State of Iowa

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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.

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UPDATING INSTRUCTIONS
June 16, 1999, Biweekly Supplement

[Previous Supplement dated 6/2/99]

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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 22
APIARY

[Prior to 7/27/88 see Agriculture Department 30—Ch 24]

21—22.1(160) Diseases. The diseases which the state apiarist shall inspect for are, but shall not be limited to: American Foulbrood, European Foulbrood, Nosema and Chalk Brood.

21—22.2(160) Parasites. The parasites for which the state apiarist shall inspect include, but shall not be limited to: the Varroa mite (Varroa jacobsoni), Tropilaelaps mite (Tropilaelaps clareae) and the honeybee tracheal mite (Acarapis woodi).

21—22.3(160) Requirement for the sale of bees. All honeybees offered for sale in Iowa must meet one of the following two requirements:

1. Colonies are apparently free of Varroa mites according to the detection methods listed below.
2. Colonies are under treatment with a miticide approved by EPA for control of Varroa mites in honeybee colonies and have an average of 10 or fewer Varroa mites per 300 adult bees or 500 or fewer Varroa mites per sticky board.

Detection methods to be used for the Varroa mite are the ether roll method with at least 300 adult bees per colony from 20 percent of the colonies in the apiary or the sticky board method with an EPA-approved miticide in 5 percent of the colonies in the apiary.

21—22.4(160) Certificate of inspection required. All honeybees transported into Iowa shall be accompanied by an approved certificate or permit issued by the state of origin or the state of Iowa. The certificate or permit shall indicate that the bees meet one of the two following requirements:

1. An average of 10 or fewer Varroa mites per 300 adult bees was detected by the ether roll test.
2. Colonies are under treatment with a miticide approved by EPA for control of Varroa mites in honeybee colonies at the time of shipment.

21—22.5(160) Certificate of inspection expiration. A certificate of inspection issued by the state of Iowa shall be valid for up to nine months from the date of issuance. An Iowa certificate may be revoked at any time if there is evidence of a disease or parasite infestation or Africanized bees in the certified colonies.

21—22.6(160) American Foulbrood treatment. If upon inspection American Foulbrood disease is detected in colonies, those colonies shall be identified and the disease abated in a timely manner that will prevent spread to neighboring colonies or apiaries as determined by the state apiarist.

The method of disease cleanup will be specified following inspection, depending on the severity of the infection and strength of the bee colony. A strong colony with a light infection of American Foulbrood may be treated with Terramycin or diseased combs removed or a combination of these methods. A severely infected, weak colony must be killed and the diseased combs destroyed by burning or melting at a temperature high enough to kill disease spores. In any case, all combs containing American Foulbrood scale shall be destroyed.

21—22.7(160) Varroa mite treatment. If upon inspection an average of more than 10 Varroa mites are detected in 300 bees by the ether roll method or 500 mites per colony by the sticky board method, then the apiary shall be quarantined and the owner of the apiary ordered to depopulate or treat all colonies with an EPA-approved miticide within ten days from the day the owner is notified.

If an average of 10 or fewer Varroa mites by the ether roll method or 500 or fewer mites by the sticky board method are detected, then the apiary shall be quarantined and the owner of the apiary shall be notified and given instruction on the nature of the mite infestation and the best method of treatment. Such treatment of all colonies in the apiary shall be initiated no later than October 15 of the same year.

21—22.8(160) Undesirable subspecies of honeybees. Each of the following undesirable subspecies of honeybees is found to be capable of inflicting damage to man or animals greater than managed or feral honeybees commonly utilized in North America and is declared a nuisance:

1. African honeybee, (Apis mellifera scutellata),
2. Cape honeybee, (Apis mellifera capensis), and
3. Any other undesirable subspecies of honeybees determined by the state apiarist to be a threat to the state.

Detection of undesirable subspecies of honeybees in the state shall initiate the quarantine of all colonies within a distance prescribed by the state apiarist of the infested apiary. All colonies within the quarantine area shall be inspected. A recommended eradication or control method shall be determined and prescribed by the state apiarist.

21—22.9(160) European honeybee certification. All honeybees transported into Iowa shall be accompanied by an approved certificate or permit from the state of origin indicating that the bees are European honeybees. Honeybees must be certified by one of the following methods:

1. Honeybees are located outside counties which have been determined by the state of origin to be infested with Africanized honeybees.
2. Honeybees have been tested according to the 1991 NASDA National Certification Plan and found to be European.

The certificate or permit shall state the method used to certify the bees. The certificate or permit shall be dated within 90 days prior to entry into Iowa. Africanized honeybees may not be transported into Iowa.

21—22.10(160) Prohibit movement of bees from designated states. A person shall not directly or indirectly transport or cause to be transported into the state of Iowa honeybees originating in the states of Florida, Georgia, North Carolina and South Carolina. As used in this rule, "honeybees" shall include, but not be limited to, the following: colonies, nucs, packages, banked queens and queen battery boxes. However, the shipping of honeybee queens and attendants in individual queen cages will be allowed when accompanied by a valid certificate of health indicating that the bees are from an apiary free of small hive beetles. This rule shall remain effective until February 18, 2000.

These rules are intended to implement Iowa Code sections 160.2, 160.9 and 160.14.

[Filed 4/13/76, Notice 2/9/76—published 5/3/76, effective 6/7/76]
[Filed emergency 7/8/88 after Notice 6/1/88—published 7/27/88, effective 7/8/88]
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[Filed 5/25/99, Notice 3/10/99—published 6/16/99, effective 7/21/99]

AUDITOR OF STATE[81]

Editorially transferred from [130] to [81], IAC Supp. 5/6/87

INDUSTRIAL LOAN DIVISION

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Transferred to Banking Division[187] under the "umbrella" of the Department of Commerce[181] as Ch 16, IAC Supp. 4/22/87.

SAVINGS AND LOAN DIVISION

CHAPTERS 2 to 13

Transferred to Savings and Loan Division[197] under the "umbrella" of the Department of Commerce [181], IAC Supp. 3/25/87.

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INDUSTRIAL LOAN DIVISION

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COUNTY AUDITS CONDUCTED BY CERTIFIED PUBLIC ACCOUNTANTS

[Prior to 5/6/87, see Auditor of State[130], Ch 20]

Rescinded IAB 10/2/91, effective 11/6/91.

CHAPTER 21

FILING FEES

81—21.1(11) Filing fee. A filing fee, as provided for under Iowa Code section 11.6, subsection 10, shall be paid by governmental subdivisions, listed in Iowa Code section 11.6, subsections 1 to 3, for the filing of each audit performed in accordance with those subsections.

21.1(1) The fee shall be remitted according to a fee schedule using six strata based on the budgeted expenditures of the certified budget as last adopted or amended of the governmental subdivision for the fiscal year of the report being filed.

21.1(2) The designated strata and applicable fees are as follows:

Budgeted Expenditures in Millions of Dollars	Fee Amount
Under 1	$ 75
At least 1 but less than 3	150
At least 3 but less than 5	225
At least 5 but less than 10	375
At least 10 but less than 25	550
25 and over	750

21.1(3) The annual fee shall pertain to the fiscal year of the report being filed and not the fiscal year in which the report is filed.

21.1(4) The fee should be remitted to the auditor of state at the same time the report is filed.

21.1(5) Governmental subdivisions shall be notified annually by July 30 of the amount of the fee for reports filed in the fiscal year.

This rule is intended to implement Iowa Code section 11.6, subsection 10.

[Filed 9/13/91, Notice 3/20/91—published 10/2/91, effective 11/6/91]

[Filed 1/15/93, Notice 10/28/92—published 2/3/93, effective 3/10/93]

CHAPTERS 22 and 23

Reserved

GENERAL DIVISION

CHAPTER 25
ORGANIZATION AND PROCEDURES

[Originally Ch 10, renumbered Ch 25 IAC 2/4/81]
[Prior to 5/6/87, see Auditor of State[130], ch 25]

81—25.1(17A,11) Auditor of state. The auditor of state is a constitutional officer of the state of Iowa, as provided by Article IV, Section 22 of the Constitution of Iowa, as amended in 1972 which provides for the election of the auditor of state by the electorate of Iowa.

81—25.2(17A,11) Duties of auditor. The rights, duties and responsibilities of the auditor of state are prescribed by Iowa Code chapter 11.

81—25.3(17A,11) Location of office. The offices of the auditor of state of Iowa are located at the seat of government at Des Moines, Iowa 50319, and are available to the public during prescribed office hours 8 a.m. to 4:30 p.m., Monday through Friday, or by special appointment in cases of necessity.

81—25.4(17A,11) Distribution of duties. The office of auditor of state has four principal divisions, namely:

25.4(1) The executive and administrative division, under the direct control of the auditor of state, assisted by a deputy and administrative assistants, which exercises control and supervision of all activities of the auditor's office.

25.4(2) The state audit division, supervised and directed by a supervisor appointed by the auditor of state, which is charged with the responsibilities of annual audit of all agencies of the state receiving or expending state funds.

25.4(3) The county audit division directed by a supervisor appointed by the auditor of state is charged with the responsibilities of the annual audit of each county of the state as provided by statute.

25.4(4) The municipal and school audit division, directed by a supervisor appointed by the auditor of state, which is responsible for the audit of cities and schools as provided by statute.

81—25.5(17A,11) Savings and loan associations. The auditor of state is charged with supervision of state of Iowa savings and loan associations chartered pursuant to Iowa Code chapter 534. This agency of the auditor of state is directed and supervised by a deputy known as "supervisor of savings and loan associations."

81—25.6(17A,11) Industrial loan companies. The auditor of state has supervision of industrial loan companies licensed by the state of Iowa pursuant to Iowa Code chapter 536A. This agency is supervised by a supervisor appointed by the auditor of state.

81—25.7(17A,11) Staffing. Each of the divisions and agencies of the auditor's office is staffed by auditors and assistants appointed by the auditor of state, as provided for by Iowa Code sections 11.7 and 11.8 and other personnel necessary to fulfill the requirements of the auditor's office.

81—25.8(17A,11) Annual audit. The statutes of Iowa provide for annual audit of all state offices and departments of the state and the counties and cities and city offices, merged areas and educational agencies and all school districts and school offices except that cities having a population of 700 or more, but less than 2,000, shall be audited at least once every four years and cities having a population of less than 700 may be examined as otherwise provided.

81—25.9(17A,11) Reports of audit. Verified reports of audit are filed at the office of the auditor of state, with the officer or agency audited, the county auditor and board of supervisors of the county audited and the mayor and council of a city audited and with the superintendent and directors of all schools involved.

25.9(1) All reports of audit are open to public inspection after publication and filing by the auditor. A limited number of copies of reports of audit are available to the public and news media.

25.9(2) Preliminary information of investigations or audit are not disclosed except as provided by law. There is to be no disclosure of results of investigation or report of audit until after the officer or agency involved has been notified and furnished a verified copy of such audit. Reports of audit are published by the auditor of state by forwarding a verified copy thereof to the officer or officers of the agency audited. Notice that a report of audit has been published is forwarded immediately thereafter to each newspaper, radio station and television station located in the county, municipality or school district involved.

81—25.10(17A,11) Declaratory orders. A petition for a declaratory order may be filed in writing by competent persons as to the applicability as to any statutory provision, rule or other written statement of law or policy provision or order of the auditor of state. Petitions for a declaratory order shall state the statutory provision, rule or other written statement of law or policy decision or order of the auditor of state in question and shall contain a full statement of the facts being submitted for the auditor of state's consideration.

81—25.11(17A,11) Informal settlement. Informal settlement of controversies that may culminate in contested cases are encouraged. Parties to a controversy may arrange and consent to a meeting for informal settlement of pending controversy. Arrangements therefor may be petitioned for in writing by either party. The time and place for hearing of petition for informal settlement shall be fixed by the agency involved or by mutual consent of the parties thereto.

81—25.12(17A,11) Change of rules. Rescinded IAB 6/16/99, effective 7/21/99.

[Filed 3/17/76, Notice 2/9/76—published 4/5/76, effective 5/10/76]
[Filed emergency 2/2/79—published 2/21/79, effective 2/2/79]
[Filed emergency 1/16/81—published 2/4/81, effective 1/16/81]
[Filed 5/28/99, Notice 4/7/99—published 6/16/99, effective 7/21/99]

CHAPTER 26
CERTIFICATION OF ACCOUNTING SYSTEMS

[Originally Ch 11, renumbered Ch 26 IAC 2/4/81]
[Prior to 5/6/87, see Auditor of State[130], Ch 26]

81—26.1(17A,7A) Application. The governor or any state agency, prior to awarding a grant or purchase of services contract to a private agency who is to be awarded grants exceeding $150,000 in the aggregate during the fiscal year, shall obtain from the auditor of state, a certification stating that the grantee or contractor has an accounting system adequate to effect compliance with the terms and conditions of the grant or contract.

81—26.2(17A,7A) Requests to auditor.

26.2(1) All requests for certification of the accounting system shall be made in writing to the auditor of state on Form P.S.1, provided by the auditor, or facsimile.

26.2(2) Requests for certification of the accounting system may originate from either the grantee, contractor or the awarding agency.

81—26.3(17A,7A) Investigation.

26.3(1) The investigation shall be conducted by the auditor of state or under the supervision of the auditor of state in accordance with the AU Sections 641 and 9641 of the Codification of Statements of Auditing Standards, issued by the American Institute of Certified Public Accountants, as effective January 22, 1980.

26.3(2) Wherever the grantee or contractor has retained a CPA, the auditor shall rely to the fullest extent possible on the work of the certified public accountant.

81—26.4(17A,7A) Approval.

26.4(1) The auditor of state will make the final determination whether or not an accounting system shall be approved.

26.4(2) The auditor of state shall advise the requesting agency of approval or disapproval within 30 days from the filing of the request.

81—26.5(17A,7A) Appeals.

26.5(1) The grantee or contractor may appeal the decision of the auditor of state to the auditor within ten days of the auditor's notification. The appeal will be reviewed with the grantor and grantee within ten days.

26.5(2) The auditor shall certify the adequacy of the accounting system after the grantee or contractor has corrected the specific deficiencies noted in the disapproval.

26.5(3) The auditor shall not impose any unreasonable record-keeping requirements on the grantee or contractor, nor require additional personnel for improved internal controls whenever the costs would exceed the benefits derived from such controls.

[Filed 2/1/80, Notice 12/12/79—published 2/20/80, effective 3/26/80]
[Filed emergency 1/16/81—published 2/4/81, effective 1/16/81]

CHAPTER 27
AGENCY PROCEDURE FOR RULE MAKING

The auditor of state adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments:

81—27.3(17A) Public rule-making docket.

27.3(2) *Anticipated rule making.* In lieu of the words "(commission, board, director)", insert "auditor of state".

81—27.4(17A) Notice of proposed rule making.

27.4(3) *Copies of notices.* In lieu of the words "(specify time period)", insert "one calendar year".

81—27.5(17A) Public participation.

27.5(1) *Written comments.* Strike the words "(identify office and address) or".

27.5(5) *Accessibility.* In lieu of the words "(designate office and telephone number)", insert "the office of auditor of state at (515)281-5834".

81—27.6(17A) Regulatory analysis.

27.6(2) *Mailing list.* In lieu of the words "(designate office)", insert "the Office of Auditor of State, State Capitol Building, Des Moines, Iowa 50319".

81—27.10(17A) Exemption from public rule-making procedures.

27.10(2) *Categories exempt.* In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them.)", insert the following:

"a. Rules which are mandated by federal law or regulation in any situation where the auditor of state has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

"b. Rules which implement recent legislation when a statute provides for the usual notice and public participation requirements;

"c. Rules which confer a benefit or remove a restriction on the public or some segment of the public;

"d. Rules which are necessary because of imminent peril to the public health, safety or welfare; and

"e. Nonsubstantive rules intended to correct typographical errors, incorrect citations or other errors in existing rules."

81—27.11(17A) Concise statement of reasons.

27.11(1) *General.* In lieu of the words "(specify the office and address)", insert "the Office of Auditor of State, State Capitol Building, Des Moines, Iowa 50319".

81—27.13(17A) Agency rule-making record.

27.13(2) *Contents.* Amend paragraph "c" by inserting "auditor of state" in lieu of "(agency head)".

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

[Filed 5/28/99, Notice 4/7/99—published 6/16/99, effective 7/21/99]

REAL ESTATE COMMISSION[193E]

[Prior to 6/15/88, see Real Estate Commission[700]]

CHAPTER 3
PRELICENSE EDUCATION AND CONTINUING EDUCATION

CHAPTER 4
INVESTIGATIONS AND DISCIPLINARY PROCEDURES

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

193E—1.20(543B) Terms or conditions. A licensee shall not write, prepare or otherwise use a contract containing terms or conditions that would violate real estate laws in Iowa Code chapter 543B or administrative rules in IAC 193E.

The broker shall be responsible to ensure that all preprinted documents and forms used are in compliance with this rule.

193E—1.21(543B) Part-time broker or broker associate. A broker who sponsors a salesperson during the salesperson's first year of licensure must be able to demonstrate that the broker has the time available and experience necessary to adequately supervise an inexperienced salesperson. Each actively licensed broker associate and salesperson shall be licensed under a broker. A broker associate or salesperson cannot be licensed under more than one broker during the same period of time.

193E—1.22 Rescinded, effective 4/21/82.

193E—1.23(543B) Listings. All listing agreements shall be in writing, properly identifying the property and containing all of the terms and conditions under which the property is to be sold, including the price, the commission to be paid, the signatures of all parties concerned and a definite expiration date. It shall contain no provision requiring a party signing the listing to notify the broker of the listing party's intention to cancel the listing after such definite expiration date. An exclusive agency or exclusive right to sell listing shall clearly indicate that it is such an agreement. A legible copy of every written listing agreement or other written authorization shall be given to the owner of the property by a licensee as soon as reasonably practical after the signature of the owner is obtained.

1.23(1) A real estate licensee shall not negotiate a sale, exchange, or lease of real property directly with an owner if it is known that the owner has a written unexpired contract in connection with the property which grants an exclusive right to sell to another broker, or which grants an exclusive agency to another broker.

1.23(2) Net listing prohibited. No licensee shall make or enter into a net listing agreement for the sale of real property or any interest in real property. A net listing agreement is an agreement that specifies a net sale price to be received by the owner with the excess over that price to be received by the broker as commission. The taking of a net listing shall be unprofessional conduct and shall constitute a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

1.23(3) A licensee shall not negotiate or enter into a listing agreement with an owner if the licensee knows or has reason to know that the owner has a written unexpired exclusive agency or exclusive right to sell listing agreement to the property with another broker, unless the owner initiates the discussion and the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into a listing which will take effect after the expiration of the current listing.

1.23(4) A listing agreement may not be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

1.23(5) A real estate licensee shall not induce another to seek to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent.

1.23(6) Any commission or fee in any listing engagement is fully negotiable among the parties to that listing agreement. Once the parties to a listing agreement have agreed to a commission or fee, no licensee other than a party to listing agreement shall attempt to alter, modify, or change or induce another person to alter, modify or change a commission or fee that has previously been agreed upon without the prior written consent of the parties to that listing agreement.

193E—1.24(543B) Advertising. A broker shall not advertise to sell, buy, exchange, rent, or lease property in a manner indicating that the offer to sell, buy, exchange, rent, or lease the property is being made by a private party not engaged in the real estate business, and no real estate advertisement shall show only a post office box number, telephone number or street address. Every broker, when advertising real estate, shall use the regular business name or the name under which the broker is licensed, and shall affirmatively and unmistakably indicate that the party is a real estate broker and not a private party. Each broker when operating under a franchise or trade name other than the broker's own name may license the franchise or trade name with the commission, or shall clearly reveal in all advertising that the broker is the licensed individual who owns the entity using the franchise or trade name.

1.24(1) Real estate advertising shall not be misleading, deceptive, or intentionally misrepresent any property, terms, values, or policies and services of the brokerage.

1.24(2) All advertising shall be conducted under the supervision of the broker. The broker shall ensure the accuracy of the information and upon becoming aware of a material error or an advertisement which is in violation of this chapter or Iowa Code chapter 543B, the broker shall promptly take corrective measures within ten calendar days.

1.24(3) A licensed firm advertising or marketing on a site on the Internet, that is either owned by or controlled by the licensed firm, must include on each page of the site on which the firm's advertisement or information appears the following data:

a. The firm's name as registered with the commission (abbreviations are not permitted);

b. The city and state in which the firm's main office is located; and

c. The states in which the firm holds a real estate brokerage license.

1.24(4) A licensee advertising or marketing on a site on the Internet, that is either owned by or controlled by the licensee, must include on each page of the site on which the licensee's advertisement or information appears the following data:

a. The licensee's name;

b. The name of the firm with which the licensee is affiliated as that firm name is registered with the commission (abbreviations are not permitted);

c. The city and state in which the licensee's office is located; and

d. The states in which the licensee holds a real estate broker or salesperson license.

1.24(5) A firm using any Internet electronic communication for advertising or marketing, including but not limited to E-mail, E-mail discussion groups, and bulletin boards, must include on the first or last page of all communications the following data:

a. The firm's name as registered with the commission (abbreviations are not permitted);

b. The city and state in which the firm's main office is located; and

c. The states in which the firm holds a real estate brokerage license.

1.24(6) A licensee using any Internet electronic communication for advertising or marketing, including but not limited to E-mail, E-mail discussion groups, and bulletin boards, must include on the first or last page of all communications the following data:

a. The licensee's name;

b. The name of the firm with which the licensee is affiliated as that firm name is registered with the commission (abbreviations are not permitted);

c. The city and state in which the licensee's office is located; and

d. The states in which the licensee holds a real estate broker or salesperson license.

1.24(7) Advertising shall include all forms of identification, representation, promotion and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity.

193E—1.25 Rescinded, effective 11/25/87.

193E—1.26(543B) Presenting purchase agreements. Any and all offers to purchase received by any broker shall be promptly presented to the seller for formal acceptance or rejection. The formal acceptance or rejection of the offers shall be promptly communicated to the prospective purchasers.

193E—1.27(543B) Trust account. All earnest payments, all rents collected, property management funds, and other trust funds received by the broker in such capacity or broker associate or salesperson on behalf of the broker's client, shall be deposited in a trust account maintained by the broker in an identified "trust" account in a federally insured bank, savings and loan association, savings bank, or credit union located in Iowa and, for the purposes of this rule, may be referred to as the "depository."

1.27(1) All money belonging to others received by the broker, broker-associate or salesperson on the sale, rental, purchase, or exchange of real property located in Iowa are trust funds and must be deposited in a trust account; this shall include, but not be limited to, receipts from property management contracts; rent or lease contracts; advance fee contracts; escrow contracts; collection contracts; earnest money contracts; or money received by a broker for future investment or other purpose; except a nonrefundable retainer need not be placed in an escrow account if specifically provided for in the written agreement between the broker and the broker's principal.

a. All trust funds must be deposited into the broker's trust account by no later than five banking days after the date indicated on the document that the last signature of acceptance of the offer to purchase, rent, lease, exchange, or option is obtained.

b. Money belonging to others shall not be invested in any type of fixed-term maturity account, security or certificate without the written consent of the party or parties to whom the money belongs.

c. A broker shall not commingle personal funds in a trust account; provided, however, that not more than $100, or the amount specified in Iowa Code section 543B.46(4), of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account.

