons for requesting waiver:

Name, address, telephone number and signature of person submitting waiver request.

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

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EMERGENCY MEDICAL CARE

See also AMBULANCES/RESCUE VEHICLES; DEFIBRILLATION

Appeals/hearings **641**—132.10–132.13

Certification, personnel

See also Service Programs: Authorizations below

Denial/suspension/revocation **641**—132.11

Emergency medical care personnel/providers **641**—132.4, 132.11

Endorsement **641**—132.4(8,9)

Renewal **641**—132.4(2–4), 132.4(8), 132.11

Complaints/investigations **641**—132.10–132.13

Continuing education **641**—132.4(3), 132.4(4)*c,e*, 132.4(5–7), 132.6, 132.9(2)*d*, 132.9(3)*d*, 132.12

Definitions **441**—75.11; **641**—130.1, 132.1, 133.1; **653**—10.1

Director, medical, *see Service Programs below*

Diseases

Disinfection **641**—132.8(5)*b*

Exposure **641**—11.45–11.53

Drugs **641**—132.8(4)*j–l*, 132.8(6)*a*, 132.9(5); **657**—10.16, ch 11

Facilities, trauma **641**—chs 134–136

Forms **641**—132.4, 132.7(1)*a*

Healthy and well kids in Iowa (HAWK-I) program **441**—86.8(7), 86.15(2)*b*

Medical assistance, *see HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*

Pesticide exposure, information **641**—ch 71

Service programs

Authorizations **641**—132.7, 132.8(1)*p*, 132.10, 133.3–133.5, 135.3, 136.3

Backup, agreement **641**—132.7(6)*g*, 132.8(7)

Complaints/appeals **641**—132.10, 136.3

Director, medical **641**—132.2(4), 132.8(1)*f,i,j,o*, 132.9; **655**—6.4(2)

Grants **641**—chs 140, 141

Hospitals, on-line medical direction **641**—132.9(6)

Inspections **641**—132.6(3), 132.7(4)

Nurses **641**—132.4(1)*r*, 132.8(1)*l,m*, 132.9(6)*d*; **655**—6.4(2)

Out-of-state **641**—132.7(2)

Physicians **641**—132.8(1)*l*, 132.9(3,6), *see also Director, Medical this subheading above*

Recordings, voice/ECG **641**—132.8(2)

Records/reports **641**—132.7(4), 132.8(1)*d*, 132.8(2,3), 136.2(2), 175.14(2)*h*

Taxation, income surtax **701**—42.11

EMPLOYEES
See EMPLOYMENT

EMPLOYERS
See EMPLOYMENT

EMPLOYMENT
See also LABOR SERVICES DIVISION; PERSONNEL DEPARTMENT; PUBLIC EMPLOYMENT RELATIONS BOARD (PERB); REGENTS BOARD; SMALL BUSINESS; TAXATION; WORK AND TRAINING PROGRAMS; WORKFORCE DEVELOPMENT BOARD/CENTER ADMINISTRATION; WORKFORCE DEVELOPMENT DEPARTMENT

Affirmative action/equal opportunity **161**—8.6, 8.7, 8.65; **223**—35.6(6)*e*; **281**—94.2, ch 95; **283**—12.2(6); **321**—2.5, 3.4, 4.22, 6.1(5,6); **429**—ch 5; **441**—1.3(2)*e*, 105.3, 114.7(1)*a*, 150.3(3), 150.5(3), 150.7(3), 150.22(5), 152.2(8), 153.57(1)*h*; **541**—ch 4; **581**—5.1(3), 10.1(3), 19.1(1), ch 20; **641**—72.4(4); **643**—3.21(8)*b*, 6.3(2)*b*; **681**—3.1, 3.69(1), ch 7, 8.6(3); **877**—8.1, 12.19

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