The broker shall ensure that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46, and that at no time are trust moneys used to cover any charges. Upon notification that the broker's personal funds are not sufficient to cover service charges initiated by the bank that are above the normal maintenance charges, the broker shall deposit personal funds to correct the deficiency within 15 days of the closing date of that bank statement.

d. Money held in the trust account which becomes due and payable to the broker shall be promptly withdrawn by the broker.

The broker shall not use the trust account as a business operating account or for personal uses. Commissions, salaries, related items and normal business expenses shall not be disbursed directly from the trust account.

f. A licensee shall not pay any undisclosed rebate to any party to a transaction.

g. A licensee shall not give any undisclosed credit against commission due from a client or licensee to any party to a transaction.

h. A licensee shall not accept, receive or charge any undisclosed payments for any services provided by any third party to any party to a transaction including, but not limited to, payments for procuring insurance or for conducting a property inspection related to the transaction.

1.42(7) Solicitation of brokerage agreements. A licensee shall not advise, counsel, or solicit a brokerage agreement from a seller or buyer, or landlord or tenant, if the licensee knows, or acting in a reasonable manner should have known, that the seller or buyer or landlord or tenant has contracted with another broker for the same brokerage services on an exclusive basis.

a. This rule does not preclude a broker from entering into a brokerage agreement with a seller or buyer, or landlord or tenant, when the initial contact is initiated by the seller or buyer, or landlord or tenant, and the licensee has not directly or indirectly solicited the discussion, provided the brokerage agreement does not become effective until the expiration or release of the current brokerage agreement.

b. A brokerage agreement may not be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

1.42(8) A licensee shall not negotiate directly or indirectly with a seller or buyer, or landlord or tenant, if the licensee knows, or acting in a reasonable manner should have known, that the seller or buyer, or landlord or tenant, has a written unexpired brokerage agreement for services on an exclusive basis.

1.42(9) A licensee shall not refuse to permit a customer to have a customer's agent present at any step in a real estate transaction including, but not limited to, viewing a property, seeking information about a property, or negotiating directly or indirectly with a licensee about a property listed by such licensee; and no licensee shall refuse to show a property listed by that licensee or otherwise deal with a customer who is represented by another licensee or who requests that the customer's agent be present at any step in the real estate transaction; provided, however, a listing licensee shall not be required to permit a customer's agent to be present when presenting offers or discussing confidential matters with a client. Compliance with this subrule does not require or obligate a listing licensee to share any commission or to otherwise compensate a customer's agent.

1.42(10) Any commission or fee in any brokerage engagement is fully negotiable among the parties to that brokerage agreement. Once the parties to a brokerage agreement have agreed to a commission or fee, no licensee other than a party to that brokerage agreement shall attempt to alter, modify, or change or induce another person to alter, modify or change a commission or fee that has previously been agreed upon without the prior written consent of the parties to that brokerage agreement.

1.42(11) A real estate licensee shall not induce another to seek to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent.

193E—1.43(543B) Single agent representing a seller or landlord.

1.43(1) *Duty to seller or landlord.* A licensee representing a seller or landlord as an exclusive seller's agent or an exclusive landlord's agent shall have the following duties and obligations:

a. To perform the terms of the written agreement made with the seller or landlord;

b. To exercise reasonable skill and care for the seller or landlord;

c. To promote the interests of the seller or landlord with the utmost care, integrity, honesty, and loyalty, including but not limited to the following:

(1) Seeking a price and terms which are acceptable to the seller or landlord; except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(2) Presenting all written offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease, unless it is provided for by the brokerage agreement;

(3) Disclosing to the seller or landlord all material adverse facts concerning the property and the transaction that are actually known by the licensee pursuant to Iowa Code Supplement section 543B.56;

(4) Advising the client to obtain expert advice as to material matters about which the licensee knows, but the specifics of which are beyond the expertise of the licensee;

(5) Preserving the seller's or landlord's confidential information as defined in 193E—1.1(543B), unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing, including but not limited to the following:

1. Information concerning the seller or the landlord that, if disclosed to the other party, could place the seller or landlord at a disadvantage when bargaining;
2. That the seller or landlord is willing to accept less than the asking price or lease price for the property;
3. What the motivating factors are for the client's selling or leasing the property;
4. That the seller or landlord will agree to sale, lease, or financing terms other than those offered;
5. The seller's or landlord's real estate needs;
6. The seller's or landlord's financial information;

(6) Accounting in a timely manner for all money and property received;

(7) Providing brokerage services to all parties to the transaction honestly and in good faith;

(8) Complying with all requirements of Iowa Code chapter 543B and all commission rules and regulations;

(9) Complying with any applicable federal, state, or local laws, rules, ordinances, including fair housing and civil rights statutes and regulations.

1.43(2) *Duty to a buyer or tenant.* A licensee acting as an exclusive seller's or exclusive landlord's agent shall disclose to any customer all material adverse facts actually known by the licensee pursuant to Iowa Code Supplement section 543B.56.

a. The licensee owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the seller or landlord or any independent inspector, unless the licensee knows or has reason to believe the information is not accurate.

b. Nothing in this rule precludes the obligation of a buyer or tenant from the responsibility of protecting the buyer's or the tenant's own interest by, but not limited to, inspecting the physical condition of the property and verifying important information.

c. A seller or landlord may agree in writing with an exclusive seller's or exclusive landlord's agent that other designated brokers may be retained or compensated as subagents, and any broker acting as a subagent on the seller's or landlord's behalf shall be an agent with the same obligations and responsibilities to the seller or landlord as the primary broker of the seller or landlord.

d. A real estate brokerage engaged by a seller or landlord in a real estate transaction may provide assistance to an unrepresented buyer or tenant by performing such acts as preparing offers and conveying those offers to the seller or landlord and providing information and assistance concerning professional services not related to real estate brokerage services.

1.43(3) *Alternative properties.* The licensee may show alternative properties not owned by the seller or landlord to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the seller or landlord.

193E—1.52(543B) Enforcement date. Rules 1.41(543B) to 1.51(543B) shall not be enforced until July 1, 1996. When the commission adopted these rules, which became effective January 24, 1996, it intended to delay enforcement until July 1, 1996, as stated in rule 1.41(543B). This rule is intended to clarify the enforcement date to avoid any possible confusion by licensees or the public more generally. The commission wants to provide licensees with the opportunity to obtain education and to become familiar with the rules prior to enforcement.

These rules are intended to implement Iowa Code chapters 558A and 543B and Iowa Code Supplement sections 543B.57 to 543B.63.

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CHAPTER 4
INVESTIGATIONS AND DISCIPLINARY PROCEDURES
[Prior to 6/15/88, see Real Estate Commission[700] Ch 4]

193E—4.1(543B) Discipline and hearing procedure. The Iowa real estate commission has authority derived from Iowa Code chapter 543B, entitled "Real Estate Brokers and Salespersons," and from Iowa Code chapter 272C, entitled "Continuing Professional and Occupational Education," to impose discipline for any violation of these two chapters, or the rules promulgated thereunder.

193E—4.2(543B) Definitions.

"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.

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

193E—4.3(543B) Proceedings. The proceeding for revocation or suspension of a license to engage in real estate practices or to discipline a person licensed to practice the real estate profession or the denial of a license shall be substantially in accord with the following procedures which are an elaboration of or in addition to the procedures stated in Iowa Code sections 543B.35 and 543B.36.

193E—4.4(543B) Confidentiality of investigative files. Complaint files, and investigation files, and all other investigation reports and other investigating information in the possession of the commission or its employees or agents which relates to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the commission, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final written decision and finding of fact of the commission in a disciplinary proceeding shall be public record, including orders, assurance of voluntary compliance and dismissed complaints.

Nothing in this rule shall prohibit access to information pursuant to Iowa Code chapter 2C.

193E—4.5(543B) Form and content of the written complaint. A complaint shall be made in writing and shall be signed by complainant or an authorized representative of the complainant. The complaint may be in the form of a letter or affidavit or it may be made using an official complaint form which may be obtained from the commission office upon request. A written complaint shall contain the following information:

1. The full name, address and telephone number of the complainant.
2. The full name, address and telephone number, if known, of the respondent.
3. A concise statement of the facts which clearly and accurately apprise the commission of the allegations against the respondent.

193E—4.6(543B) Place and time of filing. The complaint may be delivered personally or by mail to the executive secretary of the commission at the office of the commission. Timely filing is encouraged to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been substantially altered during the period of delay.

193E—4.7(543B) Disciplinary committee. The commission may appoint a disciplinary committee of two to five commission members for the purpose of reviewing complaints pertinent to the business of the real estate commission including reviewing complaints related to licensee discipline. At the request of the disciplinary committee, the commission may expand the size of the disciplinary committee at any time to facilitate the resolution of a particular case.

193E—4.8(543B) Receipt of complaints and initiation of investigations. When the commission receives a complaint pursuant to Iowa Code section 543B.34, or initiates a complaint on its own motion, the complaint shall be reviewed by the executive secretary.

4.8(1) If the complaint is a verified, written complaint, which together with evidence presented with the complaint makes out a prima facie case of a violation of a law within the investigative jurisdiction of the commission, the executive secretary shall refer the complaint to the disciplinary committee.

4.8(2) If the complaint does not meet the criteria set forth in the preceding sentence, the executive secretary may either refer the complaint to the disciplinary committee or, if in the opinion of the executive secretary the complaint is frivolous or clearly outside the jurisdiction of the commission, the executive secretary may decline to pursue the complaint further. If the executive secretary does not pursue the complaint, the complainant shall be informed by letter containing a statement specifying the reasons for rejection. If a complainant objects in writing to the executive secretary's decision not to further pursue a complaint, the executive secretary shall submit the complaint to the disciplinary committee for its consideration.

4.8(3) The executive secretary shall report to the disciplinary committee as necessary concerning actions taken on complaints received by the commission.

193E—4.9(543B) Disciplinary committee procedures.

4.9(1) Upon receipt of a complaint by the disciplinary committee, the committee shall determine whether a violation is alleged. If the committee determines that the facts alleged may warrant disciplinary action, the committee shall open a disciplinary case against the licensee. If the disciplinary committee determines that no disciplinary action is warranted, the committee shall take no further action on the complaint. If the complaint is not pursued by the committee, the complainant shall be informed by letter containing a statement specifying the reasons for rejection.

4.9(2) If a disciplinary case is opened, the disciplinary committee shall examine available information to determine whether there is probable cause to believe an alleged disciplinary violation has occurred which warrants discipline or whether additional information is required before such a determination can be made. If additional information is needed, the committee may assign an investigator to obtain additional information. Upon completion of the investigation, the results of the investigation shall be provided to the committee.

4.9(3) Following or during the review, the disciplinary committee may take one or more of the following actions:

a. Request further investigation.

b. Request that the licensee who is the subject of the complaint meet with the disciplinary committee to informally discuss the allegations.

c. Determine that there is no probable cause that a violation has occurred which warrants discipline and close the complaint. Prior to or at the time the complaint is closed, the disciplinary committee may choose to send a letter to the licensee regarding the conduct alleged in the complaint which may include the committee's recommendations to the licensee. If a letter is sent pursuant to this paragraph, the letter shall not be available for public inspection and shall not constitute disciplinary action by the commission.

d. Determine that there is probable cause to believe that a violation has occurred which warrants discipline.

e. Determine that there is probable cause to believe that a violation of Iowa Code section 543B.1 has occurred which shall be referred to a court of competent jurisdiction pursuant to Iowa Code section 543B.44.

f. Attempt informal settlement of the complaint. If the disciplinary committee determines that probable cause exists indicating that a law or rule within the jurisdiction of the commission has been violated and that discipline is warranted, the committee shall consider settling the complaint informally. If the disciplinary committee determines that a satisfactory settlement cannot be reached, the committee may commence a contested case proceeding against the licensee by causing a notice of hearing to be served.

g. Stay further action on the complaint. If the disciplinary committee finds that the complaint is against a licensee whose license has expired or has been revoked, the committee may stay further action on the complaint either prior to or after commencing a contested case proceeding against the licensee. If the proceedings are stayed, the committee shall notify the former licensee of the pending charges.

4.9(4) In determining the appropriate action to pursue, the disciplinary committee shall consider the severity of the violation alleged, the sufficiency of the evidence, the possibility that the problem can be better resolved by other means available to the parties, without commission involvement, the clarity of the laws and rules which support the alleged violation, the clarity of the commission's jurisdiction, whether the violation is likely to reoccur, the record of the licensee and any other factors which are relevant to the committee's decision in a particular case.

193E—4.10(543B) Informal discussion procedures. The disciplinary committee may request that a licensee and the licensee's employing broker attend an informal discussion. The licensee or the employing broker is not required to attend or participate in any informal discussion requested by the disciplinary committee. The licensee and employing broker are, however, required to inform the committee as to whether they will attend an informal discussion which is requested by the committee.

4.10(1) The informal discussion is a part of the committee's review of a pending disciplinary case, and facts discussed at the informal discussion may be considered by the commission in the event that the complaint advances to a contested case hearing and those facts are independently introduced into evidence in that proceeding.

4.10(2) If the licensee chooses, the licensee may be represented by an attorney at the informal discussion at the expense of the licensee.

4.10(3) The informal discussion shall be held in closed session.

4.10(4) The committee may seek an informal stipulation or settlement of the case at the time of the informal discussion. If the parties agree to an informal settlement of the case at the time of the informal discussion, a statement of charges shall be filed simultaneously with the settlement document. In the event the committee does not reach a settlement under this subrule, additional settlement rules in this chapter are still applicable.

4.10(5) By consenting to participate in an informal discussion, the licensee waives any right of notice and opportunity to participate in any communications between the disciplinary committee and the prosecuting attorney or commission staff who are involved in review of the case. This waiver shall be effective until such time as a notice of hearing is filed against the licensee.

4.10(6) Members of the disciplinary committee participating in informal discussions are not disqualified from participating in the adjudication of any contested case proceeding which may be necessary to resolve the complaint.

4.10(7) By electing to attend, the licensee waives the right to seek disqualification of a commission member or commission staff from participating in the making of a contested case decision or acting as a presiding officer in a later contested case proceeding.

193E—4.11(543B) Settlements.

4.11(1) Settlement negotiations may be initiated after a statement of charges is filed. Neither the licensee nor the commission is obligated to utilize this procedure. Settlement negotiations may be initiated by the state of Iowa acting through the prosecuting attorney, by the respondent or by the commission. The chairperson of the commission, or another commission member designated by the chairperson, shall have authority to negotiate on behalf of the commission.

4.11(2) If a licensee consents to pursue settlement, the licensee waives any right of notice and opportunity to participate in any communications between the commission chair or the chair's designee and the prosecuting attorney or investigating staff members who are thereafter involved in the settlement negotiations or in presentation of the settlement to the commission.

4.11(3) The proposed settlement may be submitted to the full commission by the prosecuting attorney, commission staff, or the commission member involved in the negotiations.

4.11(4) The commission shall not consider any settlement negotiation pursuant to this rule until a proposed, written settlement, signed by the licensee, is submitted to the commission for approval.

4.11(5) All settlement agreements are subject to the approval of a majority of the full commission. If the commission fails to approve the settlement, the proposed settlement shall be of no force or effect to either party.

4.11(6) The settlement discussion by the full commission shall be held in closed session.

4.11(7) The commission member who participates in the negotiation of a settlement is not disqualified from participating in the commission's consideration of the proposed settlement or the adjudication of any contested case which may be necessary to resolve the complaint.

4.11(8) Following approval of a settlement by the full commission and filing of the settlement document, the settlement document shall be available for public inspection.

193E—4.12(543B) Refusal to set hearing. Reasons for refusal to set hearing by the commission may include but are not necessarily limited to the following:

1. Triviality of the allegation.
2. Insufficiency of evidence.
3. Effort to resolve problem on the local level.
4. Lack of clarity of the issue.
5. Lack of jurisdiction.

193E—4.13(543B) Ruling on the initial inquiry.

4.13(1) *Rejection.* If a determination is made by the commission to reject the case, the complainant shall be provided a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the commission shall be sent to the respondent.

4.13(2) *Requirement of further inquiry.* If determination is made by the commission to order further inquiry, the complaint and recommendations shall be returned to the investigator(s) along with an oral or written statement specifying the information deemed necessary.

4.13(3) *Acceptance of the case.* If a determination is made by the commission that probable cause to hold hearing exists, the commission may initiate contested case proceedings. The commission may enter into informal settlement negotiations prior to holding a contested case hearing. As a result of informal settlement, the commission may impose any of the penalties available to it. If informal negotiation is not taken or successful, the commission may proceed with formal disciplinary proceedings through contested case proceedings.

193E—4.14(543B) Withdrawal or amendment. A complaint may be amended or withdrawn at any time prior to official notification of the parties and thereafter at the sole discretion of the commission. The commission may choose to pursue a matter even after a complaint has been withdrawn.

193E—4.15(543B) Order for hearing or complaint. The commission may, upon its own motion or upon receipt of a complaint in writing, issue an order fixing the time and place for hearing. A written notice of hearing, together with a statement of the charges, shall be mailed to the licensee at least 20 days before the hearing by restricted certified mail return receipt requested to the last-known business address of the licensee or may be served as in the manner of an original notice. Delivery of personal notice to the licensee or refusal by the licensee to accept restricted certified mailing may constitute commencement of the contested case proceedings.

193E—4.16(543B) Statement of charges. The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged and shall be in sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify the statute(s) and any rule(s) alleged to have been violated, and may also include any additional information which the commission deems appropriate to the proceedings.

193E—4.17(543B) Notice of hearing. The notice of hearing shall state:

1. The date, time and place of hearing.
2. A statement that the party may be represented by legal counsel at all stages.
3. A statement of the legal authority and jurisdiction under which the hearing is to be held.
4. Reference to the statutes and rules involved.
5. A short and plain statement of the matter asserted.
6. A statement that the respondent has the right to appear at a hearing and be heard.
7. A statement requiring the respondent to submit an answer, as outlined in rule 4.18(543B).
8. A statement requiring the respondent within the period of ten days after receipt of the notice of hearing to acknowledge receipt of the notice of hearing on the form provided with the notice.
9. A statement requiring the respondent to furnish the commission with a list of potential witnesses, with their current addresses, whom the respondent intends to have called. The answer required in numbered paragraph 7 and the list of potential witnesses, if any, as required in this paragraph, shall be provided to the executive secretary no later than ten days prior to the date set for hearing.
10. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (i.e., the commission or administrative law judge from the department of inspections and appeals); and
11. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1) and rule 4.19(17A) that the presiding officer be an administrative law judge.

193E—4.18(543B) Form of answer. The answer shall be captioned "Before the Iowa Real Estate Commission", and shall be titled: "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 the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

193E—4.19(17A) Presiding officer.

4.19(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 commission or a panel of the commission.

4.19(2) The commission may deny the request only upon a finding that one or more of the following apply:

a. Neither the commission nor any officer of the commission 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 commission 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 intercommission appeal.

g. The request was not timely filed.

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

4.19(3) The commission shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

4.19(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 commission. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

193E—4.20(17A) Time requirements.

4.20(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.20(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.

193E—4.21(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 commission action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific commission action which is disputed and, where the requester is represented by a lawyer, 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.

193E—4.22(543B,272C) Legal representation. Every statement of charges and notice of hearing prepared by the commission 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 commission. The assistant attorney general assigned to prosecute a contested case before the commission shall not represent the commission in that case but shall represent the public interest.

193E—4.23(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 commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193E—4.24(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.

193E—4.25(17A) Disqualification.

4.25(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.

4.25(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 commission 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 subrules 4.25(3) and 4.41(9).

4.25(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.

4.25(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.25(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 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 4.47(17A) and seek a stay under rule 4.49(17A).

193E—4.26(17A) Consolidation—severance.

4.26(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.

4.26(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193E—4.27(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.

193E—4.28(17A) Service and filing of pleadings and other papers.

4.28(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 commission, 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.

4.28(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.

4.28(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 commission. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

4.28(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commission, 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.

4.28(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 Real Estate Commission 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) _____

193E—4.29(17A) Discovery.

4.29(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.

4.29(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 4.29(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.29(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193E—4.30(17A) Subpoenas. In connection with the investigation of a complaint, the commission 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 4.17(543B,272C), the following procedures are available to the parties in order to obtain relevant and material evidence:

4.30(1) Commission 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 desired.

4.30(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.

4.30(3) In the event of a refusal to obey a subpoena, either party or the commission 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.

193E—4.31(17A) Motions.

4.31(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.

4.31(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 commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.31(3) The presiding officer may schedule oral argument on any motion.

4.31(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 commission or an order of the presiding officer.

4.31(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 4.48(17A) and appeal pursuant to rule 4.52(17A).

193E—4.32(17A) Prehearing conference.

4.32(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 commission to all parties. For good cause the presiding officer may permit variances from this rule.

4.32(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.

4.32(3) In addition to the requirements of subrule 4.32(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.

4.32(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.

193E—4.33(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.33(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.

4.33(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.

193E—4.34(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

193E—4.35(17A) Intervention.

4.35(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.

4.35(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.

4.35(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.

4.35(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.

193E—4.36(543B) 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 at the expense of the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed and maintained in accordance with the provisions of Iowa Code section 17A.12(7). Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

193E—4.37(543B) Hearings. A hearing may be conducted before the full commission, or one or more members of the commission, or before an administrative law judge in accordance with Iowa Code section 17A.11.

4.37(1) When a hearing is held before the commission, or a small number of commissioners, the commission chairperson or someone designated by the chairperson shall act as the presiding officer. The presiding officer or administrative law judge shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections.

4.37(2) The presiding officer and commission members have the right to conduct a direct examination of the testimony of a witness at the time the testimony is given or at a later stage during the proceeding. Direct examination and cross-examination by commission members are subject to objections properly raised in accordance with the rules of evidence noted in subrules 4.39(1) and 4.39(2).

193E—4.38(543B) Order of proceedings. Before testimony is presented, the record shall show the identity of any commission members present, the identity of the hearing panel or administrative law judge, the identity of the primary parties and their representatives, and of the fact that all testimony is being recorded. Hearings before the commission or a panel of the commission or before an administrative law judge shall generally be conducted in the following order, subject to modification at the discretion of the commission or of the panel of the commission conducting the proceedings.

1. The presiding officer or designee may read a summary of the charges and answers thereto, and other responsive pleadings filed by the respondent prior to the hearing.
2. The assistant attorney general or other person representing the state or commission interest before the commission shall make a brief opening statement which shall include a summary of the charges and the witnesses and documents to support such charges.
3. The respondent or respondents shall each be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent.
4. The presentation of evidence on behalf of the public.
5. A summary, at the close of the evidence on behalf of the state or commission, of the case and what was sought to be proven.
6. The presentation of evidence on behalf of the respondent(s).
7. Rebuttal evidence on behalf of the state or commission, if any.
8. Rebuttal evidence on behalf of the respondent(s), if any.
9. Closing arguments first on behalf of the state or commission, then on behalf of the respondent, and then on behalf of the state or commission, if any.

193E—4.39(543B) Rules of evidence—documentary evidence—official notice.

4.39(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.

4.39(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.39(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.

4.39(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. 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.

4.39(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.

4.39(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.

4.39(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon 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.

4.39(8) Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

4.39(9) Subject to the above 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 submitted in writing in certified form, e.g., affidavit, sworn statements or certified documents.

4.39(10) Documentary evidence may be received in the form of copies if the original is not readily available. Documentary evidence may be received in the form of excerpts if the entire document is not relevant. Accurate copies of any document should be made in advance of the hearing, as far as possible, in sufficient numbers for all members of the commission and shall be furnished to those members of the commission sitting at the hearing and to opposing parties. Upon request, parties shall be given the opportunity to compare the copy with the original, if available.

4.39(11) 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.

4.39(12) 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 commission. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the commission determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

193E—4.40(17A) Default.

4.40(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.

4.40(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.

4.40(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 commission 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 4.46(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.

4.40(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.

4.40(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.

4.40(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.

4.40(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 4.47(17A).

4.40(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.

4.40(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

4.40(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 4.49(17A).

193E—4.41(17A) Ex parte communication.

4.41(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 4.25(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.

4.41(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.

4.41(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

4.41(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 4.28(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.

4.41(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.41(6) The executive secretary 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 4.41(1).

4.41(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 4.33(17A).

4.41(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.

4.41(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.

4.41(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.

193E—4.42(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.

193E—4.43(543B) Final decision.

4.43(1) When three or more members of the commission preside over the reception of the evidence at the hearing, the commission's decision is a final decision. A finding of guilt or penalty by the commission shall require a majority vote of the entire commission.

4.43(2) If the hearing is conducted by fewer than three members of the commission or by an administrative law judge, the decision is a proposed decision and subject to the review provisions of rule 4.46(543B).

a. A proposed or final decision shall be in writing and shall consist of the following parts:

(1) A concise statement of the facts which support the findings of fact.

(2) Findings of fact. A party may submit proposed findings of fact and, where this is done, the decision shall include a ruling on each proposed finding.

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

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

d. The decision may include any of the following conclusions:

(1) That the respondent be exonerated.

(2) Revocation of license.

(3) Suspension of license until further order of the commission or for a specified period.

(4) Nonrenewal of license.

(5) Prohibit permanently, until further order of the commission or for a specific period, the engaging in specified procedures, methods or acts.

(6) Probation.

(7) Require additional education or training.

(8) Require reexamination.

(9) Order a physical or mental examination with periodic reports to the commission, if deemed necessary.

(10) Issue citation and warning.

(11) Impose civil penalties not to exceed $1,000.

(12) Such other sanctions allowed by law as may be appropriate.

193E—4.44(543B) Discretion of commission. The following factors are among those which may be considered by the commission in determining the nature and severity of the disciplinary sanction to be imposed against a particular licensee or groups of licensees.

1. The relative seriousness of the violation as it relates to assuring the citizens of this state professional competency.
2. The facts of the particular violation.
3. Number of prior violations.
4. Seriousness of prior violations.
5. Whether remedial action has been taken.
6. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.
7. The impact of a particular activity upon the public.

193E—4.45(543B) Final decision—filed with executive secretary. The final decision of the commission, presiding officer or administrative law judge shall be filed with the executive secretary. A copy of the decision and order shall immediately be sent by certified mail return receipt requested to the licensee's last-known post office address or may be served as in the manner of original notices upon the licensee.

193E—4.46(543B) Proposed decision—appeal to commission—procedures and requirements. A proposed decision as defined in rule 4.2(543B) becomes a final decision unless appealed in accordance with the following procedure:

1. A proposed decision may be appealed to the commission by a party to the decision who is adversely affected thereby. An appeal is begun by serving on the executive secretary, either in person or by certified mail, a notice of appeal within 20 days after the service of the proposed decision or order on the appealing party. The appealing party shall be designated "appellant" and all other parties in the contested case proceedings shall be designated "appellee(s)".

2. Within 20 days after serving a notice of appeal, the appellant shall serve five copies of the exceptions, if any, together with the brief and argument desired by appellant. The appellant shall also furnish copies to each appellee by first-class mail. Any appellee to the appeal shall have 14 days after service of exceptions and brief on the executive secretary to file a responsive brief and argument. Except for the notice of appeal, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by a member of the commission or executive secretary.

3. Oral argument of the appeal is discretionary but may be required by the commission upon its own motion. At the times designated for filing briefs and arguments, either party may request oral argument. If a request for oral argument is granted or required, the executive secretary shall notify all parties of the date, time and place. The commission chairperson or a designated commissioner shall preside at the oral argument and determine the procedural order of the proceedings.

4. The record on appeal shall be the entire record made before the hearing panel or administrative law judge. The commission is not bound by any proposed findings of fact, conclusions of law or order but is free to accept, affirm, modify or reject such proposed findings, conclusions or order. The commission may consider other evidence or information, with notice to all parties, which was not originally presented at the hearing. The commission may give such new evidence or information whatever value or weight the commission desires.

193E—4.47(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission 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 commission 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.

193E—4.48(17A) Applications for rehearing.

4.48(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.48(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 commission decision on the existing record and whether the applicant requests an opportunity to submit additional evidence. A request to submit additional evidence must describe how the new evidence would be material and disclose a good-faith reason for the failure to timely present the evidence.

4.48(3) *Time of filing.* The application shall be filed with the commission within 20 days after issuance of the final decision.

4.48(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 commission shall serve copies on all parties.

4.48(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

193E—4.49(17A) Stays of commission actions.

4.49(1) *When available.*

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

b. Any party to a contested case proceeding may petition the commission 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.

4.49(2) *When granted.* In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

4.49(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the commission or any other party.

193E—4.50(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.

193E—4.51(17A) Emergency adjudicative proceedings.

4.51(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 commission 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 commission by emergency adjudicative order. Before issuing an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the commission 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 commission is necessary to avoid the immediate danger.

4.51(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 commission'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 commission;

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

(4) First-class mail to the last address on file with the commission; 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 commission orders be sent by fax and has provided a fax number for that purpose.

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

4.51(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.51(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the commission 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 commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

193E—4.52(543B) Judicial review and appeal. Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure Act, from and after the date of the commission's order.

193E—4.53(543B,272C) Hearing on license denial. If the commission, upon receipt of a complete and proper application for initial license or reciprocal license, accompanied by the proper fee, shall deny a license to the applicant, the executive secretary shall send written notice to the applicant by regular first-class mail identifying the basis for denial.

4.53(1) An applicant denied a license who desires to contest the denial must request a hearing before the commission within 30 days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service. The request for hearing shall specify the grounds under which the applicant contends that the commission erred in denying the license. If a request for hearing is timely made, the commission shall issue notice of hearing and conduct a contested case hearing.

4.53(2) Hearings on license denial shall be open to the public. The burden of presenting evidence and information or documents to support the applicant's position shall be the responsibility of the applicant.

4.53(3) The commission, after a hearing on a license denial, may grant or deny the application for a license. If denied, the commission shall state the reasons for denial of the license and may state conditions under which the application for a license could be granted, if applicable.

4.53(4) The notice of license denial, request for hearing, notice of hearing, and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media and other persons or entities.

4.53(5) Judicial review of a final order denying a license may be sought in accordance with the provisions of Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, which are applicable to judicial review of the commission's final decision in a contested case.

193E—4.54(543B) Violations for which civil penalties may be imposed.

4.54(1) Engaging in activities requiring a license when license is inactive.

4.54(2) Failing to maintain a place of business.

4.54(3) Improper care and custody of license:

a. Failing to properly display license(s).

b. Failing to return license in a timely manner (72 hours).

c. Failing to notify associate when license is returned.

d. Failing to provide mailing address of associate when license is returned.

4.54(4) Failing to inform commission and remit required fees if appropriate:

a. When changing business address (5 working days).

b. When changing status (5 working days).

c. When changing form of firm (5 working days).

d. When opening a trust account by not filing a consent to examine for the account.

e. When changing residence address or mailing address.

f. When independently obtained errors and omissions insurance status, coverage or provider changes.

4.54(5) Maintaining inadequate transaction records such as:

a. Failing to maintain a general ledger.

b. Failing to maintain individual account ledgers.

c. Failing to retain records on file.

4.54(6) Improper trust account and closing procedures:

a. Failing to deposit funds as required.

b. Disbursing trust funds prior to closing without written authorization.

c. Withholding earnest money unlawfully when the transaction fails to consummate.

d. Failing to obtain escrow agreement for undisbursed funds.

e. Failing to remit and account for interest on closing statements.

f. Computing closing statements improperly.

g. Failing to provide closing statements.

h. Retaining excess personal funds in the trust account.

i. Failing as a salesperson or broker associate to immediately turn funds over to the broker.

j. Failing to deposit trust funds in interest-bearing account in accordance with Iowa Code section 543B.46.

k. Failing to account for and remit to the state accrued interest due in accordance with Iowa Code section 543B.46.

4.54(7) Failing to immediately present offer.

4.54(8) Advertising without identifying broker or clearly indicating advertisement is by a licensee.

4.54(9) Failing to provide information to the commission when requested relative to a complaint (14 calendar days).

4.54(10) Failing to obtain all signatures required on contracts or to obtain signatures or initials of all parties to changes in a contract.

4.54(11) Placing a sign on property without consent, or failure to remove a sign when requested.

4.54(12) Failing to furnish a progress report when requested.

4.54(13) Failing by a broker to supervise salespersons or broker associates.

4.54(14) Failing by a broker associate or salesperson to keep the employing broker informed.

4.54(15) Issuing an insufficient funds check to the commission for any reason or to anyone else in the individual's capacity as a real estate licensee.

4.54(16) Issuing an insufficient funds check on the broker's trust account.

4.54(17) Engaging in conduct which constitutes a tying arrangement as prohibited by these rules.

4.54(18) Failing to inform clients of real estate brokerage firm the date the firm will cease to be in business and the effect upon sellers' listing agreements.

4.54(19) Violating any of the remaining provisions in 193E—Chapters 1 to 6 inclusive, which have not heretofore been specified in this rule.

193E—4.55(543B) Publication of decisions. Final decisions of the commission relating to disciplinary procedures may be transmitted to the appropriate professional association(s), other states, and news media.

193E—4.56(543B) Recovery of hearing fees and expenses. The commission may assess the licensee with certain fees and expenses relating to a disciplinary hearing, only if the commission finds the licensee did violate Iowa Code chapter 543B or administrative rules of the commission.

4.56(1) The commission may assess an amount up to the following costs under this rule:

a. For conducting a disciplinary hearing, an amount not to exceed $75.

b. All applicable costs involved in the transcript including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs.

c. All normally accepted witness expenses and fee for a hearing or the taking of depositions. This shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony.

d. All normally applicable costs involved in depositions including, but not limited to, the services of the court reporter recording the deposition, transcription, duplication, and postage or delivery costs.

e. The commission, at its discretion, may assess an appropriate amount up to but not exceeding specific fees established by this subrule and the actual normally acceptable cost, fee or expenses involved.

4.56(2) Fees, costs, and expenses assessed pursuant to this rule shall be calculated by the executive secretary or other designated person and may be entered into the commission disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

a. When it is impractical or not possible to include the assessment and time period in the disciplinary order in a timely manner, or the expenditures occur after the disciplinary order, the commission, by majority vote of members present, may assess the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and time period are not included in the disciplinary order, the commission shall have to the end of the sixth month after the date the state of Iowa paid the expenditure(s) to assess the licensee for such expenditure by commission action.

4.56(3) Fees, costs, and expenses assessed by the commission pursuant to this rule shall be allocated to the expenditure category of the licensing commission in which the disciplinary procedure or hearing was incurred. The fees, costs and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

4.56(4) The failure to comply with payment of a commission-assessed cost, fee, or expense, within the time specified, shall be considered prima facie evidence of a violation of Iowa Code sections 543B.29(3) and 543B.34(2).

However, no action may be taken against the licensee without a hearing as provided in Iowa Code section 543B.35.

193E—4.57(543B,272C) Reinstatement. Any person whose license has been revoked or suspended by the board may apply to the commission for reinstatement in accordance with the terms of the order of revocation or suspension.

4.57(1) If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of voluntary surrender.

4.57(2) All proceedings for reinstatement shall be initiated by the respondent who shall file with the commission an application for 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 the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the commission.

4.57(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the commission to determine that the basis of 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.

4.57(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 commission. This order will be published as provided for in rule 4.55(543B,272C).

193E—4.58(272C) Impaired licensee review committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the real estate commission establishes the impaired licensee review committee.

4.58(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 543B.

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

4.58(2) *Purpose.* The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the commission on the recovery or rehabilitation of practitioners who self-report impairments.

4.58(3) *Composition of the committee.* The chairperson of the commission shall appoint the members of the committee. The membership of the committee includes, but is not limited to:

a. One licensee, who holds a license to practice pursuant to Iowa Code chapter 543B;

b. One public member of the real estate commission;

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

4.58(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 commission;

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 commission 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 commission 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 real estate;

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

4.58(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.

4.58(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.

4.58(7) *Noncompliance.* Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the commission for purpose of disciplinary action.

4.58(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 commission for appropriate action.

4.58(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 commission of any duties and shall not divest the commission 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 commission for appropriate action.

4.58(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 commission or the committee about practitioners 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.

193E—4.59(252J) Certificates of noncompliance. The commission shall suspend or revoke a license 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.

4.59(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 Iowa Rule of Civil Procedure 56.1. Alternatively, the licensee may accept service personally or through authorized counsel.

4.59(2) The effective date of revocation or suspension of license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee.

4.59(3) The commission's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 252J.8, and is directed to notify the licensee that the license will be suspended, unless the registration is already suspended on other grounds. In the event a license is on suspension, the executive secretary shall notify the licensee of the commission's intention to revoke the license.

4.59(4) Licensees shall keep the commission informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the commission copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

4.59(5) All commission fees for license renewal or reinstatement must be paid by licensee before a license will be renewed or reinstated after the commission has suspended or revoked the license pursuant to Iowa Code chapter 252J.

4.59(6) In the event a licensee files a timely district court action following service of a commission notice pursuant to Iowa Code sections 252J.8 and 252J.9, the commission 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 commission to proceed. For purposes of determining the effective date of revocation or suspension, the commission 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.

4.59(7) The commission shall notify the licensee in writing through regular first-class mail, or such other means as the commission deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee when the license is reinstated following the commission's receipt of a withdrawal of the certificate of noncompliance.

193E—4.60(261) Suspension or revocation of a certificate of registration—student loan. The commission shall suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

4.60(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 registrant may accept service personally or through authorized counsel.

4.60(2) The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee.

4.60(3) The commission'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 license 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 commission's intention to revoke the license.

4.60(4) Licensees shall keep the commission 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 commission 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.

4.60(5) All commission fees required for license renewal or license reinstatement must be paid by licensee and all continuing education requirements must be met before a license will be renewed or reinstated after the commission has suspended or revoked a license pursuant to Iowa Code chapter 261.

4.60(6) In the event a licensee timely files a district court action following service of a commission notice pursuant to Iowa Code sections 261.126 and 261.127, the commission 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 commission to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the commission 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.

4.60(7) The commission shall notify the licensee in writing through regular first-class mail, or such other means as the commission deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee when the license is reinstated following the commission's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 17A, 252J, 272C, and 543B and Iowa Code sections 261.126 and 261.127.

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*Effective date (8/14/91) of amendments to 4.40(4)"e," "f"; and 4.40(17-19) delayed 70 days by the Administrative Rules Review Committee. Delay lifted 8/21/91, effective 8/22/91.

CHAPTER 7
DECLARATORY ORDERS

193E—7.1(17A) Petition for declaratory order. Any person may file a petition with the commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission at the commission's offices. A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

REAL ESTATE COMMISSION

Petition by (Name of Petitioner) for 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 7.7(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.

193E—7.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to rule 7.6(17A) to whom notice is required by any provision of law. The commission may also give notice to any other persons.

193E—7.3(17A) Intervention.

7.3(1) 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.

7.3(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 commission.

7.3(3) A petition for intervention shall be filed at the commission's offices. Such a petition is deemed filed when it is received by that office. The commission 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:

REAL ESTATE COMMISSION

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.

193E—7.4(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The commission may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

193E—7.5(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive secretary of the commission at the commission's offices.

193E—7.6(17A) Service and filing of petitions and other papers.

7.6(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 its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

7.6(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 commission at the commission's offices. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

7.6(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 rule 193E—4.28(17A).

193E—7.7(17A) Commission consideration. Upon request by petitioner, the commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

193E—7.8(17A) Action on petition.

7.8(1) Within the time allowed after receipt of a petition for a declaratory order, the commission shall take action on the petition within 30 days after receipt as required by 1998 Iowa Acts, chapter 1202, section 13(5).

7.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 193E—4.2(543B,17A).

193E—7.9(17A) Refusal to issue order. The commission 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 commission to issue an order.
3. The commission does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in current rule making, contested case, or other commission or judicial proceeding that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a commission 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 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 commission to determine whether a statute is unconstitutional on its face.

7.9(1) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final commission action on the petition.

7.9(2) 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 an order.

193E—7.10(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, 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.

193E—7.11(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.

193E—7.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the commission, 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 commission. The issuance of a declaratory order constitutes final commission action on the petition.

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

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CHAPTER 59
ENTERPRISE ZONES

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

261—59.2(15E) Definitions.

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

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

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

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

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

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

"Department" means the Iowa department of economic development.

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

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

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

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

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

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

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

59.3(1) *County—eligibility.*

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

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

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

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

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

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

59.3(2) *City—eligibility.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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COLLEGE STUDENT AID COMMISSION[283]

[Prior to 8/10/88, see College Aid Commission[245]]

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CHAPTER 2
AGENCY PROCEDURE FOR RULE MAKING

[Prior to 8/10/88, see College Aid Commission, 245—13.1 and 13.2]

283—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.

283—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.

283—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.

283—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 one year.

283—2.5(17A) Public participation.

2.5(1) *Written comments.* For at least 20 days after publication of 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 Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609, 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 administrative secretary at College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609, or (515)281-3501 in advance to arrange access or other needed services.

283—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 College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. 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).

283—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.

283—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.

283—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.

283—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.

283—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 College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. 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.

283—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.

283—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 executive 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 amendments 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 separate file 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 files.* The agency shall maintain the rule-making file 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."*

283—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.

283—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).

283—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.

283—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.

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

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CHAPTER 3
DECLARATORY ORDERS

[Prior to 8/10/88, see College Aid Commission, 245—13.4 and 13.5]

283—3.1(17A) Petition for declaratory order. Any person may file a petition with the college student aid commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission, at 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. A petition is deemed filed when it is received by that office. The commission 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:

COLLEGE STUDENT AID COMMISSION

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.

283—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the college student aid commission 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 commission may also give notice to any other persons.

283—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 commission.

3.3(3) A petition for intervention shall be filed at 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. Such a petition is deemed filed when it is received by that office. The commission 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:

COLLEGE STUDENT AID COMMISSION

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.

283—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The commission may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

283—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609.

283—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 College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

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 uniform rule on contested cases 3.12(17A).

283—3.7(17A) Consideration. Upon request by petitioner, the college student aid commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

283—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 executive director 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 contested case uniform rule 283—4.2(17A).

283—3.9(17A) Refusal to issue order.

3.9(1) The commission 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 commission to issue an order.
3. The commission 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 commission 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 an order.

283—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.

283—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.

283—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 commission, 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 commission. The issuance of a declaratory order constitutes final agency action on the petition.

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

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CHAPTER 4
CONTESTED CASES

283—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the college student aid commission.

283—4.2(17A) Definitions. Except where otherwise specifically defined by law:

"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.

"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 executive director.

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

283—4.3(17A) Time requirements.

4.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

4.3(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.

283—4.4(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 agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer 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.

283—4.5(17A) Notice of hearing.

4.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the agency 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;

e. 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;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 4.6(17A), that the presiding officer be an administrative law judge.

283—4.6(17A) Presiding officer.

4.6(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 or such other time period the agency designates after service of a notice of hearing which identifies or describes the presiding officer as the agency head or members of the agency.

4.6(2) The agency or its designee may deny the request only upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency 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. A qualified administrative law judge is unavailable to hear the case within a reasonable time.

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 interagency appeal.

g. The request was not timely filed.

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

4.6(3) The agency or its designee shall issue a written ruling specifying the grounds for its decision within 20 days or such other time period the agency designates after a request for an administrative law judge is filed. The parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

4.6(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 agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.6(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.

283—4.7(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.

283—4.8(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.

283—4.9(17A) Disqualification.

4.9(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.

4.9(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 4.9(3) and 4.23(9).

4.9(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.

4.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.9(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 4.25(17A) and seek a stay under rule 4.29(17A).

283—4.10(17A) Consolidation—severance.

4.10(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.

4.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

283—4.11(17A) Pleadings.

4.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

4.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.11(4) Amendment. Any notice of hearing, petition, or other charging document 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.

283—4.12(17A) Service and filing of pleadings and other papers.

4.12(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 agency, 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.

4.12(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.

4.12(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 college student aid commission.

4.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the college student aid commission, 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.

4.12(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 (agency office and address) 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)

283—4.13(17A) Discovery.

4.13(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.

4.13(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 4.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

283—4.14(17A) Subpoenas.

4.14(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.14(2) *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.

283—4.15(17A) Motions.

4.15(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.

4.15(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.

4.15(3) The presiding officer may schedule oral argument on any motion.

4.15(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.

4.15(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 4.28(17A) and appeal pursuant to 4.27(17A).

283—4.16(17A) Prehearing conference.

4.16(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 executive director to all parties. For good cause the presiding officer may permit variances from this rule.

4.16(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.

4.16(3) In addition to the requirements of subrule 4.16(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.

4.16(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.

283—4.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.17(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.

4.17(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.

283—4.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

283—4.19(17A) Intervention.

4.19(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.

4.19(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.

4.19(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.

4.19(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.

283—4.20(17A) Hearing procedures.

4.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.20(2) All objections shall be timely made and stated on the record.

4.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.20(6) Witnesses may be sequestered during the hearing.

4.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

283—4.21(17A) Evidence.

4.21(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.

4.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.21(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.

4.21(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. Copies of documents should normally be provided to opposing parties.

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

4.21(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.

4.21(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.

283—4.22(17A) Default.

4.22(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.

4.22(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.

4.22(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 or other period of time specified by statute or rule 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 4.27(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.

4.22(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.

4.22(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 or other time specified by the agency 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.

4.22(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.

4.22(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 4.25(17A).

4.22(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.

4.22(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.

4.22(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 subrule 4.29(17A).

283—4.23(17A) Ex parte communication.

4.23(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 4.9(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.

4.23(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.

4.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.23(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 4.12(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.

4.23(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.

4.23(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 4.23(1).

4.23(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 4.17(17A).

4.23(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.

4.23(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.

4.23(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 executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

283—4.24(17A) Recording costs. Upon request, the college student aid commission 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.

283—4.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the executive director. In determining whether to do so, the commission 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 agency 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 time for compliance with the order or the date of hearing, whichever is first.

283—4.26(17A) Final decision.

4.26(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

4.26(2) When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the commission within the time provided in rule 4.27(17A).

283—4.27(17A) Appeals and review.

4.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

4.27(2) *Review.* The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

4.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the college student aid commission. 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 appealed from;

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.

4.27(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 nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.27(5) *Scheduling.* The college student aid commission shall issue a schedule for consideration of the appeal.

4.27(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 commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

283—4.28(17A) Applications for rehearing.

4.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.28(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 agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.27(4), the applicant requests an opportunity to submit additional evidence.

4.28(3) *Time of filing.* The application shall be filed with the college student aid commission within 20 days after issuance of the final decision.

4.28(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 commission shall serve copies on all parties.

4.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

283—4.29(17A) Stays of agency actions.

4.29(1) *When available.*

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

b. Any party to a contested case proceeding may petition the college student aid commission 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.

4.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

4.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the college student aid commission or any other party.

283—4.30(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.

283—4.31(17A) Emergency adjudicative proceedings.

4.31(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 agency 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 agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a 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; and

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

4.31(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 agency'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 agency;

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

(4) First-class mail to the last address on file with the agency; 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 agency 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.

4.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.31(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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CHAPTER 5
DUE PROCESS
[Prior to 8/10/88, see College Aid Commission, 245—Ch 11]

283—5.1(261) Appeals. Procedures for appeal to commission decisions covering student eligibility for state scholarship and grant awards, adjustment in award amounts, refunds of awards, and institutional eligibility for participation in state scholarship and grant programs.

5.1(1) Administrative staff of the commission shall make all decisions in accordance with established policies and published administrative rules approved by the commission and shall notify the individual or institution concerned of these decisions within a reasonable time after inquiry.

5.1(2) If an individual, institution or any duly appointed representative thereof disagrees with a staff decision, written evidence shall be presented to the executive director of the commission, setting forth the reasons for disagreement. The evidence must be presented within 60 days after notification of the staff decision, and the appellant may request a hearing.

a. If no hearing is requested, the executive director will consider all evidence provided and will notify the appellant within 30 days whether the decision is retracted, modified or upheld. The appellant will be advised of the appellant's right to carry the appeal to a meeting of the full commission or to an appeals panel appointed by the commission.

b. If a hearing is requested, the executive director will set a date for the hearing no later than 30 days from the date that the request was received.

c. The executive director or a delegated representative of the executive director will preside at the hearing and will consider any written material presented before the hearing as well as other evidence presented during the course of the hearing.

d. After considering all evidence presented, the presiding officer will notify the appellant in writing as to the decision on the appeal, advising the appellant of the appellant's right to carry the appeal to a full meeting of the commission or to its appointed appeals panel.

5.1(3) If the appellant seeks a hearing before the full commission or its appointed appeals panel, the appellant must notify the executive director of this request in writing within 30 days after receiving notice of the presiding officer's ruling.

a. Upon receipt of the request, the executive director will set a date for the hearing before the commission or its appointed appeals panel at the earliest convenience of both the appellant and the commission, but not to exceed 60 days from the date of the request.

b. After consideration of all evidence presented, the full commission or its appointed appeals panel will notify the appellant in writing of the final decision.

These rules are intended to implement Iowa Code sections 261.1, 261.2(4), 261.15 and 261.17.

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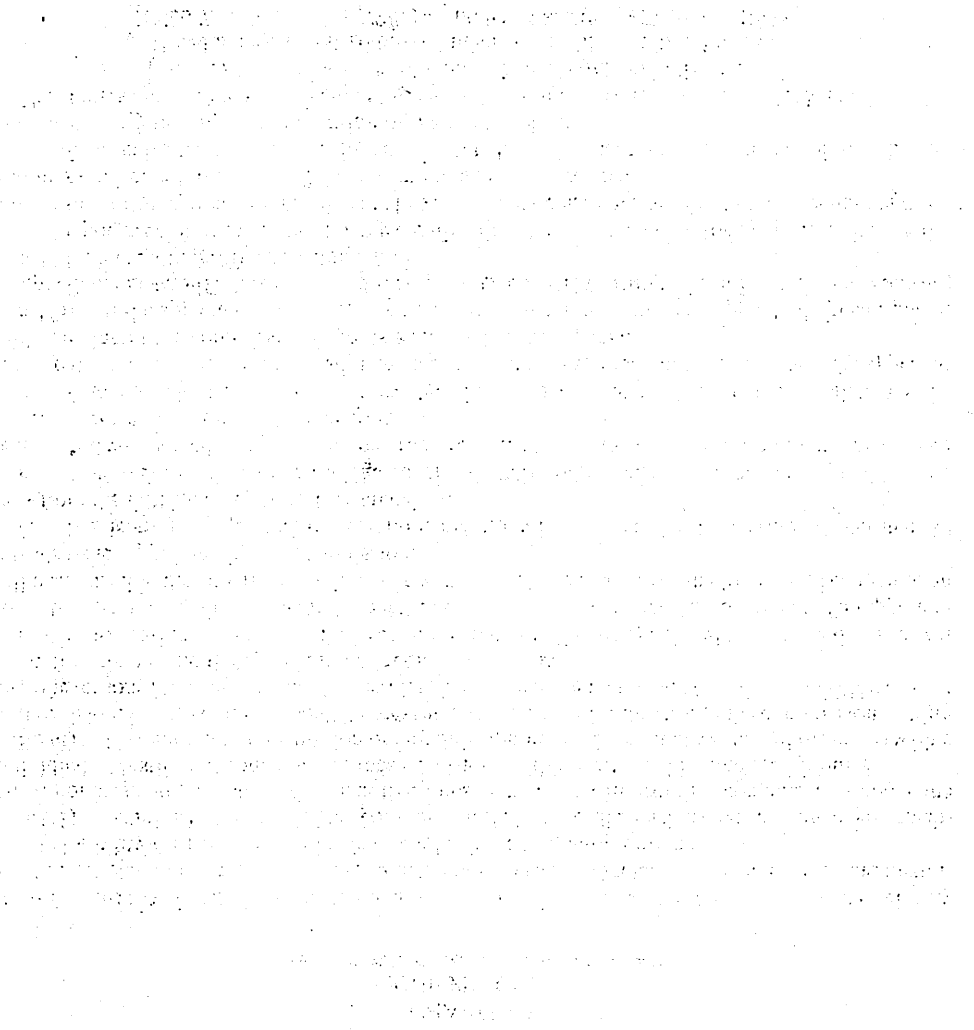

CHAPTER 14
OSTEOPATHIC PHYSICIAN RECRUITMENT PROGRAM

[Prior to 8/10/88, see College Aid Commission, 245—Ch 7]

PREAMBLE

The osteopathic physician recruitment program administered by the college student aid commission is a state-supported program that consists of forgivable loans and tuition scholarships for students and loan repayment benefits for graduates of the University of Osteopathic Medicine and Health Sciences, Des Moines, Iowa.

283—14.1(261) Definitions.

"Eligible rural community" means a medically underserved rural community.

"Iowa resident student" means an individual who meets the criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262).

"Primary care" means family medicine, general internal medicine and pediatrics.

283—14.2(261) Forgivable loan.

14.2(1) *Student eligibility.* A recipient of a forgivable loan must be an Iowa resident who is enrolled in a program at the University of Osteopathic Medicine and Health Sciences leading to a degree in osteopathic medicine and agrees to practice medicine in Iowa.

14.2(2) *Award limits.* The annual amount of the forgivable loan to an eligible osteopathic student is determined by the annual appropriation, loan collections and the number of eligible students.

14.2(3) *Extent of grant.* Students who are repeating an entire year's academic program and who are not charged tuition and fees for that program will not be eligible for benefits during that year.

14.2(4) *Physician service requirement.* The physician service requirement for the forgivable loan program is one year for borrowers who receive up to two annual loans and two years for borrowers who receive three or more annual loans.

14.2(5) *Promissory note.* Recipients of a forgivable loan shall sign a promissory note agreeing to the physician service requirements or to repay the loan and accrued interest according to repayment terms specified in the note.

14.2(6) *Interest rate.* The rate of interest on loans under this program shall be at the rate of 10.5 percent per annum on the unpaid principal balance.

14.2(7) *Disbursement of loan proceeds.*

a. The full loan amount will be disbursed when the university certifies that the borrower is an Iowa resident and enrolled in good standing.

b. The loan check will be made copayable to the borrower and the University of Osteopathic Medicine and Health Sciences and will be sent to the university within ten days following the receipt of the proper certifications.

c. The university will deliver the check to the student and require that the loan check be applied directly to the student's account.

d. If the student withdraws from the university and is entitled to a refund of tuition and fees, the pro-rata share of the refund attributable to the forgivable loan must be refunded to the commission.

14.2(8) *Repayment terms.* Repayment of the forgivable loan begins 30 days following:

a. Termination of enrollment at the University of Osteopathic Medicine and Health Sciences.

b. Graduation of the borrower when the borrower does not intend to commence a medical residency or internship within a reasonable period of time and subsequently practice medicine in the state of Iowa.

c. Completion of a medical residency or internship where the borrower does not commence practice of medicine in the state of Iowa within a reasonable period of time.

d. Termination, for any reason, of the borrower's medical practice in the state of Iowa, if the borrower has practiced in the state for less than the required length of service.

14.2(9) *Loan payments.*

a. Prior to the start of the repayment period, the commission shall provide the borrower with a repayment schedule, modified to reflect any applicable cancellation benefits.

b. It shall be the borrower's responsibility to remit payments to the commission by the fifteenth day of each month.

c. In the event the borrower fails to abide by any material provision of the promissory note or fails to make any payment due under the promissory note within ten days after the date the payment is due, the commission may declare the borrower in default and declare the entire unpaid balance and accrued interest on the promissory note due.

d. The borrower is responsible for notifying the commission immediately of a change of name, place of employment, or home address.

14.2(10) *Deferral of repayment.*

a. Repayment of the borrower's loan obligation may be deferred under the following circumstances: return to full-time study; active duty in the United States military service, not to exceed three years; a period of temporary disability, not to exceed three years.

b. Repayment of the borrower's loan obligation under this loan program is not required during periods of enrollment as a student at the University of Osteopathic Medicine and Health Sciences, during periods of internship or residency, or while fulfilling the physician service requirement.

c. Forbearance is a revision of repayment terms to temporarily postpone payments. It may be granted when a borrower experiences a temporary hardship and is willing but unable to pay in accordance with the repayment schedule. Borrowers remain responsible for interest accrual during forbearance periods.

The program administrator may grant forbearance for periods of less than six months; periods of greater than six months but less than one year must be approved by the executive director and periods of greater than one year must be approved by the commission.

14.2(11) *Loan cancellation.*

a. An eligible borrower may qualify for forgiveness of the outstanding balance of principal and accrued interest.

b. Partial loan cancellation shall be granted based on the percentage of the service requirement completed by the borrower. The commission shall revise the repayment schedule accordingly.

c. To certify eligibility for cancellation, the borrower must submit to the commission an affidavit verifying practice in Iowa.

d. A borrower shall notify the commission within 30 days of a name or address change, a change of enrollment status, transfer to another school, a change of employment, enlistment in the military services of the United States, and of events leading to temporary disability.

e. In the event of death or total and permanent disability, a borrower's obligation to repay this loan is canceled. Borrowers seeking forgiveness as the result of total or permanent disability must submit information substantiating the claim to the commission.

14.2(12) *Restrictions.* A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the osteopathic forgivable loan program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapter 5, Iowa Administrative Code.

283—14.3(261) Tuition scholarship.

14.3(1) *Student eligibility.* A third year student at the University of Osteopathic Medicine and Health Sciences who agrees to practice in an eligible rural Iowa community shall be eligible for a tuition scholarship. The tuition scholarship is renewable for one year. A student who receives a tuition scholarship shall not be eligible for the physician loan repayment program.

14.3(2) *Selection criteria.* Individuals shall be selected by the University of Osteopathic Medicine and Health Sciences.

14.3(3) *Renewal.* To be eligible for renewal of the tuition scholarship, a student must advance to the fourth year of study and be in good academic standing.

14.3(4) *Award amount.* The tuition scholarship shall be for an amount not to exceed the annual tuition at the university.

14.3(5) *Physician service requirement.* The physician service requirement for the tuition scholarship is one year for each year that a recipient receives the scholarship.

14.3(6) *Disbursement of scholarship.*

a. The full amount of the scholarship will be disbursed to the university upon receipt of certification from the university that the scholarship recipient is enrolled and in good standing.

b. The university will apply the scholarship funds to the student's tuition account.

c. If the student withdraws from the university and is entitled to a refund of tuition and fees, the pro-rata share of the refund attributable to the tuition scholarship shall be refunded to the commission.

14.3(7) *Repayment.*

a. A student shall repay the tuition scholarship plus interest at 12 percent per annum to the commission if the student fails to:

(1) Complete a residency in primary care within four years after graduation from the University of Osteopathic Medicine and Health Sciences.

(2) Practice in an Iowa community identified by the university as a participating physician shortage community.

(3) Annually certify employment in a designated Iowa physician shortage community.

b. The scholarship shall be paid in full within three years from the date of failure to comply with the terms of the scholarship.

14.3(8) *Restrictions.* A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for a tuition scholarship. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapter 5, Iowa Administrative Code.

283—14.4(261) Physician loan repayment program.

14.4(1) *Recruitment.* The University of Osteopathic Medicine and Health Sciences shall recruit and place physicians in rural communities that have agreed to provide additional funds for the physician's loan repayment.

14.4(2) *Physician service requirement.* The physician service requirement for the physician loan repayment program is four years.

14.4(3) *Award.* The physician may receive up to $30,000 in state-funded repayment benefits when a community agrees to fund matching benefits of at least $30,000.

14.4(4) *Disbursement.*

a. The commission shall disburse state funds to the University of Osteopathic Medicine and Health Sciences upon receipt of the physician's contract to practice in a rural physician shortage community.

b. The University of Osteopathic Medicine and Health Sciences shall arrange for the repayment of the physician's loan(s).

14.4(5) *Repayment.*

a. If a physician fails to practice primary care in the agreed-upon location for four years, the physician shall repay the commission on a prorated basis. The prorated balance will be calculated as a daily amount by dividing the amount advanced by the number of days in the service period less the number of days served by the physician multiplied by the daily amount.

b. A physician shall repay the prorated balance of the physician loan repayment benefits and accrued interest of 12 percent per annum.

c. The prorated balance of the physician loan repayment benefits must be paid in full within three years from the date the primary care service ended.

14.4(6) *Restrictions.* A physician who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for repayment benefits. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapter 5, Iowa Administrative Code.

14.4(7) *Administrative allowance.* The commission shall pay the University of Osteopathic Medicine and Health Sciences an administrative fee from the funds appropriated for the tuition scholarship and physician placement programs.

These rules are intended to implement Iowa Code section 261.19.

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CHAPTER 30
OSTEOPATHIC FORGIVABLE PROGRAM
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 31
IOWA WORK FOR COLLEGE PROGRAM
Rescinded IAB 6/18/97, effective 7/23/97

CHAPTER 32
CHIROPRACTIC GRADUATE STUDENT FORGIVABLE LOAN PROGRAM

283—32.1(261) Chiropractic graduate student forgivable loan program. The chiropractic graduate student forgivable loan program is a state-supported and administered forgivable loan program for Iowans enrolled at Palmer College of Chiropractic.

32.1(1) *Definitions.* As used in this chapter:

"Chiropractic practice" means working full-time as a licensed chiropractor in the state of Iowa as certified by the state board of examiners.

"Iowa resident student" means an individual who meets the criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262).

32.1(2) *Recipient eligibility.*

a. Individuals who are enrolled at the Palmer College of Chiropractic on or after July 1, 1997, who meet the Iowa residency criteria as defined in 681 IAC 1.4(262) and plan to practice chiropractic in Iowa are eligible to apply for program benefits.

b. The maximum award from state funds to an eligible student is $700 per trimester.

32.1(3) *Criteria for selection of recipients.* Priority will be given to chiropractic students who show considerable financial need and who are willing to practice in a designated shortage area within the state of Iowa.

32.1(4) *Promissory note.* The chiropractic recipient of a loan under this program shall sign a promissory note agreeing to practice chiropractic in Iowa for one full year for each loan received or to repay the loan and accrued interest according to repayment terms specified in the note.

32.1(5) *Interest rate.* The rate of interest on loans under this program shall be at the rate of 10.5 percent per annum on the unpaid principal balance.

32.1(6) *Disbursement of loan proceeds.*

a. The full loan amount will be disbursed when the college certifies that the borrower is an Iowa resident and enrolled in good standing.

b. The loan check will be made copayable to the borrower and Palmer College of Chiropractic and will be sent to the college within ten days following the receipt of the proper certification.

c. The college will deliver the check to the student and require that the loan check be endorsed to the college to be applied directly to the borrower's tuition account.

d. If the student withdraws from attendance and is entitled to a refund of tuition and fees, the prorata share of the refund attributable to the state loan must be refunded to the commission.

32.1(7) *Loan cancellations.*

a. Thirty days following the termination of enrollment at Palmer College of Chiropractic or termination of a chiropractic practice in the state of Iowa, the borrower shall notify the commission of the nature of the borrower's employment or educational status.

b. To certify eligibility for cancellation, the borrower must submit to the commission an affidavit from the state licensing board verifying that the borrower practiced as a licensed chiropractor in the state of Iowa for 12 consecutive months for each annual loan to be canceled.

c. If the borrower qualifies for partial loan cancellation, the commission shall notify the borrower promptly and revise the repayment schedule accordingly.

d. In the event of death or total and permanent disability, a borrower's obligation to pay this loan is canceled. Borrowers seeking forgiveness as a result of total or permanent disability must submit sufficient information substantiating the claim to the commission. Reports of a borrower's death will be referred to the licensing board for confirmation.

32.1(8) *Loan payments.*

a. Prior to the start of the repayment period, the commission shall provide the borrower with a repayment schedule, modified to reflect any applicable cancellation benefits.

b. It shall be the borrower's responsibility to remit payments to the commission by the fifteenth day of each month.

c. In the event the borrower fails to abide by any material provision of the promissory note or fails to make any payment due under the promissory note within ten days after the date the payment is due, the commission may declare the borrower in default and declare the entire unpaid balance and accrued interest on the promissory note due.

d. The borrower is responsible for notifying the commission immediately of a change of name, place of employment, or home address.

32.1(9) *Deferral of repayment.*

a. Repayment of the borrower's loan obligation may be deferred under the following circumstances: active duty in the United States military service, not to exceed three years; during a period of temporary disability, not to exceed three years.

b. Repayment of the borrower's loan obligation under this loan program is not required during periods of enrollment as a student at Palmer College of Chiropractic.

c. Forbearance is a revision in repayment terms to temporarily postpone payments. It may be granted when a borrower experiences a temporary hardship and is willing but unable to pay in accordance with the repayment schedule. Borrowers remain responsible for interest accrual during forbearance periods.

The program administrator may grant forbearance for periods of less than six months; periods of greater than six months but less than one year must be approved by the executive director. Forbearance periods exceeding one year must be approved by the commission.

32.1(10) *Restrictions.* A borrower who is in default on a Stafford Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan payments. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapter 5, Iowa Administrative Code.

This rule is intended to implement Iowa Code section 261.71.

[Filed 9/18/97, Notice 6/18/97—published 10/8/97, effective 11/12/97]

CHAPTER 35
INDUSTRIAL TECHNOLOGY FORGIVABLE LOAN PROGRAM

283—35.1(261) Industrial technology forgivable loan program. The industrial technology forgivable loan program is a state-supported and administered forgivable loan program for Iowans enrolled as undergraduate students in an approved industrial technology education program.

35.1(1) *Definitions.* As used in this chapter:

"Eligible institution" means an institution of higher learning under the control of the state board of regents, a North Central Association of Colleges (NCA) accredited independent institution as defined in Iowa Code section 261.9, or a state-supported community college.

"Iowa resident student" means an individual who meets the criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262).

35.1(2) *Student eligibility.*

a. An applicant must be an Iowa resident who is enrolled as a sophomore, junior or senior in the area of industrial technology education or is enrolled in the area of industrial technology at a community college and the credits for the coursework in industrial technology are transferable to an eligible Iowa regent or independent institution's accredited education program.

b. The need of an applicant for assistance under this program shall be evaluated annually on the basis of a confidential statement of family finances filed on forms designated by the commission. The processing agent must receive the form by the date specified in the application instructions. The student is responsible for making certain that both the commission and the institution in which the student is enrolling receive the results of this evaluation.

c. An applicant must complete and file an application for the industrial technology forgivable loan program. Applicants must submit the application by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications.

d. The maximum annual award to an eligible student is $3,000, or the amount of the student's established financial need, whichever is less.

e. Financial need is defined as the difference between the student's college expenses and the amount of the financial aid available to defray the expenses.

35.1(3) *Selection criteria.* All applications received on or before the published deadline will be considered for funding. In the event that all applicants for the program cannot be funded with the available appropriations, the following selection criteria will be used to select the recipients: renewal status, date of application, date available to begin teaching, and applicant's financial resources.

35.1(4) *Promissory note.* Loan recipients shall sign promissory notes agreeing to teach industrial technology in Iowa for five years or to repay the loan and accrued interest according to repayment terms specified in the note.

35.1(5) *Interest rate.* The rate of interest shall be equal to the rate of a federal Stafford Student Loan for the year in which the recipient made application.

35.1(6) *Disbursement of loan proceeds.*

a. Loan proceeds will be prorated by academic term and disbursed upon receipt of the institution's certification that the borrower is enrolled in good standing.

b. Loan checks will be made copayable to the borrower and institution and distributed to the institution's financial aid officials.

35.1(7) *Loan cancellations.*

a. Thirty days following graduation, termination of enrollment at the student's institution or termination of full-time teaching of industrial technology education in Iowa, the borrower shall notify the commission of the nature of the borrower's employment and educational status.

b. To certify eligibility for cancellation, the borrower must submit to the commission an affidavit from the borrower's school district verifying that the borrower taught full-time in the area of industrial technology, in an Iowa school district or an accredited nonpublic school. The borrower's loan amount, including principal and interest, shall be reduced by 20 percent for each year of full-time teaching in the area of industrial technology.

c. If the borrower qualifies for partial loan cancellation, the commission shall revise the repayment schedule accordingly.

d. In the event of death or total and permanent disability, a borrower's obligation to pay this loan is canceled. Borrowers seeking forgiveness as the result of total or permanent disability must submit information substantiating the claim to the commission. Reports of a borrower's death will be referred to the school district for confirmation.

35.1(8) *Loan payments.*

a. Prior to the start of the repayment period, the commission shall provide the borrower with a repayment schedule, modified to reflect any applicable cancellation benefits.

b. It shall be the borrower's responsibility to remit payments to the commission by the fifteenth day of each month.

c. In the event the borrower fails to abide by any material provision of the promissory note or becomes more than 90 days delinquent in submitting required payments, the commission may declare the borrower in default and declare the entire unpaid balance and accrued interest on the promissory note due.

d. The borrower is responsible for notifying the commission immediately of a change of name, place of employment, or home address.

35.1(9) *Deferral of repayment.*

a. Repayment of the borrower's loan obligation may be deferred under the following circumstances: return to full-time study; active duty in the United States military service, not to exceed three years; a period of temporary disability, not to exceed three years.

b. Repayment of the borrower's loan obligation under this program is not required during periods of enrollment as an undergraduate student in the area of industrial technology, or during periods of teaching in the area of industrial technology.

c. Forbearance is a revision in repayment terms to temporarily postpone payments. It may be granted when a borrower experiences a temporary hardship and is willing but unable to pay in accordance with the repayment schedule. Borrowers remain responsible for interest accrual during forbearance periods.

The program administrator may grant forbearance for periods of less than six months; periods of greater than six months but less than one year must be approved by the executive director. Forbearance periods exceeding one year must be approved by the commission.

35.1(10) *Restrictions.* A borrower who is in default on a Stafford Student Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan payments. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapter 5, Iowa Administrative Code.

This rule is intended to implement 1998 Iowa Acts, chapter 1215.

[Filed 11/25/98, Notice 8/26/98—published 12/16/98, effective 1/20/99]
[Filed 5/28/99, Notice 3/10/99—published 6/16/99, effective 7/21/99]

CHAPTER 14
AGENCY PROCEDURE FOR RULE MAKING

351—14.1(17A) Adoption by reference. The ethics and campaign disclosure board hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "executive director".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Executive Director, Ethics and Campaign Disclosure Board, 514 East Locust Street, Des Moines, Iowa 50309".
4. In lieu of the words "(designate office and telephone number)", insert "the executive director at (515)281-6841".
5. In lieu of the words "(designate office)", insert "Ethics and Campaign Disclosure Board".
6. In lieu of the words "(specify the office and address)", insert "Ethics and Campaign Disclosure Board, 514 East Locust Street, Des Moines, Iowa 50309".
7. In lieu of the words "(agency head)", insert "executive director".

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

[Filed 5/28/99, Notice 3/24/99—published 6/16/99, effective 7/21/99]

CHAPTER 86
HEALTHY AND WELL KIDS IN IOWA (HAWK-I) PROGRAM

PREAMBLE

These rules define and structure the department of human services healthy and well kids in Iowa (HAWK-I) program. The purpose of this program is to provide transitional health care coverage to children ineligible for Title XIX (Medicaid) assistance or other health insurance. The program is implemented and administered in compliance with Title XXI of the federal Social Security Act. The rules establish requirements for the third-party administrator responsible for the program administration and for the participating health plans which will be delivering services to the enrollees.

441—86.1(514I) Definitions.

"Administrative contractor" shall mean the person or entity with whom the department contracts to administer the healthy and well kids in Iowa (HAWK-I) program.

"Benchmark benefit package" shall mean any of the following:

1. The standard Blue Cross Blue Shield preferred provider option service benefit plan, described in and offered under 5 U.S.C. Section 8903(1).
2. A health benefits coverage plan that is offered and generally available to state employees in this state.
3. The plan of a health maintenance organization, as defined in 42 U.S.C. Section 300e, with the largest insured commercial, nonmedical assistance enrollment of covered lives in the state.

"Capitation rate" shall mean the fee the department pays monthly to a participating health plan for each enrollee for the provision of covered medical services whether or not the enrollee received services during the month for which the fee is intended.

"Contract" shall mean the contract between the department and the person or entity selected as the third-party administrator or the contract between the department and the participating health plan for the provision of medical services to HAWK-I enrollees for whom the participating health plans assume risk.

"Cost sharing" shall mean the payment of a premium or copayment as provided for by Title XXI of the federal Social Security Act and Iowa Code section 514I.10.

"Covered services" shall mean all or a part of those medical and health services set forth in rule 441—86.14(514I).

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

"Director" shall mean the director of the Iowa department of human services.

"Eligible child" shall mean an individual who meets the criteria for participation in the HAWK-I program as set forth in rule 441—86.2(514I).

"Emergency medical condition" shall mean a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

1. Placing the health of the person or, with respect to a pregnant woman, the health of the woman and her unborn child, in serious jeopardy,
2. Serious impairment to bodily functions, or
3. Serious dysfunction of any bodily organ or part.

"Emergency services" shall mean, with respect to an individual enrolled with a plan, covered inpatient and outpatient services which are furnished by a provider qualified to furnish these services and which are needed to evaluate and stabilize an emergency medical condition.

"Enrollee" shall mean a HAWK-I recipient who has been enrolled with a participating health plan.

"Federal poverty level" shall mean the poverty income guidelines revised annually and published in the Federal Register by the United States Department of Health and Human Services.

"Good cause" shall mean the family has demonstrated that one or more of the following conditions exist:

1. There was a serious illness or death of the enrollee or a member of the enrollee's family.
2. There was a family emergency or household disaster, such as a fire, flood, or tornado.
3. There was a reason beyond the enrollee's control.
4. There was a failure to receive the third-party administrator's request for a reason not attributable to the enrollee. Lack of a forwarding address is attributable to the enrollee.

"HAWK-I board" or *"board"* shall mean the entity that adopts rules, establishes policy, and directs the department regarding the HAWK-I program.

"HAWK-I program" or *"program"* shall mean the healthy and well kids in Iowa program implemented in this chapter to provide health care coverage to eligible children.

"Health insurance coverage" shall mean health insurance coverage as defined in 42 U.S.C. Section 300gg(c).

"Institution for mental diseases" shall mean a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services as defined at 42 CFR Section 435.1009 as amended November 10, 1994.

"Nonmedical public institution" shall mean an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control as defined in 42 CFR Section 435.1009 as amended November 10, 1994.

"Participating health plan" shall mean any entity licensed by the division of insurance of the department of commerce to provide health insurance in Iowa or an organized delivery system licensed by the director of public health that has contracted with the department to provide health insurance coverage to eligible children under this chapter.

"Physician" shall be defined as provided in Iowa Code subsection 135.1(4).

"Provider" shall mean an individual, firm, corporation, association, or institution that is providing or has been approved to provide medical care or services to an enrollee pursuant to the HAWK-I program.

"Regions" shall mean the six regions of the state as follows:

- Region 1: Lyon, Osceola, Dickinson, Emmet, Sioux, O'Brien, Clay, Palo Alto, Plymouth, Cherokee, Buena Vista, Woodbury, Ida, Sac, Monona, Crawford, and Carroll.
- Region 2: Kossuth, Winnebago, Worth, Mitchell, Howard, Hancock, Cerro Gordo, Floyd, Pocahontas, Humboldt, Wright, Franklin, Calhoun, Webster, Hamilton, Hardin, Greene, Boone, Story, Marshall, and Tama.
- Region 3: Winneshiek, Allamakee, Chickasaw, Fayette, Clayton, Butler, Bremer, Grundy, Black Hawk, Buchanan, Delaware, Dubuque, Jones, Jackson, Cedar, Clinton, and Scott.

- Region 4: Harrison, Shelby, Audubon, Pottawattamie, Cass, Mills, Montgomery, Fremont, and Page.
- Region 5: Guthrie, Dallas, Polk, Jasper, Adair, Madison, Warren, Marion, Adams, Union, Clarke, Lucas, Taylor, Ringgold, Decatur, and Wayne.
- Region 6: Benton, Linn, Poweshiek, Iowa, Johnson, Muscatine, Mahaska, Keokuk, Washington, Louisa, Monroe, Wapello, Jefferson, Henry, Des Moines, Appanoose, Davis, Van Buren, and Lee.

"Third-party administrator" shall mean the person or entity with which the department contracts to provide administrative services for the HAWK-I program.

441—86.2(514I) Eligibility factors. A child must meet the following eligibility factors to participate in the HAWK-I program.

86.2(1) *Age.* The child shall be under 19 years of age. Eligibility for the program ends the first day of the month following the month of the child's nineteenth birthday.

86.2(2) *Income.* Countable income shall not exceed 185 percent of the federal poverty level for a family of the same size when determining initial and ongoing eligibility for the program.

a. Countable income. When determining initial and ongoing eligibility for the HAWK-I program, all earned and unearned income, unless specifically exempted, shall be countable.

(1) Earned income. The earned income of all parents, spouses, and children under the age of 19 who are not students shall be countable. Income shall be countable earned income when an individual produces it as a result of the performance of services. Earned income is income in the form of a salary, wages, tips, bonuses, and commissions earned as an employee, or net profit from self-employment.

1. Earned income from employment. Earned income from employment means total gross income.

2. Earned income from self-employment. Earned income from self-employment means the net profit determined by comparing gross income with the allowable costs of producing the income. The net profit from self-employment income shall be determined according to the provisions of 441—paragraph 75.57(2)*"f."* A person is considered self-employed when the person:

- Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions; or
- Establishes the person's own working hours, territory, and methods of work; or
- Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

(2) Unearned income. The unearned income of all parents, spouses, and children under the age of 19 shall be counted. Unearned income is any income in cash that is not gained by labor or service. The available unearned income shall be the amount remaining after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes). Examples of unearned income include, but are not limited to:

1. Social security benefits. Social security income is the amount of the entitlement before withholding of a Medicare premium.
2. Child support and alimony payments received for a member of the family.
3. Unemployment compensation.
4. Veterans benefits.

(3) Recurring lump sum income. Earned and unearned lump sum income that is received on a regular basis shall be counted and prorated over the time it is intended to cover. These payments may include, but are not limited to:

1. Annual bonuses.
2. Lottery winnings that are paid out annually.

b. Exempt income. The following shall not be counted toward the income limit when establishing eligibility for the HAWK-I program.

(1) Nonrecurring lump sum income. Nonrecurring lump sum income is income that is not expected to be received more than once. These payments may include, but are not limited to:

1. An inheritance.
2. A one-time bonus.
3. Lump sum lottery winnings.
4. Other one-time payments.

(2) Food reserves from home-produced garden products, orchards, domestic animals, and the like, when used by the household for its own consumption.

(3) The value of the coupon allotment in the Food Stamp Program.

(4) The value of the United States Department of Agriculture donated foods (surplus commodities).

(5) The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.

(6) Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.

(7) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981.

(8) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.

(9) Interest and dividend income.

(10) Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe.

(11) Payments to volunteers participating in the Volunteers in Service to America (VISTA) program.

(12) Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.

(13) Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.

(14) Experimental housing allowance program payments.

(15) The income of a Supplemental Security Income (SSI) recipient.

(16) Income of an ineligible child if the family chooses not to include the child in the eligibility determination in accordance with the provisions of paragraph 86.2(3)"*c.*"

(17) Unearned income in kind.

(18) Family support subsidy program payments.

(19) All earned and unearned educational funds of an undergraduate or graduate student or a person in training. However, any additional amount of educational funds received for the person's dependents that are in the eligible group shall be considered as nonexempt income.

(20) Bona fide loans.

(21) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

(22) Payment for major disaster and emergency assistance provided under the Disaster Relief Act of 1974 as amended by Public Law 100-707, the Disaster Relief and Emergency Assistance Amendments of 1988.

(23) Payments made to certain United States citizens of Japanese ancestry and resident Japanese aliens under Section 105 of Public Law 100-383, and payments made to certain eligible Aleuts under Section 206 of Public Law 100-383 entitled Wartime Relocation of Civilians.

(24) Payments received from the Radiation Exposure Compensation Act.

(25) Reimbursements from a third party or from an employer for job-related expenses.

(26) Payments received for providing foster care when the family is operating a licensed foster home.

(27) Any payments received as a result of an urban renewal or low-cost housing project from any governmental agency.

(28) Retroactive corrective payments.

(29) The training allowance issued by the division of vocational rehabilitation, department of education.

(30) Payments from the PROMISE JOBS program.

(31) The training allowance issued by the department for the blind.

(32) Payments from passengers in a car pool.

(33) Compensation in lieu of wages received by a child under the Job Training Partnership Act of 1982.

(34) Any amount for training expenses included in a payment issued under the Job Training Partnership Act of 1982.

(35) Earnings of a child aged 19 or younger who is a student.

(36) Incentive payments received from participation in the adolescent pregnancy prevention programs.

(37) Payments received from the comprehensive child development program, funded by the Administration for Children, Youth, and Families, provided the payments are considered complementary assistance by federal regulations.

(38) Incentive allowance payments received from the work force investment project, provided the payments are considered complementary assistance by federal regulation.

(39) Honorarium income and all moneys paid to an eligible family in connection with the welfare reform longitudinal study.

(40) Family investment program (FIP) benefits.

(41) Moneys received through pilot self-sufficiency grants or diversion programs.

c. Verification of income. Earnings from the past 30 days may be used to verify earned income if it is representative of the income expected in future months. Pay stubs or employers' statements are acceptable forms of verification of earned income. Unearned income shall be verified through data matches when possible, award letters, warrant copies, or other acceptable means of verification. Self-employment income shall be verified using business records or income tax returns from the previous year if they are representative of anticipated earnings.

d. Changes in income. Once initial eligibility is established, changes in income during the 12-month enrollment period shall not affect the child's eligibility to participate in the HAWK-I program. However, if income has decreased, the family may request a review of their income to establish whether they are required to continue paying a premium in accordance with rule 441—86.8(514I).

86.2(3) *Family size.* For purposes of establishing initial and ongoing eligibility under the HAWK-I program, the family size shall consist of all persons living together who are children and who are parents of those children as defined below.

EXCEPTION: Persons who are receiving Supplemental Security Income (SSI) under Title XVI of the Social Security Act or who are voluntarily excluded in accordance with the provisions of paragraph "*c*" below are not considered in determining family size.

a. Children. A child under the age of 19 and any siblings of whole or half blood or adoptive shall be considered together unless the child is emancipated due to marriage, in which case, the emancipated child is not included in the family size unless the marriage has been annulled. Emancipated children, their spouses, and children who live together shall be considered as a separate family when establishing eligibility for the HAWK-I program.

b. Parents. Any parent living with the child under the age of 19 shall be included in the family size. This includes the biological parent, stepparent, or adoptive parent of the child and is not dependent upon whether the parents are married to each other.

c. Persons who may be excluded when determining family size. If a child is ineligible for coverage under the HAWK-I program because the child has insurance or is on Medicaid, the family may choose not to count the child in the family size if the child also has income. However, this rule shall not apply when the child is receiving Supplemental Security Income (SSI) benefits.

d. Temporary absence from the home. The following policies shall be applied to an otherwise eligible child under the age of 19 who is temporarily absent from the home.

(1) When a child is absent from the home to secure education or training (e.g., the child is attending college), the child shall be included when establishing the size of the family at home.

(2) When a child is absent from the home to secure medical care, the child shall be included when establishing the size of the family at home when the reason for the absence is expected to last less than 12 months.

(3) When the child is absent from the home because the child is an inmate in a nonmedical public institution (e.g., a penal institution) in accordance with the provisions of subrule 86.2(9), the child shall be included when establishing the size of the family at home if the absence is expected to be less than three months.

(4) When a child is absent from the home because the child is in foster care, the child shall not be included when establishing the size of the family at home.

(5) When a child is absent from the home for vacation or visitation of an absent parent, for example, the child shall be included in establishing the size of the family at home if the absence does not exceed three months.

86.2(4) *Uninsured status.* The child must be uninsured. A child who is currently enrolled in an individual or group health plan is not eligible to participate in the HAWK-I program. However, a child who is enrolled in a plan that provides coverage only for a specific disease or service (e.g., a vision- or dental-only policy or a cancer policy) shall not be considered insured for purposes of the HAWK-I program.

a. A child who has been enrolled in an employer-sponsored health plan in the six months prior to the month of application but who no longer is enrolled in an employer-sponsored health plan is not eligible to participate in the HAWK-I program for six months from the last date of coverage unless the coverage ended for one of the following reasons:

(1) Employment was lost due to factors other than voluntary termination.

(2) Coverage was lost due to the death of a parent.

(3) There was a change in employment to a new employer that does not provide an option for dependent coverage.

(4) The child moved to an area of the state where the plan does not have a provider network established.

(5) The employer discontinued health benefits to all employees.

(6) The coverage period allowed by COBRA expired.

(7) The parent became self-employed.

(8) Health benefits were terminated because of a long-term disability.

(9) Dependent coverage was terminated due to an extreme economic hardship on the part of either the employee or the employer.

Extreme economic hardship for employees shall mean that the employee's share of the premium for providing employer-sponsored dependent coverage exceeded 5 percent of the family's gross annual income.

(10) There was a substantial reduction in either lifetime medical benefits or benefit category available to an employee and dependents under an employer's health care plan.

(11) Child health insurance program (CHIP) coverage in another state was terminated due to the family's move to Iowa.

b. American Indian and Alaska Native. American Indian and Alaska Native children are eligible for the HAWK-I program on the same basis as other children in the state, regardless of whether or not they may be eligible for or served by Indian Health Services-funded care.

86.2(5) *Ineligibility for Medicaid.* The child shall not be receiving Medicaid or eligible to receive Medicaid if application were made except when the child would be required to meet a spenddown under the medically needy program in accordance with the provisions of 441—subrule 75.1(35). Additionally, a child who would be eligible for Medicaid except for the parent's failure or refusal to cooperate in establishing initial or ongoing eligibility shall not be eligible for coverage under the HAWK-I program.

86.2(6) *Iowa residency.* The child shall be a resident of the state of Iowa. A resident of Iowa is a person:

a. Who is living in Iowa voluntarily with the intention of making that person's home in Iowa and not for a temporary purpose; or

b. Who, at the time of application, is not receiving assistance from another state and entered Iowa with a job commitment or to seek employment or who is living with parents or guardians who entered Iowa with a job commitment or to seek employment.

86.2(7) *Citizenship and alien status.* The child shall be a citizen or lawfully admitted alien. The criteria established under Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997 shall be followed when determining whether a lawfully admitted alien child is eligible to participate in the HAWK-I program. The citizenship or alien status of the parents or other responsible person shall not be considered when determining the eligibility of the child to participate in the program.

86.2(8) *Dependents of state of Iowa employees.* The child shall not be eligible for the HAWK-I program if the child is eligible for health insurance coverage as a dependent of a state of Iowa employee.

86.2(9) *Inmates of nonmedical public institutions.* The child shall not be an inmate of a nonmedical public institution as defined at 42 CFR Section 435.1009 as amended November 10, 1994.

86.2(10) *Inmates of institutions for mental disease.* At the time of application or annual review of eligibility, the child shall not be an inmate of an institution for mental disease as defined at 42 CFR Section 435.1009 as amended November 10, 1994.

86.2(11) *Preexisting medical conditions.* The child shall not be denied eligibility based on the presence of a preexisting medical condition.

86.2(12) *Furnishing a social security number.* The child must furnish a social security number or, if one has not been issued or is not known, proof of application must be provided.

441—86.3(514I) Application process.

86.3(1) *Who may apply.* Each person wishing to do so shall have the opportunity to apply without delay. When the request is made in person, the requester shall immediately be given an application form. When a request is made that the application form be mailed, it shall be sent in the next outgoing mail.

a. Child lives with parents. When the child lives with the child's parents, including stepparents and adoptive parents, the parent shall file the application on behalf of the child unless the parent is unable to do so.

If the parent is unable to act on the child's behalf because the parent is incompetent or physically disabled, another person may file the application on behalf of the child. The responsible person shall be a family member, friend or other person who has knowledge of the family's financial affairs and circumstances and a personal interest in the child's welfare or a legal representative such as a conservator, guardian, executor or someone with power of attorney. The responsible person shall sign the application form and assume the responsibilities of the incompetent or disabled parent in regard to the application process and ongoing eligibility determinations.

b. Child lives with someone other than a parent. When the child lives with someone other than a parent (e.g., another relative, friend, guardian), the person who has assumed responsibility for the care of the child may apply on the child's behalf. This person shall sign the application form and assume responsibility for providing all information necessary to establish initial and ongoing eligibility for the child.

c. Child lives independently or is married. When a child under the age of 19 lives in an independent living situation or is married, the child may apply on the child's own behalf, in which case, the child shall be responsible for providing all information necessary to establish initial and ongoing eligibility. If the child is married, both the child and the spouse shall sign the application form.

86.3(2) *Application form.* An application for the HAWK-I program shall be submitted on Form 470-3526, Healthy and Well Kids in Iowa (HAWK-I) Application, unless the family applies for the Medicaid program first.

When an application has been filed for the Medicaid program in accordance with the provisions of rule 441—76.1(249A) and Medicaid eligibility does not exist in accordance with the provisions of rule 441—75.1(249A), or the family must meet a spenddown in accordance with the provisions of 441—subrule 75.1(35) before the child can attain eligibility, the Medicaid application shall be used to establish eligibility for the HAWK-I program in lieu of the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526. Applications may be obtained by telephoning the toll-free telephone number of the third-party administrator.

86.3(3) *Place of filing.* An application for the HAWK-I program shall be filed with the third-party administrator responsible for making the eligibility determination. Any local or area office of the department of human services, disproportionate share hospital, federally qualified health center, other facilities in which outstationing activities are provided, school nurse, Head Start, maternal and child health center, WIC office, or other entity may accept the application. However, all applications shall be forwarded to the third-party administrator.

86.3(4) *Date and method of filing.* The application is considered filed on the date an identifiable application is received by the third-party administrator unless the family has applied for Medicaid first and a referral is made to the third-party administrator by the county office of the department, in which case, the date the Medicaid application was originally filed with the department shall be the filing date. An identifiable application is an application containing a legible name, address, and signature.

86.3(5) *Right to withdraw application.* After an application has been filed, the applicant may withdraw the application at any time prior to the eligibility determination. Requests for voluntary withdrawal of the application shall be documented, and the applicant shall be sent a notice of decision confirming the request.

86.3(6) *Application not required.* An application shall not be required when a child becomes ineligible for Medicaid and the county office of the department makes a referral to the HAWK-I program, in which case, Form 470-3563, HAWK-I Referral, shall be accepted in lieu of an application. The original Medicaid application or the last review form, whichever is more current, shall suffice to meet the signature requirements.

86.3(7) *Information and verification procedure.* The decision with respect to eligibility shall be based primarily on information furnished by the applicant or enrollee. The third-party administrator shall notify the applicant or enrollee in writing of additional information or verification that is required to establish eligibility. This notice shall be provided to the applicant or enrollee personally or by mail or facsimile. Failure of the applicant or enrollee to supply the information or verification or refusal by the applicant or enrollee to authorize the third-party administrator to secure the information shall serve as a basis for rejection of the application or cancellation of coverage. Five working days shall be allowed for the applicant or enrollee to supply the information or verification requested by the third-party administrator. The third-party administrator may extend the deadline for a reasonable period of time when the applicant or enrollee is making every effort but is unable to secure the required information or verification from a third party.

86.3(8) *Time limit for decision.* The third-party administrator shall make a decision regarding the applicant's eligibility to participate in the HAWK-I program within ten working days from the date of receiving the completed application and all necessary information and verification unless the application cannot be processed within the period for a reason that is beyond the control of the third-party administrator.

EXCEPTION: When the application is referred to the county office of the department for a Medicaid eligibility determination and the application is denied, the third-party administrator shall determine HAWK-I eligibility no later than ten working days from the date of the notice of Medicaid denial.

86.3(9) *Applicant cooperation.* An applicant must cooperate with the third-party administrator in the application process, which may include providing verification or signing documents. Failure to cooperate with the application process shall serve as basis for a denial of the application.

86.3(10) *Waiting lists.* When funds appropriated for this purpose are obligated, pending applications for HAWK-I coverage shall be denied by the third-party administrator. A notice of decision shall be mailed by the third-party administrator. The notice shall state that the applicant meets eligibility requirements but no funds are available and that the applicant will be placed on a waiting list, or that the person does not meet eligibility requirements.

a. Applicants shall be entered on the waiting list on the basis of the date a completed Form 470-3564 is date-stamped by the third-party administrator. In the event that more than one application is received on the same day, applicants shall be entered on the waiting list on the basis of the day of the month of the oldest child's birthday, the lowest number being first on the list. Any subsequent ties shall be decided by the month of birth of the oldest child, January being month one and the lowest number.

b. If funds become available, applicants shall be selected from the waiting list based on the order of the waiting list and notified by the third-party administrator.

c. The third-party administrator shall establish that the applicant continues to be eligible for HAWK-I coverage.

d. After eligibility is reestablished, the applicant shall have 15 working days to enroll in the program. If the applicant does not enroll in the program within 15 working days, the applicant's name shall be deleted from the waiting list and the third-party administrator shall contact the next applicant on the waiting list.

86.3(11) *Falsification of information.* A person is guilty of falsification of information if that person, with the intent to gain HAWK-I coverage for which that person is not eligible, knowingly makes or causes to be made a false statement or representation or knowingly fails to report to the third-party administrator or the department any change in circumstances affecting that person's eligibility for HAWK-I coverage in accordance with rule 441—86.2(514I) and rule 441—86.10(514I).

In cases of founded falsification of information, the department may proceed with disenrollment in accordance with rule 441—86.7(514I) and require repayment for the amount that was paid to a health plan by the department and any amount paid out by the plan while the person was ineligible.

86.3(12) *Applications pended due to unavailability of a plan.* When there is no participating health plan in the applicant's county of residence, the application shall be held until a plan is available. The application shall be processed when a plan becomes available and coverage shall be effective the first day of the month the plan becomes available.

441—86.4(514I) Coordination with Medicaid.

86.4(1) *HAWK-I applicant appears eligible for Medicaid.* At the time of initial application, if it appears the child may be eligible for Medicaid in accordance with the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), a referral shall be made by the third-party administrator to the county department office for a determination of Medicaid eligibility as follows:

a. The original Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, and copies of any accompanying information and verification shall be forwarded to the county department office within 24 hours, or the next working day, whichever is sooner. The third-party administrator shall maintain a copy of all documentation sent to the department and a log to track the disposition of all referrals.

b. The third-party administrator shall notify the family that the referral has been made. The notice of the referral to the family shall be accompanied by a Medicaid Supplement to the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3564, and the third-party administrator shall return to the family any original verification and information that was submitted with the application.

c. The referral shall be considered an application for Medicaid in accordance with the provisions of rule 441—76.1(249A). The time limit for processing the referred application begins with the date the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, is date-stamped as being received by the third-party administrator.

86.4(2) *HAWK-I enrollee appears eligible for Medicaid.* At the time of the annual review, if it appears the child may be eligible for Medicaid in accordance with the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), a referral shall be made to the county department office for a determination of Medicaid eligibility as stated in subrule 86.4(1) above. However, the child shall remain eligible for the HAWK-I program pending the Medicaid eligibility determination unless the 12-month certification period expires first.

86.4(3) *Medicaid applicant not eligible.* If a child is not eligible for Medicaid under the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), the department shall make a referral to the third-party administrator for an eligibility determination under the HAWK-I program as follows:

a. A copy of the original application, copies of any accompanying information and verification, and a copy of the notice of decision shall be forwarded to the third-party administrator within 24 hours of the decision to deny Medicaid eligibility or the next working day, whichever is sooner.

b. The third-party administrator shall date-stamp the referral, notify the family of the referral, and proceed with an eligibility determination under the HAWK-I program.

c. The time frame for processing the application begins with the day on which the referred application is date-stamped as having been received by the third-party administrator.

d. If it is apparent that the child will not be eligible for the HAWK-I program (e.g., the child is the dependent of a state of Iowa employee), the referral shall not be made.

86.4(4) *Medicaid recipient becomes ineligible.* If a child becomes ineligible for Medicaid under the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), a referral shall be made to the third-party administrator for an eligibility determination under the HAWK-I program as follows:

a. The department shall complete a Referral to HAWK-I, Form 470-3563, and send it to the third-party administrator within 24 hours of the determination that the child is no longer eligible for Medicaid or that the child must meet a spenddown under the medically needy program.

b. The third-party administrator shall date-stamp the referral, notify the family of the referral, and proceed with an eligibility determination under the HAWK-I program. Form 470-3563, Referral to HAWK-I, shall be used as an application for the HAWK-I program. If needed, copies of supporting documentation and signatures shall be obtained from the case record at the county office of the department.

c. If it is apparent the child will not be eligible for the HAWK-I program (e.g., the child is the dependent of a state of Iowa employee), the referral shall not be made.

441—86.5(514I) Effective date of coverage. Coverage for children who are determined eligible for the HAWK-I program shall be effective the first day of the month following the month in which the application is filed, regardless of the day of the month the application is filed, or when a plan becomes available in the applicant's county of residence.

441—86.6(514I) Selection of a plan. At the time of initial application, if there is more than one participating plan available in the child's county of residence, the applicant shall select the plan in which the applicant wishes to enroll as part of the eligibility process. The enrollee may change plans only at the time of the annual review unless the provisions of subrule 86.7(1) apply. The applicant shall designate the plan choice in writing by completing Form 470-3574, Selection of Plan.

86.6(1) *Coverage in another county's plan.* If a child traditionally travels to another county to receive medical care, the applicant may choose to participate in the plan available in the county in which the child receives medical care.

86.6(2) *Period of enrollment.* Once enrolled in a plan, the child shall remain enrolled in the selected plan for a period of 12 months unless the child is disenrolled in accordance with the provisions of rule 441—86.7(514I). If a child is disenrolled from the plan and subsequently reapplies prior to the end of the original 12-month enrollment period, the child shall be enrolled in the plan from which the child was originally disenrolled unless the provisions of subrule 86.7(1) apply.

86.6(3) *Failure to select a plan.* When more than one plan is available, if the applicant fails to select a plan within ten working days of the written request to make a selection, the application shall be denied unless good cause exists.

441—86.7(514I) Disenrollment. The child shall be disenrolled from the selected plan prior to the end of the 12-month enrollment period for any of the following:

86.7(1) *Child moves from the service area.* The child may be disenrolled from the plan when the child moves to an area of the state in which the plan does not have a provider network established. If the child is disenrolled, the child shall be enrolled in a participating plan in the new location. The period of enrollment shall be the number of months remaining in the original certification period.

86.7(2) *Age.* The child shall be disenrolled from the plan and canceled from the HAWK-I program as of the first day of the month following the month in which the child attained the age of 19.

86.7(3) *Nonpayment of premiums.* The child shall be disenrolled from the plan and canceled from the program as of the first day of the month in which premiums are not paid in accordance with the provisions of subrules 86.8(3) and 86.8(5).

86.7(4) *Iowa residence abandoned.* The child shall be disenrolled from the plan and canceled from the program as of the first day of the month following the month in which the child relocated to another state. A child shall not be disenrolled when the child is temporarily absent from the state in accordance with the provisions of subrule 86.2(6).

86.7(5) *Eligible for Medicaid.* The child shall be disenrolled from the plan and canceled from the program as of the first day of the month following the month in which Medicaid eligibility is established.

86.7(6) *Enrolled in other health insurance coverage.* The child shall be disenrolled from the plan as of the first day of the month following the month in which the child attained other health insurance coverage.

86.7(7) *Admission to a nonmedical public institution.* The child shall be disenrolled from the plan and canceled from the program as of the first day of the month following the month in which the child enters a nonmedical public institution unless the temporary absence provisions of paragraph 86.2(3)*"d"* apply.

86.7(8) *Admission to an institution for mental disease.* The child shall be disenrolled from the plan and canceled from the program if the child is a patient in an institution for mental disease at the time of annual review.

86.7(9) *Employment with the state of Iowa.* The child shall be disenrolled from the plan and canceled from the HAWK-I program as of the first day of the month in which the child's parent became eligible to participate in a health plan available to state of Iowa employees.

441—86.8(514I) Premiums and copayments.

86.8(1) *Income limit.* No premium shall be assessed when countable income is less than 150 percent of the federal poverty level for a family of the same size. When countable income is equal to or greater than 150 percent of the federal poverty level for a family of the same size, participation in the program is contingent upon the payment of a monthly premium.

86.8(2) *Premium amount.* The premium amount shall be $10 per month per child up to a maximum of $20 per month per family.

86.8(3) *Due date.* When the third-party administrator notifies the applicant that the applicant is eligible to participate in the program, the applicant shall pay any premiums due within ten working days for the initial month of coverage. When the premium is received, the third-party administrator shall notify the plan of the enrollment. After the initial month of coverage, premiums shall be received no later than the last day of the month prior to the month of coverage. Failure to pay the premium by the last day of the month before the month of coverage shall result in disenrollment from the plan. At the request of the family, premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

86.8(4) *Reinstatement.* A child may be reinstated once in a 12-month period when the family fails to pay the premium by the last day of the month prior to the month of coverage. However, the reinstatement must occur within the calendar month following the month of nonpayment and the premium must be paid in full prior to reinstatement.

86.8(5) *Method of premium payment.* Premiums may be submitted in the form of cash, personal checks, automatic bank account withdrawals, or other methods established by the third-party administrator.

86.8(6) *Failure to pay premium.* Failure to pay the premium in accordance with subrules 86.8(3) and 86.8(5) shall result in disenrollment from the plan and cancellation from the program unless the reinstatement provisions of subrule 86.8(4) apply. Once a child is disenrolled and canceled from the program due to nonpayment of premiums, the family must reapply for coverage.

86.8(7) *Copayment.* There shall be a $25 copayment for each emergency room visit if the child's medical condition does not meet the definition of emergency medical condition.

441—86.9(514I) Annual reviews of eligibility. All eligibility factors shall be reviewed at least every 12 months to establish ongoing eligibility for the program. "Month one" shall be the first month in which coverage is provided.

86.9(1) *Review form.* The family shall complete Form 470-3526, Healthy and Well Kids in Iowa (HAWK-I) Application, and provide information and verification of current income as part of the review process.

86.9(2) *Failure to provide information.* The child shall not be enrolled for the next 12-month period if the family fails to provide information and verification of income or otherwise fails to cooperate in the annual review process.

86.9(3) *Change in plan.* At the time of the annual review of eligibility, if more than one plan is available, the family shall designate whether the child is to remain enrolled in the current plan or is to be enrolled in another plan. The plan choice shall be designated in writing by completing Form 470-3574, Healthy and Well Kids in Iowa (HAWK-I) Selection of Plan.

441—86.10(514I) Reporting changes. Changes that may affect eligibility shall be reported to the third-party administrator as soon as possible but no later than ten working days after the change. "Day one" shall begin with the date of the change. The parent, guardian, or other adult responsible for the child shall report the change. If the child is emancipated, married, or otherwise in an independent living situation, the child shall be responsible for reporting the change.

86.10(1) *Pregnancy.* The pregnancy of a child shall be reported when the pregnancy is diagnosed.

86.10(2) *Entry to a nonmedical public institution.* The entry of a child into a nonmedical public institution, such as a penal institution, shall be reported following entry to the institution.

86.10(3) *Iowa residence is abandoned.* The abandonment of Iowa residence shall be reported following the move from the state.

86.10(4) *Other insurance coverage.* Enrollment of the child in other health insurance coverage shall be reported.

86.10(5) *Employment with the state of Iowa.* The employment of the child's parent with the state of Iowa shall be reported.

86.10(6) *Decrease in income.* If the family reports a decrease in income, the third-party administrator shall ascertain whether the change affects the premium obligation of the family. If the change is such that the family is no longer required to pay a premium in accordance with the provisions of rule 441—86.8(514I), premiums will no longer be charged beginning with the month following the month of the report of the change.

86.10(7) *Failure to report changes.* Any benefits paid during a period of time in which the child was ineligible due to unreported changes will be subject to recoupment.

441—86.11(514I) Notice requirements. The applicant or enrollee shall be notified in writing of the decision of the third-party administrator regarding the applicant or enrollee's eligibility for the HAWK-I program. If the applicant or enrollee has been determined to be ineligible, an explanation of the reason shall be provided.

441—86.12(514I) Appeals and fair hearings. If the applicant or enrollee disputes a decision by the third-party administrator to reduce, cancel or deny participation in the HAWK-I program, the applicant or enrollee may appeal the decision in accordance with 441—Chapter 7.

441—86.13(514I) Third-party administrator. The third-party administrator shall have the following responsibilities:

86.13(1) *Determination of eligibility.* The third-party administrator shall determine eligibility in accordance with the provisions of rule 441—86.2(514I).

86.13(2) *Dissemination of application forms and information.* The third-party administrator shall disseminate the following:

a. Application forms to any organization or individual making a request in accordance with the provisions of subrule 86.3(1).

b. Outreach materials to any organization or individual making a request.

c. Participating health plan information.

d. Other materials as specified by the department.

86.13(3) *Toll-free dedicated customer services line.* The third-party administrator shall maintain a toll-free multilingual dedicated customer service line in accordance with the requirements of the department.

86.13(4) *HAWK-I program web site.* The third-party administrator shall work in cooperation with the department to maintain a web site providing information about the HAWK-I program.

86.13(5) *Application process.* The third-party administrator shall process applications in accordance with the provisions of rule 441—86.3(514I).

a. Processing applications and mailing of approvals and denials shall be completed within ten working days of receipt of the application and all necessary information and verification unless the application cannot be processed within this period for a reason beyond the control of the third-party administrator.

b. Original verification information shall be returned to the applicant or enrollee upon completion of review.

86.13(6) *Tracking of applications.* The third-party administrator shall track and maintain applications. This includes, but is not limited to, the following procedures:

a. Date-stamping all applications with the date of receipt.

b. Screening applications for completeness and requesting in writing any additional information or verification necessary to establish eligibility. All information or verification of information attained shall be logged.

c. Entering all applications received into the data system with an identifier status of pending, approved, or denied.

d. Referring applications to the county office of the department, when appropriate, and receiving application referrals from the department.

e. Tracking any waiting periods before coverage can begin in accordance with subrule 86.2(4).

f. Notifying the plans when the number of enrollees who speak the same non-English language equals or exceeds 10 percent of the number of enrollees in the plan.

86.13(7) *Effective date of coverage.* The third-party administrator shall establish effective date of coverage in accordance with the provisions of rule 441—86.5(514I).

86.13(8) *Selection of plan.* The third-party administrator shall provide participating health plan information to families of eligible children by telephone or mail and, if necessary, offer unbiased assistance in the selection of a plan in accordance with the provisions of rule 441—86.6(514I).

86.13(9) *Enrollment.* The third-party administrator shall notify participating health plans of enrollments.

86.13(10) *Disenrollments.* The third-party administrator shall disenroll an enrollee in accordance with the provisions of rule 441—86.7(514I). The third-party administrator shall notify the participating health plan when an enrollee is disenrolled.

86.13(11) *Annual reviews of eligibility.* The third-party administrator shall annually review eligibility in accordance with the provisions of rules 441—86.2(514I) and 86.9(514I).

86.13(12) *Acting on reported changes.* The third-party administrator shall ensure that all changes reported by the HAWK-I enrollee in accordance with rule 441—86.10(514I) are acted upon no later than ten working days from the date the change is reported.

86.13(13) *Premiums.* The third-party administrator shall:

a. Calculate premiums in accordance with the provisions of rule 441—86.8(514I).

b. Collect HAWK-I premium payments. The funds shall be deposited into an interest-bearing account maintained by the department for periodic transmission of the funds and any accrued interest to the HAWK-I trust fund in accordance with state accounting procedures.

c. Track the status of the enrollee premium payments and provide the data to the department.

d. Mail a reminder notice to the family if the premium is not received by the due date.

86.13(14) *Notices to families.* The third-party administrator shall develop and provide timely and adequate approval, denial, and cancellation notices to families that clearly explain the action being taken in regard to an application or an existing enrollment. Denial and cancellation notices shall clearly explain the appeal rights of the applicant or enrollee. All notices shall be available in English and Spanish.

86.13(15) *Records.* The third-party administrator shall at a minimum maintain the following records:

a. All records required by the department and the department of inspections and appeals.

b. Records which identify transactions with or on behalf of each enrollee by social security number or other unique identifier.

c. Application, case and financial records.

d. All other records as required by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

86.13(16) *Confidentiality.* The third-party administrator shall protect and maintain the confidentiality of HAWK-I applicants and enrollees in accordance with 441—Chapter 9.

86.13(17) *Reports to the department.* The third-party administrator shall submit reports as required by the department.

86.13(18) *Systems.* The third-party administrator shall maintain data files that are compatible with the department's and the health plans' data files and shall make the system accessible to department staff.

441—86.14(514I) Covered services. The benefits provided under the HAWK-I program shall meet a benchmark, benchmark equivalent, or benefit plan that complies with Title XXI of the federal Social Security Act.

86.14(1) *Required services.* The participating health plan shall cover at a minimum the following medically necessary services:

a. Inpatient hospital services (including medical, surgical, intensive care unit, mental health, and substance abuse services).

b. Physician services (including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits).

c. Outpatient hospital services (including emergency room, surgery, lab, and x-ray services and other services).

d. Ambulance services.

e. Physical therapy.

f. Nursing care services (including skilled nursing facility services).

g. Speech therapy.
h. Durable medical equipment.
i. Home health care.
j. Hospice services.
k. Prescription drugs.
l. Dental services (including restorative and preventative services).
m. Hearing services.
n. Vision services (including corrective lenses).

86.14(2) *Abortion.* Payment for abortion shall only be made under the following circumstances:

a. The physician certifies that the pregnant enrollee suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the enrollee in danger of death unless an abortion is performed.

b. The pregnancy was the result of an act of rape or incest.

441—86.15(514I) Participating health plans.

86.15(1) *Licensure.* The participating health plan must be licensed by the division of insurance of the department of commerce to provide health care coverage in Iowa or be an organized delivery system licensed by the director of public health to provide health care coverage.

86.15(2) *Services.* The participating health plan shall provide health care coverage for the services specified in rule 441—86.14(514I) to all children determined eligible by the third-party administrator.

a. The participating health plan shall make services it provides to HAWK-I enrollees at least as accessible to the enrollees (in terms of timeliness, duration and scope) as those services are accessible to other commercial enrollees in the area served by the plan.

b. Participating health plans shall ensure that emergency services (inpatient and outpatient) are available for treatment of an emergency medical condition 24 hours a day, seven days a week, either through the health plan's own providers or through arrangements with other providers.

c. If a participating plan does not provide statewide coverage, the plan shall participate in every county within the region in which the plan has contracted to provide services in which it is licensed and in which a provider network has been established. Regions are specified in rule 441—86.1(514I).

86.15(3) *Premium tax.* Premiums paid to participating health plans by the third-party administrator are exempt from premium tax.

86.15(4) *Provider network.* The participating health plan shall establish a network of providers. Providers contracting with the participating health plan shall comply with HAWK-I requirements, which shall include collecting copayments, if applicable.

86.15(5) *Medical cards.* Medical identification cards shall be issued by the participating health plan to the enrollees for use in securing covered services.

86.15(6) *Marketing.*

a. Participating health plans may not distribute directly or through an agent or independent contractor any marketing materials.

b. All marketing materials require prior approval from the department.

c. At a minimum, participating health plans must provide the following written material:

(1) A current member handbook that fully explains the services available, how and when to obtain them, and special factors applicable to the HAWK-I enrollees. At a minimum the handbook shall include covered services, network providers, exclusions, emergency services procedures, 24-hour toll-free number for certification of services, daytime number to call for assistance, appeal procedures, enrollee rights and responsibilities, and definitions of terms.

(2) All plan literature and brochures shall be available in English and any other language when enrollment in the plan by enrollees who speak the same non-English language equals or exceeds 10 percent of all enrollees in the plan and shall be made available to the third-party administrator for distribution.

d. All health plan literature and brochures shall be approved by the department.

e. The participating health plans shall not, directly or indirectly, conduct door-to-door, telephonic, or other "cold-call" marketing.

f. The participating health plan may make marketing presentations at the discretion of the department.

86.15(7) *Appeal process.* The participating health plan shall have a written procedure by which enrollees may appeal issues concerning the health care services provided through providers contracted with the plan and which:

a. Is approved by the department prior to use.

b. Acknowledges receipt of the appeal to the enrollee.

c. Establishes time frames which ensure that appeals be resolved within 60 days, except for appeals which involve emergency medical conditions, which shall be resolved within time frames appropriate to the situations.

d. Ensures the participation of persons with authority to take corrective action.

e. Ensures that the decision be made by a physician or clinical peer not previously involved in the case.

f. Ensures the confidentiality of the enrollee.

g. Ensures issuance of a written decision to the enrollee for each appeal which shall contain an adequate explanation of the action taken and the reason for the decision.

h. Maintains a log of the appeals which is made available to the department at its request.

i. Ensures that the participating health plan's written appeal procedures be provided to each newly covered enrollee.

j. Requires that the participating health plan make quarterly reports to the department summarizing appeals and resolutions.

86.15(8) *Appeals to the department.* Rescinded IAB 1/13/99, effective 1/1/99.

86.15(9) *Records and reports.* The participating health plan shall maintain records and reports as follows:

a. The plan shall comply with the provisions of rule 441—79.3(249A) regarding maintenance and retention of clinical and fiscal records and shall file a letter with the commissioner of insurance as described in Iowa Code section 228.7. In addition, the plan must maintain a medical records system that:

(1) Identifies each medical record by HAWK-I enrollee identification number.

(2) Maintains a complete medical record for each enrollee.

(3) Provides a specific medical record on demand.

(4) Meets state and federal reporting requirements applicable to the HAWK-I program.

(5) Maintains the confidentiality of medical records information and releases the information only in accordance with established policy below:

1. All medical records of the enrollee shall be confidential and shall not be released without the written consent of the enrollee or responsible party.

2. Written consent is not required for the transmission of medical records information to physicians, other practitioners, or facilities that are providing services to enrollees under a subcontract with the plan. This provision also applies to specialty providers who are retained by the plan to provide services which are infrequently used, which provide a support system service to the operation of the plan, or which are of an unusual nature. This provision is also intended to waive the need for written consent for department staff and the third-party administrator assisting in the administration of the program, reviewers from the peer review organization (PRO), monitoring authorities from the Health Care Financing Administration (HCFA), the plan itself, and other subcontractors which require information as described under numbered paragraph "5" below.

EXCEPTION: Written consent is required for the transmission of medical records relating to substance abuse, HIV, or mental health treatment in accordance with state and federal laws.

3. Written consent is not required for the transmission of medical records information to physicians or facilities providing emergency care pursuant to paragraph 86.15(2)*"b."*

4. Written consent is required for the transmission of the medical records information of a former enrollee to any physician not connected with the plan.

5. The extent of medical records information to be released in each instance shall be based upon a test of medical necessity and a "need to know" on the part of the practitioner or a facility requesting the information.

6. Medical records maintained by subcontractors shall meet the requirements of this rule.

b. Each plan shall provide at a minimum reports and plan information to the third-party administrator as follows:

(1) A list of providers of medical services under the plan.

(2) Information regarding the plan's appeals process.

(3) A plan for a health improvement program.

(4) Periodic financial, utilization and statistical reports as required by the department.

(5) Encounter data on a monthly basis as required by the department.

(6) Time-specific reports which define activity for child health care, appeals, and other designated activities which may, at the department's discretion, vary among plans, depending on the services covered and other differences.

(7) Other information as directed by the department.

86.15(10) *Systems.* The participating health plan shall maintain data files that are compatible with the department's and third-party administrator's systems.

86.15(11) *Payment to the participating health plan.*

a. In consideration for all services rendered by a plan, the plan shall receive a payment each month for each enrollee. This capitation rate represents the total obligation of the department with respect to the costs of medical care and services provided to the enrollees.

b. The capitation rate shall be actuarially determined by the department July of 2000 and each fiscal year thereafter using statistics and data assumptions and relevant experience derived from similar populations.

c. The capitation rate does not include any amounts for the recoupment of losses suffered by the plan for risks assumed under the current or any previous contract. The plan accepts the rate as payment in full for the contracted services. Any savings realized by the plan due to lower utilization from a less frequent incidence of health problems among the enrolled population shall be wholly retained by the plan.

d. If an enrollee has third-party coverage or a responsible party other than the HAWK-I program available for purposes of payment for medical expenses, it is the right and responsibility of the plan to investigate these third-party resources and attempt to obtain payment. The plan shall retain all funds collected through third-party sources. A complete record of all income from these sources must be maintained and made available to the department.

86.15(12) *Quality assurance.* The plan shall have in effect an internal quality assurance system. These rules are intended to implement Iowa Code chapter 514I.

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RACING AND GAMING COMMISSION[491]

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming Division [195] under the "umbrella" of Commerce, Department of [181], 11/19/86]
[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]
[Transferred from Commerce Department[181] to the Department of Inspections and Appeals "umbrella"[481] pursuant to 1987 Iowa Acts, chapter 234, section 421]
[Renamed Racing and Gaming Commission[491], 8/23/89; See 1989 Iowa Acts, ch 67 §1(2), and ch 231 §30(1), 31]

CHAPTER 2
RULE MAKING AND DECLARATORY ORDERS

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—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.

491—2.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the racing and gaming commission (commission) 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 commission by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

491—2.3(17A) Public rule-making docket.

2.3(1) *Docket maintained.* The commission 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 commission. 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 commission for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of commission personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the commission of that possible rule. The commission 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, and whether such written request, analysis, or statement may be inspected;

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

h. Any known timetable for commission decisions or other action in the proceedings;

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.

491—2.4(17A) Notice of proposed rule making.

2.4(1) *Contents.* At least 35 days before the adoption of a rule the commission 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 commission 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 commission 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 commission a written request indicating the name and address to which such notices should be sent. The commission will attach the proposed rules to the agenda for the commission meeting in which the rules will be addressed. If the individual desiring a copy of the rules did not receive the rules with the copy of the agenda either through the mail or on the commission Web page within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the commission 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 commission 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 one year.

491—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 the Racing and Gaming Commission, 717 East Court, Suite B, Des Moines, Iowa 50309.

2.5(2) *Oral proceedings.* The commission may, at any time, schedule an oral proceeding on a proposed rule. The commission 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 commission 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 commission, a member of the commission, or another person designated by the commission who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the commission does not preside, the presiding officer shall prepare a memorandum for consideration by the commission summarizing the contents of the presentations made at the oral proceeding unless the commission determines that such a memorandum is unnecessary because the commission 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 commission 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 commission 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 commission.

(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 questions.

(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 commission may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

2.5(5) *Accessibility.* The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the commission at (515)281-7352 in advance to arrange access or other needed services.

491—2.6(17A) Regulatory analysis.

2.6(1) *Qualified requesters for regulatory analysis—business impact.* The commission 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 review committee,

b. The administrative rules coordinator.

2.6(2) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the commission shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

2.6(3) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the commission. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

2.6(4) *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(5) *Publication of a concise summary.* The commission 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(6) *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.

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

491—2.8(17A) Time and manner of rule adoption.

2.8(1) *Time of adoption.* The commission 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 commission 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 commission 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 commission expertise.* Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

491—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

2.9(1) The commission 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 commission shall consider the following factors:

a. The extent to which the person 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 commission 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 commission 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 commission to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

491—2.10(17A) Exemption from public rule-making procedures.

2.10(1) *Omission of notice and comment.* To the extent the commission 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 commission 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 commission 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 commission 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 commission 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 commission 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.

491—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 commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Racing and Gaming Commission, 717 East Court, Suite B, Des Moines, Iowa 50309. 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 commission's reasons for overruling the arguments made against the rule.

2.11(3) *Time of issuance.* After a proper request, the commission 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.

491—2.12(17A) Contents, style, and form of rule.

2.12(1) *Contents.* Each rule adopted by the commission shall contain the text of the rule and, in addition:

a. The date the commission 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 commission 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 commission in its discretion decides to include such reasons; and

g. The effective date of the rule.

2.12(2) *Incorporation by reference.* The commission 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 commission finds that the incorporation of its text in the commission proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the commission proposed or adopted rule shall fully 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 commission may incorporate such matter by reference in a proposed or adopted rule only if the commission 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 the commission, 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 commission shall retain permanently a copy of any materials incorporated by reference in a rule of the commission.

If the commission 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 commission 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 commission. The commission will provide a copy of that full text at the 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 commission 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 commission shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

491—2.13(17A) Agency rule-making record.

2.13(1) *Requirement.* The commission 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 commission 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 commission submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the commission'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 commission, 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 commission and considered by the administrator, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent that the commission 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 commission 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 commission 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 commission rule-making record required by this rule need not constitute the exclusive basis for commission action on that rule.

2.13(4) *Maintenance of record.* The commission 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."*

491—2.14(17A) Filing of rules. The commission 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 applicable. 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 commission shall use the standard form prescribed by the administrative rules coordinator.

491—2.15(17A) Effectiveness of rules prior to publication.

2.15(1) *Grounds.* The commission 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 commission 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 commission 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 commission 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 commission 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 commission 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).

491—2.16(17A) General statements of policy.

2.16(1) *Compilation, indexing, public inspection.* The commission 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 commission 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.

491—2.17(17A) Review by commission 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 commission to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the commission 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 commission 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 commission 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 commission'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 commission or granted by the commission. 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 commission'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.

491—2.18(17A) Petition for rule making. Any interested person or agency may file a petition for rule making with the commission. The petition for rule making shall be filed in the Racing and Gaming Commission Office, 717 East Court, Suite B, Des Moines, Iowa 50309. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a file-stamped copy of the petition. The petition may be either typewritten or legibly printed in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION
717 East Court, Suite B
Des Moines, Iowa 50309

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 commission'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.

Petitioner's signature

2.18(1) *Petition signed.* 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.

2.18(2) *Deny petition.* The commission may deny a petition because it does not substantially conform to the required form.

2.18(3) *Procedure after petition is filed.* Upon filing of the petition, the administrator shall inspect the petition to ensure substantial compliance with the recommended form. If the petition does not contain the text or substance of the proposed amendment or fails to include copies of any cited statute, rule, or evidence, the administrator may reject the petition and return it to the petitioner along with the reasons for the rejection. Petitioner may then correct the reasons for rejection and refile the petition. A petition in substantial compliance with the recommended form shall be filed and stamped, and copies promptly sent to the commission members for further study.

2.18(4) *Commission action.* Within 60 days of the filing of a petition, the commission shall meet to consider the petition and shall either grant the petition and commence rule making, or deny the petition and notify the petitioner in writing of the grounds for the denial.

491—2.19(17A) General. Any interested person may solicit oral or written advice from the administrator concerning the application or interpretation of any statute or administrative rule dealing with the commission. However, unless the request is made pursuant to 1998 Iowa Acts, chapter 1202, section 13, petition for declaratory order, any such advice is not binding upon the commission. Petitioners for a declaratory order must have a real and direct interest in a specific fact situation that may affect their legal rights, duties or responsibilities under statutes or regulations administered by the commission.

491—2.20(17A) Petition for declaratory order. Any person may file a petition with the commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission, at 717 East Court, Suite B, Des Moines, Iowa 50309. A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION
717 East Court, Suite B
Des Moines, Iowa 50309

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 2.26(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.

491—2.21(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to rule 2.25(17A) to whom notice is required by any provision of law or who have requested notice of petitions for declaratory orders. The commission may also give notice to any other persons.

491—2.22(17A,99D,99F) Intervention.

2.22(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 30 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

2.22(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 commission.

2.22(3) A petition for intervention shall be filed at the Racing and Gaming Commission Office, 717 East Court, Suite B, Des Moines, Iowa 50309. Such a petition is deemed filed when it is received by that office. The commission 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:

RACING AND GAMING COMMISSION
717 East Court, Suite B
Des Moines, Iowa 50309

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. A citation and the relevant language of any additional statutes, rules, or orders and any other, additional, relevant law.
3. The answers to the original summary of the reasons urged by the intervenor in support of those answers.
4. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
5. 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.
6. The names and addresses of any additional persons, or a description of any class of persons, known by intervenor to be affected by, or interested in, the questions presented.
7. 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 concerning the petition should be directed.

491—2.23(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The commission may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

491—2.24(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Racing and Gaming Commission, 717 East Court, Suite B, Des Moines, Iowa 50309.

491—2.25(17A) Service and filing of petitions and other papers.

2.25(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.

2.25(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 Racing and Gaming Commission Office, 717 East Court, Suite B, Des Moines, Iowa 50309. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

491—2.26(17A) Consideration. Upon request by petitioner, the commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

491—2.27(17A) Action on petition.

2.27(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

2.27(2) The date of issuance of an order or of a refusal to issue an order is defined as 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.

491—2.28(17A) Refusal to issue order.

2.28(1) The commission 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 commission to issue an order.
3. The commission 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 commission or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a commission 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 commission to determine whether a statute is unconstitutional on its face.

2.28(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final commission action on the petition.

2.28(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 an order.

491—2.29(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.

491—2.30(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.

491—2.31(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 commission, 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 commission. The issuance of a declaratory order constitutes final commission action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 99D and 99F.

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CHAPTER 119
WASTE OIL

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119.3(455D,455B) Prohibited disposal
119.4(455D,455B) Operational requirements
119.5(455D,455B) Tanks
119.6(455D,455B) Locating collection sites
119.7(455D,455B) Waste management authority division responsibilities
119.8(455D,455B) State procurement

"Country grain elevator" means any grain elevator that receives more than 50 percent of its grain, as defined by 40 CFR 60.301(a) as amended through August 3, 1978, produced by farms in the vicinity. This definition does not include grain terminal elevators or grain storage elevators, as defined in paragraph 23.1(2)*"ooo."*

"Criteria" means information used as guidelines for decisions when establishing air quality goals, air quality standards and the various air quality levels, and which in no case is to be confused or used interchangeably with air quality goals or standards.

"Director" means the director of the department of natural resources or the director's designee.

"Electric furnace" means a furnace in which the melting and refining of metals are accomplished by means of electrical energy.

"Emergency generator" means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency generator does not include:

1. Peaking units at electric utilities; or
2. Generators at industrial facilities that typically operate at low rates, but are not confined to emergency purposes; or
3. Any standby generators that are used during time periods when power is available from the electric utility.

An emergency is an unforeseeable condition that is beyond the control of the owner or operator.

"Emission limitation" and *"emission standard"* mean a requirement established by a state, local government, or the administrator which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to ensure continuous emission reduction.

"EPA conditional method" means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

"EPA reference method" means any method of sampling and analyzing for an air pollutant as described in 40 CFR 51, Appendix M, as amended through June 16, 1997; 40 CFR 52, Appendices D and E, as amended through February 6, 1975; 40 CFR 60, Appendix A, as amended through March 12, 1996; 40 CFR 61, Appendix B, as amended through April 6, 1973; 40 CFR 63, Appendix A, as amended through December 7, 1995; and 40 CFR 75, Appendices A, B, and H, as amended through May 22, 1996, May 17, 1995, and July 30, 1993.

"Equipment" means equipment capable of emitting air contaminants to produce air pollution such as fuel burning, combustion or process devices or apparatus including but not limited to fuel-burning equipment, refuse burning equipment used for the burning of fuel or other combustible material from which the products of combustion are emitted; and including but not limited to apparatus, equipment or process devices which generate heat and may emit products of combustion, and manufacturing, chemical, metallurgical or mechanical apparatus or process devices which may emit smoke, particulate matter or other air contaminants.

"Excess air" means that amount of air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel or combustible waste material present.

"Excess emission" means any emission which exceeds either the applicable emission standard prescribed in 567—Chapter 23 or rule 567—22.5(455B), or any emission limit specified in a permit or order.

"Existing equipment" means equipment, machines, devices or installations that are in operation prior to September 23, 1970.

"Foundry cupola" means a stack-type furnace used for melting of metals consisting of, but not limited to, the furnace proper, tuyeres, fans or blowers, tapping spout, charging equipment, gas cleaning devices and other auxiliaries.

"Fugitive dust" means any airborne solid particulate matter emitted from any source other than a flue or stack.

"Garbage" means all solid and semisolid putrescible and nonputrescible animal and vegetable wastes resulting from the handling, preparing, cooking, storing and serving of food or of material intended for use as food, but excluding recognized industrial by-products.

"Gas cleaning device" means a facility designed to remove air contaminants from gases exhausted from equipment as defined herein.

"Goal" means a level of air quality which is expected to be obtained.

"Heating value" means the heat released by combustion of one pound of waste or fuel measured in Btu on an as received basis. For solid fuels, the heating value shall be determined by use of ASTM Standard D2015-66.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid or gaseous combustible refuse is ignited and burned efficiently, and from which the solid residues contain little or no combustible material.

"Initiation of construction, installation or alteration" means significant permanent modification of a site to install equipment, control equipment or permanent structures. Not included are activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility.

"Landscape waste" means any vegetable or plant wastes except garbage. The term includes trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery and yard trimmings.

"Level" means a certain specified degree, quality or characteristic.

"Malfunction" means any sudden and unavoidable failure of control equipment or of a process to operate in a normal manner. Any failure that is caused entirely or in part by poor maintenance, careless operation, lack of an adequate maintenance program, or any other preventable upset condition or preventable equipment breakdown shall not be considered a malfunction.

"Maximum achievable control technology (MACT)" means the following regarding regulated hazardous air pollutant sources:

1. For existing sources, the emissions limitation reflecting the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category of stationary sources, that shall not be less stringent than the MACT floor.

2. For new sources, the emission limitation which is not less stringent than the emission limitation achieved in practice by the best-controlled similar source and which reflects the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the affected source.

"Maximum achievable control technology (MACT) floor" means the following:

1. For existing sources, the average emission limitation achieved by the best 12 percent of the existing sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, for categories and subcategories of stationary sources with 30 or more sources in the category or subcategory, or the average emission limitation achieved by the best-performing five sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information), for a category or subcategory of stationary sources with fewer than 30 sources in the category or subcategory.

2. For new sources, the emission limitation achieved in practice by the best-controlled similar source.

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

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

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

"Volatile organic compound" means any compound included in the definition of volatile organic compound found at 40 CFR Section 51.100(s) as amended through April 9, 1998.

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

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

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

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

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

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

20.3(4) *Air contaminant emissions survey forms.* The submission of emissions information pursuant to 567—subrule 21.1(3) shall be made in accordance with instructions for completion of survey forms provided by the department.

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

20.3(6) *Temporary air toxics fee form.* Rescinded IAB 4/8/98, effective 5/13/98.

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

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*Effective date of 20.2(455B), definition of "12-month rolling period," delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

CHAPTER 21
COMPLIANCE

[Prior to 7/1/83, DEQ Chs 2 and 6]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—21.1(455B) Compliance schedule.

21.1(1) *New equipment.* All new equipment and all new control equipment, as defined herein, installed in this state shall perform in conformance with applicable emission standards specified in 567—Chapter 23.

21.1(2) *Existing equipment.* All existing equipment, as defined herein, shall be operated in conformance with applicable emission standards specified in 567—Chapter 23 or as otherwise specified herein; except that the performance standards specified in 567—subrule 23.1(2) shall not apply to existing equipment.

***21.1(3)** *Emissions inventory.* The person responsible for equipment as defined herein shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emissions or other air pollution information to the director upon the director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The information requested shall be submitted on forms supplied by the department. All information in regard to both actual and allowable emissions shall be public records and any publication of such data shall be limited to actual and allowable air contaminant emissions.

21.1(4) Rescinded 2/16/76.

21.1(5) *Public availability of data.* Emission data obtained from owners or operators of stationary sources under the provisions of 21.1(3) will be correlated with applicable emission limitations and other control measures. All such emission data and correlations will be available during normal business hours at the quarters of the department. The director may designate one or more additional places where such data and correlations will be available for public inspection.

21.1(6) *Maintenance of record.* Each owner or operator of any stationary source, as defined herein, shall, upon notification from the director, maintain records of the nature and amounts of air contaminant emissions from such source and any other information as may be deemed necessary by the commission to determine whether such source is in compliance with the applicable emission limitations or other control measures.

a. The information recorded shall be summarized and reported monthly to the director on forms furnished by the department. The initial reporting period shall commence 60 days from the date the director issues notification of the record-keeping requirements.

b. Information recorded by the owner or operator and copies of the summarizing reports submitted to the director shall be retained by the owner or operator for two years after the date on which the pertinent report is submitted.

This rule is intended to implement Iowa Code chapter 455B.

567—21.2(455B) Variances.

21.2(1) *Application for variances.* A person may make application for a variance from applicable rules or standards specified in this title.

a. *Contents.* Each application for a variance shall be submitted to the director stating the following:

*Suspended by Governor Branstad 8/10/93 pursuant to Iowa Code section 29C.6(6) to the extent that it requires submission of the emissions inventory questionnaire by August 15, 1993.

(1) The name, address and telephone number of the person submitting the application or, if such person is a legal entity, the name and address of the individual authorized to accept service of process on its behalf and the name of the person in charge of the premises where the pertinent activities are conducted.

(2) The type of business or activity involved.

(3) The nature of the operation or process involved; including information on the air contaminants emitted, the chemical and physical properties of such emissions and the estimated amount and rate of discharge of such emissions.

(4) The exact location of the operation or process involved.

(5) The reason or reasons for considering that compliance with the provisions specified in these rules will produce serious hardship without equal or greater benefits to the public, and the reasons why no other reasonable method can be used for such operations without resulting in a hazard to health or property.

(6) Each application shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth and accuracy. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information provided are true and accurate.

b. Variance extension. The request for extension of a variance shall be accompanied by an emission reduction program as specified in 21.3(455B).

21.2(2) *Processing of applications.* Each application for a variance and its supporting material shall be reviewed and an investigation of the facilities shall be made by the department, for evaluation of whether or not the emissions involved will produce the following effects.

a. Endanger human health. Endanger or tend to endanger the health of persons residing in or otherwise occupying the area affected by said emissions.

b. Create safety hazards. Create or tend to create safety hazards, such as (but not limited to) interference with traffic due to reduced visibility.

c. Damage to livestock or plant life. Damage or tend to damage any livestock harbored on, or any plant life on, property that is affected by said emissions and under other ownership.

d. Damage property. Damage or tend to damage any property on land that is affected by said emissions and under other ownership.

21.2(3) *Decision.*

a. Granting of variance. The director shall grant a variance when the director concludes that the action is appropriate. The variance may be granted subject to conditions specified by the director. The director shall specify the time intervals as are considered appropriate for submission of reports on the progress attained in the emission reduction program.

b. Denial of variance. The director shall deny a variance when the director concludes that the action is appropriate. The applicant may request a review hearing before the commission if the application is denied.

c. Variance from any new source performance standards, emission guidelines, national emission standards for hazardous air pollutants, PSD, or a case-by-case MACT are not allowed. No variance shall be granted to a source to which 567—paragraph 22.1(1)*"b,"* rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), or 567—subrule 23.1(5) applies.

This rule is intended to implement Iowa Code section 455B.143.

567—21.3(455B) Emission reduction program.

21.3(1) *Content.* An air contaminant emission reduction program submitted to the department pursuant to these rules shall include a schedule for the installation of pollution control devices or the replacement or alteration of specified facilities in such a way that emissions of air contaminants are reduced to comply with the emission standard specified in 567—Chapter 23. The schedule must include, as a minimum, the following five increments of progress:

a. The date of submittal of the final control plan to the department.

b. The date by which contracts will be awarded for emission control systems or process modification or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process modifications.

c. The date of initiation of on-site construction or installation of emission control equipment or process change.

d. The date by which on-site construction or installation of emission control equipment or process modification is to be completed.

e. The date by which final compliance is to be achieved.

21.3(2) *Action.* The director shall approve the programs if they are adequate and reasonable.

a. Upon approval of a program, a variance is granted for one year or until the final compliance date, whichever period is shorter. Emission reduction programs shall be reviewed annually by the director and a variance extension granted for ongoing approved emission reduction programs which show satisfactory progress toward the elimination or prevention of air pollution. The director may specify under what conditions and to what extent the variance or variance extension is granted.

b. If the director disapproves a program, the applicant may appeal to the commission, and the applicant shall have a period of 30 days from date of notification by the director in which to file an appeal.

c. Failure to meet any increment of progress in the compliance schedule contained in an approved emission reduction program may result in the disapproval by the director of the program and termination of the associated variance.

21.3(3) *Reports.* Each person responsible for an approved program shall make periodic written progress reports to the department, as specified by the department. The department shall make periodic reports to the commission on emission reduction programs submitted, and on the recommendations related to such programs.

This rule is intended to implement Iowa Code section 455B.143.

567—21.4(455B)* Circumvention of rules. No person shall build, erect, install or use any article, machine, equipment or other contrivance which, without resulting in a reduction in the total amount of air contaminants released to the atmosphere, reduces or conceals an emission which would otherwise constitute violation of these rules.

This rule is intended to implement Iowa Code chapter 455B.

567—21.5(455B) Evidence used in establishing that a violation has or is occurring. Notwithstanding any other provisions of these rules, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any provisions herein.

21.5(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

a. A monitoring method approved for the source and incorporated in an operating permit pursuant to 567—Chapter 22;

b. Compliance test methods specified in 567—Chapter 25; or

c. Testing or monitoring methods approved for the source in a construction permit issued pursuant to 567—Chapter 22.

21.5(2) The following testing, monitoring or information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:

*Prior to 6/22/83, DEQ rule 6.1.

a. Any monitoring or testing methods provided in these rules; or

b. Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in subrule 21.5(1) or this subrule.

This rule is intended to implement Iowa Code section 455B.133.

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CHAPTER 22
CONTROLLING POLLUTION

[Prior to 7/1/83, DEQ Ch 3]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—22.1(455B) Permits required for new or existing stationary sources.

22.1(1) *Permit required.* Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph *"c"* of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to 22.8(455B), or permits required pursuant to 22.4(455B) and 22.5(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

a. Existing sources. Sources built prior to September 23, 1970, are not subject to this subrule, unless they have been modified, reconstructed, or altered on or after September 23, 1970.

b. New or reconstructed major sources of hazardous air pollutants. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR 63.2 and 40 CFR 63.41 as amended through December 27, 1996, unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

c. New, reconstructed, or modified sources may initiate construction prior to issuance of the construction permit by the department if they meet the eligibility requirements stated in subparagraph (1) below. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in subrule 22.1(3);

2. The applicant has notified the department of the applicant's intentions in writing five working days prior to initiating construction; and

3. The source is not subject to rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), 567—subrule 23.1(5), or paragraph *"b"* of this subrule. Prevention of significant deterioration (PSD) provisions and prohibitions remain applicable until a proposed project legally obtains PSD synthetic minor status (i.e., obtains permitted limits which limit the source below the PSD thresholds).

(2) The applicant must cease construction if the department's evaluation demonstrates that the construction, reconstruction or modification of the source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through August 12, 1996.

(3) The applicant will be required to make any modification to the source that may be imposed in the issued construction permit.

22.1(2) *Exemptions.* The provisions of this rule shall not apply to the following listed equipment or control equipment unless review of the equipment or the control equipment is necessary to comply with rule 22.4(455B), prevention of significant deterioration requirements; rule 22.5(455B), special requirements for nonattainment areas; 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, in which case a permit must be obtained. If equipment is permitted under the provisions of rule 22.8(455B), then no other exemptions shall apply to that equipment.

a. Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than ten million Btu per hour input per combustion unit.

b. Fuel-burning equipment for indirect heating or cooling with a capacity of less than one million Btu per hour input per combustion unit when burning coal, untreated wood or fuel oil. Used oils meeting the specification from 40 CFR 279.11 as amended through May 3, 1993, are acceptable fuels for this exemption.

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

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1, subsection 6, or a confinement building owned or operated by that person and located in this state.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption.

f. Fugitive dust controls unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source wishes to obtain credit for reductions under the prevention of significant deterioration requirements, it must apply for a permit for the reduction prior to the time the reduction is made. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with paragraph *"s"* below.

h. Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter, or any other regulated air contaminant (as defined in 22.100(455B)).

i. Construction, modification or alteration to equipment which will not result in a net emissions increase (as defined in 22.5(1)*"f"*) of more than 1.0 lb/hr of any regulated air pollutant (as defined in 22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

Pollutants covered under the provisions of Section 112(g) of the Clean Air Act are not included in this exemption except for those listed in Table 1. Further, the net emissions rate INCREASE must not equal or exceed the values listed in Table 1.

Table 1

Pollutant	Ton/year
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with paragraph *"s"* below.

The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

j. Residential wood heaters, cookstoves, or fireplaces.

k. Asbestos demolition and renovation projects subject to 40 CFR 61.145 as amended through January 16, 1991.

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

m. Storage tanks with a capacity of less than 10,570 gallons and an annual throughput less than 40,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems which include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only hand-held aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: Comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft. For the purposes of this exemption, the manufacturer's nameplate rating at full load shall be defined as the brake horsepower output at the shaft.

s. A facility claiming to be exempt under the provisions of paragraph *"g"* or *"i"* above shall provide the information listed in 22.1(2)*"s"*(1) through 22.1(2)*"s"*(8) to the department. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed in 22.1(2)*"s"*(1) through 22.1(2)*"s"*(8) shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed in 22.1(2)*"s"*(1) through 22.1(2)*"s"*(8) is provided to the department.

(1) A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in 22.100(455B)), accompanied by documentation of the basis for the emission estimate;

(2) A detailed description of each change being made;

(3) The name and location of the facility;

(4) The height of the emission point or stack and the height of the highest building within 50 feet;

(5) The date for beginning actual construction and the date that operation will begin after the changes are made;

(6) A statement that the provisions of rules 22.4(455B) and 22.5(455B) do not apply;

(7) A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)*"i,"* when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences) have not exceeded significant levels as defined in 40 CFR 52.21(b)(23) as amended through March 12, 1996, and adopted in rule 22.4(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

(8) The written statement shall contain certification by a responsible official as defined in rule 22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

22.1(3) *Construction permits.* The owner or operator of a new or modified stationary source shall apply for a construction permit unless a conditional permit is required by Iowa Code chapter 455B or subrule 22.1(4) or requested by the applicant in lieu of a construction permit. Two copies of a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322. The owner or operator of any new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation as defined in rule 567—65.1(455B) shall apply for a construction permit. Two copies of a construction permit application for an anaerobic lagoon shall be presented or mailed to Department of Natural Resources, Water Quality Bureau, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319.

a. New equipment design in concept review. If requested in writing, the director will review the design concepts of proposed new equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the proposed equipment. If the review is requested, the requester shall supply the following information:

(1) Preliminary plans and specifications of proposed equipment and related control equipment.

(2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.

(3) The estimated emission rates of any air contaminants which are to be considered.

(4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.

(5) An estimate of when construction would begin and when construction would be completed.

b. Construction permit applications. Each application for a construction permit shall be submitted to the department on the form "Air Construction Permit Application." Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer registered in the state of Iowa in conformance with Iowa Code chapter 542B. The application for a permit to construct shall include the following information:

(1) A description of the equipment or control equipment covered by the application;

(2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;

(3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;

(4) The physical and chemical characteristics of the air contaminants;

22.2(3) *Final notice.* The department shall notify the applicant in writing of the issuance or denial of a construction or conditional permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

This rule is intended to implement Iowa Code section 455B.133.

567—22.3(455B) Issuing permits.

22.3(1) *Stationary sources other than anaerobic lagoons.* In no case shall a construction permit or conditional permit which results in an increase in emissions be issued to any facility which is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan. If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit or conditional permit. A construction or conditional permit shall be issued when the director concludes that the preceding requirement has been met and:

a. That the required plans and specifications represent equipment which reasonably can be expected to comply with all applicable emission standards, and

b. That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28, and

c. That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(4), and

d. That the applicant has met all other applicable requirements.

22.3(2) *Anaerobic lagoons.* A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of rule 567—65.15(455B).

22.3(3) *Conditions of approval.* A permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications compliance testing, continuous monitoring, and excess emission reporting.

a. Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

b. Each permit shall require the department to be notified of intended startup at least ten days before the equipment or control equipment involved is placed in operation. The department shall also be notified in writing of the actual startup.

c. Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

d. A conditional permit shall require the submittal of final plans and specifications for the equipment or control equipment designed to meet the specified emission limits prior to installation of the equipment or control equipment.

e. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

f. A permit is not transferable from one location to another or from one piece of equipment to another, unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least 30 days prior to transferring to the new location. The owner or operator will be notified at least 10 days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case a supplemental permit shall be obtained prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit or conditional permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirement under local, state or federal law.

22.3(4) *Denial of a permit.*

a. When an application for a construction or conditional permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

22.3(5) *Modification of a permit.* The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard.

22.3(6) *Limits on hazardous air pollutants.* The department may limit a source's hazardous air pollutant potential to emit, as defined at 567—22.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

22.3(7) *Revocation of a permit.* The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

This rule is intended to implement Iowa Code section 455B.133.

567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). Except as provided in subrule 22.4(1), the following federal regulations pertaining to the prevention of significant deterioration are adopted by reference, 40 CFR Subsection 52.21 as amended through March 12, 1996.

22.4(1) Federal rules 40 CFR 52.21(a) (Plan Disapproval), 52.21(q) (Public Participation), 52.21(s) (Environmental Impact Statement), and 52.21(u) (Delegation of Authority) are not adopted by reference. Also, for the purposes of 40 CFR 52.21(1), the department adopts by reference Appendix W to 40 CFR 51, Guideline on Air Quality Models (Revised), as adopted March 12, 1996.

22.5(2) *Applicability.* Areas designated as attainment, nonattainment, or unclassified are as listed in 40 CFR §81.316 as amended through March 19, 1998.

a. The requirements contained in rule 22.5(455B) shall apply to any new major stationary source or major modification that, as of the date the permit is issued, is major for any pollutant for which the area in which the source would construct is designated as nonattainment.

b. The requirements contained in rule 22.5(455B) shall apply to each nonattainment pollutant that the source will emit or has the potential to emit in major amounts. In the case of a modification, the requirements shall apply to the significant net emissions increase of each nonattainment pollutant for which the source is major.

c. Particulate matter. If a major source or major modification is proposed to be constructed in an area designated nonattainment for particulate matter, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for particulate matter, but the modeled (EPA-approved guideline model) worst case ground level particulate concentrations due to the major source or major modification in a designated particulate matter nonattainment area is equal to or greater than five micrograms per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

d. Sulfur dioxide. If a major source or major modification is proposed to be constructed in an area designated nonattainment for sulfur dioxide, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for sulfur dioxide, but the modeled (EPA-approved guideline model) worst case ground level sulfur dioxide concentrations due to the major source or major modification in a designated sulfur dioxide nonattainment area is equal to or greater than 25 micrograms per cubic meter (three-hour concentration), five microgram per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

e. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

22.5(3) *Emission offsets.*

a. Emission offsets shall be obtained from the same source or other sources in the same nonattainment area, except that the required emissions reductions may be obtained from a source in another nonattainment area if:

(1) The other area, which must be nonattainment for the same pollutant, has an equal or higher nonattainment classification than the nonattainment area in which the source is located, and

(2) Emissions from such other nonattainment areas contribute to a violation of a National Ambient Air Quality Standard in the nonattainment area in which the proposed new or modified source would construct.

b. Emission offsets for any regulated air contaminant in the designated nonattainment area shall provide for reasonable further progress toward attainment of the applicable National Ambient Air Quality Standards and provide a positive net air quality benefit in the nonattainment area.

c. The increased emissions of any applicable nonattainment air pollutant allowed from the proposed new or modified source shall be offset by an equal or greater reduction, as applicable, in the total tonnage and impact of actual emissions, as stated in subrule 22.5(4), of such air pollutant from the same or other sources. For purposes of subrule 22.5(3), actual emissions shall be determined in accordance with subparagraphs 22.5(1)*"n"* (1) and (2).

d. All emissions reductions claimed as offset credit shall be federally enforceable prior to, or upon, the issuance of the permit required under this rule and shall be in effect by the time operation of the permitted new source or modification begins.

e. Proposals for emission offsets shall be submitted with the application for a permit for the major source or major modification. All approved emission offsets shall be made a part of the permit and shall be deemed a condition of expected performance of the major source or major modification.

22.5(4) *Acceptable emission offsets.*

a. Equivalence. The effect of the reduction of emissions must be measured or predicted to occur in the same area as the emissions of the major source or major modification. It can be assumed that, if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the major source or major modification and if the air contaminant disperses from substantially the same stack height, the emissions will be equivalent and may be offset. Otherwise, an adequate dispersion model must be used to predict the effect. If the reduction accomplished at the source is as specified in subrule 22.5(3) and if the effect of the reduction is measured or predicted to occur in the same area as the emissions of the major source or major modification, the effect of the reduction at the measured or predicted point does not have to exactly offset the effect of the major source or major modification.

b. Offset ratio. Rescinded IAB 2/14/96, effective 3/20/96.

c. Control of uncontrolled existing sources. If control equipment is proposed for a presently uncontrolled existing source for which controls are not required by rules, then credit may be allowed for any reduction below the source's potential to emit. The reduction shall be proposed at the time of permit application. Any such reductions which occurred prior to January 1, 1978, shall not be accepted for offsets.

d. Greater control of existing sources. If more effective control equipment for a source already in compliance with the SIP allowable level is proposed to offset the emissions of the major source or major modification in or affecting a nonattainment area, then the difference in the emissions between the actual level on January 1, 1978, and the new level can be credited for offsets. (This does not allow credit to be granted for any reductions in actual emissions required by the SIP subsequent to January 1, 1978.)

For example, if a cyclone that is being used to meet a SIP emission standard is emitting x_1 lbs/hr and if it is to be replaced by a bag filter emitting x_2 lbs/hr, an emission offset equal to $(x_1 - x_2)$ lbs/hr may be allowed toward the total required reduction.

e. Fugitive dust offsets. Credits may be allowed for permanent control of fugitive dust. EPA's "Technical Guidance for Control of Industrial Process Fugitive Particulate Emissions" (EPA-450/3-77-010, March 1977) shall be used as a guide to estimate reduction from fugitive dust controls on traditional sources. Traditional source means a source category for which a particulate emission standard has been established in 567—subrule 23.1(2), 567—paragraph 23.3(2)*"a"* or *"b"* or 567—23.4(455B). The emission factors shall be modified to reflect realistic reductions. This would correspond to a consideration of particles in the less than 3 micron size range and the effectiveness of the fugitive dust control method.

f. Fuel switching credits. Credit may be allowed for fuel switching provided there is a demonstration by the applicant that supplies of the cleaner fuel will be available to the applicant for a minimum of five years. The demonstration must include, as a minimum, a written contract with the fuel supplier that the fuel will not be interrupted. The permit for the existing source shall be amended to provide for maintaining those offsets resulting from the fuel switching before offset credit will be granted.

g. Reduction credits. Credit for an emissions reduction can be claimed to the extent that the administrator and the department have not: (1) relied on it in issuing any permit under regulations approved pursuant to 40 CFR Parts 51 (amended through April 9, 1998), 55 (amended through August 4, 1997), 63 (amended through December 28, 1998), 70 (amended through November 26, 1997), or 71 (amended through October 22, 1997); (2) relied on it in demonstrating attainment or reasonable further progress; or (3) the reduction is not otherwise required under the Clean Air Act. Incidental emissions reductions which are not otherwise required under the Act shall be creditable as emissions reductions for such purposes if such emissions reductions meet the requirements of subrule 22.5(3).

h. Derating of equipment. If the emissions from a major source or major modification are proposed to be offset by reducing the operating capacity of another existing source, then credit may be allowed for this provided proper documentation (such as stack test results) showing the effect on emissions due to derating is submitted. The permit for the existing source must be amended to limit the operating capacity before offsets will be allowed.

i. Shutdown or curtailment.

(1) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are surplus, permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory or attainment demonstration. However, in no event may credit be given for shutdowns which occurred prior to January 1, 1978. For purposes of this paragraph, the director may consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources. The work force shall be notified of the proposed curtailment or shutdown by the source owner or operator.

(2) The reductions described in subparagraph 22.5(4)*"i"*(1) may be credited in the absence of any approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions in 22.5(4)*"i"*(1) are observed.

j. External emission offsets. If the emissions from the major source or major modification are proposed to be offset by reduction of emissions from a source not owned or operated by the owner or operator of the major source or major modification, then credit may be allowed for such reductions provided the external source's permit is amended to require the reduced emissions or a consent order is entered into by the department and the existing source. Consent orders for external offsets must be incorporated into the SIP and be approved by EPA before offset credit may be granted.

22.5(5) *Banking of offsets in nonattainment areas.* If the offsets in a given situation are more than required by 22.5(3) the amount of offsets that is greater than required may be banked for the exclusive use or control of the person achieving the reduction, subject to the limitations of this subrule. If the person achieving the reduction is not an individual, an authorized representative of the person must release control of the banked emissions in writing before another person, other than the commission, can utilize the banked emissions. The banking of offsets creates no property right in those offsets. The commission may proportionally reduce or cancel banked offsets if it is determined that reduction or cancellation is necessary to demonstrate reasonable further progress or to attain the ambient air quality standards. Prior to reduction or cancellation, the commission shall notify the person who banked the offsets.

22.5(6) *Control technology review.*

a. Lowest achievable emission rate. A new or modified major source in a nonattainment area shall comply with the lowest achievable emission rate.

b. For phased construction projects, the determination of the lowest achievable emissions rate shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to the commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of the LAER for the source.

c. State implementation plan, new source performance standards, and emission standards for hazardous air pollutants. A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard of performance under 40 CFR Parts 60 (amended through November 24, 1998), 61 (amended through October 14, 1997), and 63 (amended through December 28, 1998).

22.5(7) *Compliance of existing sources.* If a new major source or major modification is subject to rule 22.5(455B), then all major sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control by the applicant) in Iowa shall be either in compliance with applicable emission standards or under a compliance schedule approved by the commission.

22.5(8) *Alternate site analysis.* The permit application shall contain a submittal of an alternative site analysis. Such submittal shall include analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed source. The analysis must demonstrate that benefits of the proposed source significantly outweigh the environmental and social costs that would result from its location, construction or modification. Such analysis shall be completed prior to permit issuance.

22.5(9) *Additional conditions for permit approval.*

a. For the air pollution control requirements applicable to subrule 22.5(6), the permit shall require the source to monitor, keep records, and provide reports necessary to determine compliance with and deviations from applicable requirements.

b. The state shall not issue the permit if the administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed stationary source or modification is to be constructed.

22.5(10) *Public availability of information.* No permit shall be issued until notice and opportunity for public comment are made available in accordance with the procedure described in 40 CFR 51.161 (as amended through November 7, 1986).

567—22.6(455B) Nonattainment area designations. Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the administrator of the federal Environmental Protection Agency a list of areas that exceed the ambient air quality standards, that are lower than those standards, or that cannot be classified on the basis of current data. A list of Iowa's nonattainment area designations is found at 40 CFR Part 81.316 as amended through March 19, 1998. The commission uses the document entitled "Criteria for Revising Nonattainment Area Designations"* (June 14, 1979) to determine when and to what extent the list will be revised and resubmitted.

*Filed with Administrative Rules Coordinator, also available from the department.

567—22.7(455B) Alternative emission control program.

22.7(1) *Applicability.* The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR §81.316 amended March 19, 1998) or located in an area with an approved State Implementation Plan (SIP) demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

a. The applicant is presently in compliance with EPA approved SIP requirements, or

b. The applicant is subject to a consent order to meet an EPA approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

22.7(2) *Demonstration requirements.* The applicant for the alternative emission control program shall have the burden of demonstrating that:

a. The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Clean Air Act;

b. The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact; (In the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff.)

c. The pollutants being exchanged are comparable and within the same pollutant category;

d. Hazardous air pollutants designated in 40 CFR Part 61, as amended through October 14, 1997, will not be exchanged for nonhazardous air pollutants;

e. The alternative program will not result in any delay in compliance by any source.

Specific situations may require additional demonstration as specified at 44 FR 71780-71788, December 11, 1979, or as requested by the director.

22.7(3) *Approval process.*

a. The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.

b. After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.

c. If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the State Implementation Plan. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

567—22.8(455B) Permit by rule.

22.8(1) *Permit by rule for spray booths.* Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

a. Definition. "Sprayed material" is material sprayed from spray equipment when used in the surface coating process in the spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents.

b. Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all requirements, except that they must submit the certification in 22.8(1)*"e"* to the department and keep records of daily sprayed material use. The facility must keep the records of daily sprayed material use for 18 months from the date to which the records apply.

c. Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day are exempt from all requirements, except that they must submit the certification in 22.8(1)*"e"* to the department, keep records of daily sprayed material use, and vent emissions from spray booth(s) through stack(s) which is at least 22 feet tall, measured from ground level. The facility must keep the records of daily sprayed material use for 18 months from the date to which the records apply.

d. Facilities which facilitywide spray more than three gallons per day must comply with all applicable statutes and rules.

e. Facilities which claim to be permitted by provisions of this rule must submit to the department a written statement as follows:

"I certify that all paint booths at the facility and listed below are in compliance with all applicable requirements of 567 IAC 22.8(1) and all other applicable requirements, including but not limited to the allowable emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13). I understand that this equipment shall be deemed permitted under the terms of 567 IAC 22.8(1) only if all applicable requirements of 567 IAC 22.8(1) are met. This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete."

The certification must be signed by one of the following individuals.

(1) For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at 567 IAC 22.100(455B).

(2) For partnerships, a general partner.

(3) For sole proprietorships, the proprietor.

(4) For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

22.8(2) Reserved.

567—22.9 to 22.99 Reserved.

567—22.100(455B) Definitions for Title V operating permits. For purposes of rules 22.100(455B) to 22.116(455B), the following terms shall have the meaning indicated in this rule:

"Act" means the Clean Air Act, 42 U.S.C. Sections 7401, et seq.

"High risk pollutant" means one of the following hazardous air pollutants listed in Table 1 in 40 CFR 63.74 as amended through October 21, 1994.

cas #	chemical name	weighting factor
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
107131	Acrylonitrile	10
0	Arsenic compounds	100
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000
0	Beryllium compounds	10
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
0	Cadmium compounds	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
0	Chromium compounds	100
107302	Chloromethyl methyl ether	10
0	Coke oven emissions	10
334883	Diazomethane	10
132649	Dibenzofuran	10
96128	1,2-Dibromo-3-chloropropane	10
111444	Dichloroethyl ether(Bis(2-chloroethyl)ether)	10
79447	Dimethylcarbamoyl chloride	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100
77474	Hexachlorocyclopentadiene	100
302012	Hydrazine	100
0	Manganese compounds	10
0	Mercury compounds	100
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
0	Nickel compounds	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10

7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
8001352	Toxaphene (chlorinated camphene)	100
75014	Vinyl chloride	10

"Major source" means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:

For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.

For radionuclides, "major source" shall have the meaning specified by the administrator by rule as of January 18, 1994.

3. A major stationary source as defined in Part D of Title I of the Act, including:

For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe" and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

For carbon monoxide nonattainment areas (1) that are classified as "serious" and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;

For particulate matter (PM-10), nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

22.101(2) Title V deferred stationary sources. The requirement to obtain a Title V permit is deferred for all sources listed in 22.101(1) that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act, unless by the final promulgation of a federal standard to which the source is subject under the provisions of 40 CFR Part 60 (as amended through November 24, 1998), 40 CFR Part 63 (as amended through December 28, 1998), or 567—subrule 23.1(5), a source is required to obtain a Title V permit. Each source receiving a deferral under the provisions of this rule shall submit a Title V permit application to the department within 12 months of the date when the requirement to obtain a Title V permit is no longer deferred for that source.

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

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

22.102(1) Residential wood heaters required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, as amended to November 24, 1998.

22.102(2) Asbestos demolition and renovation projects required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, as amended to June 19, 1995.

22.102(3) Any decorative chromium electroplating operation or chromium anodizing operation using fume suppressants as an emission reduction technology; and any decorative chromium electroplating operation using a trivalent chromium bath incorporating a wetting agent as a bath ingredient if the source is not by itself a major source and is not located at a major source, as defined under 40 CFR 70.2 (as amended through July 21, 1992).

22.102(4) Any batch cold solvent cleaning machine as defined in 40 CFR 63 Subpart T (as amended through June 5, 1995) that is not itself a major source and that is not located at a major source as defined under 40 CFR 70.2 (as amended through July 21, 1992).

567—22.103(455B) Insignificant activities.

22.103(1) *Insignificant activities excluded from Title V operating permit application.* The following are insignificant activities for purposes of Title V permitting if not needed to determine the applicability of or to impose any applicable requirement. In accordance with 40 CFR 70.5 (as amended through July 21, 1992), these activities need not be included in the Title V permit application or in the calculation of fees pursuant to 22.106(455B). However, if the inclusion of emissions from these activities makes the source subject to the Title V permit requirement or if these activities are needed to impose any applicable requirement, these activities must be included in the permit application.

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

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

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

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

(3) Located in this state.

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

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

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

f. Residential wood heaters, cookstoves, or fireplaces.

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

h. Recreational fireplaces.

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

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

k. Retail gasoline and diesel fuel handling facilities.

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

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

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

4000 lbs per year of carbon monoxide,
1600 lbs per year of nitrogen oxides,
1600 lbs per year of sulfur dioxides,
1000 lbs per year of particulate matter,
600 lbs per year of PM-10,
1600 lbs per year of volatile organic compounds,
1600 lbs per year of ozone,
24 lbs per year of lead,
120 lbs per year of fluorides,
280 lbs per year of sulfuric acid mists,
400 lbs per year of total reduced sulfur compounds,
20 lbs per year of any hazardous air pollutant except high-risk pollutants, or
20 lbs per year of any high-risk air pollutant divided by the weighting factor established in the definition of "High risk pollutant" in 567—22.100(455B).

(2) A storage tank which contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in subparagraph 22.103(2)*"a"*(1).

(3) Insignificant activities which are exempted because of size or production rate must be listed in the application.

b. Emissions rate in tons per year:

Carbon monoxide	100.0
Nitrogen dioxide	40.0
Sulfur dioxide	40.0
Particulate matter	25.0
PM-10	15.0
Volatile organic compounds	40.0
Ozone	40.0
Lead	0.6
Fluorides	3.0
Sulfuric acid mist	7.0
Total reduced sulfur compounds	10.0
Sum of hazardous air pollutants (aggregate of the weighted high-risk and non-high-risk hazardous air pollutants)	0.5

c. Regardless of the classification of an activity as insignificant, an application for a Title V operating permit cannot omit information needed to determine the applicability of, or to impose, any applicable requirement.

d. The following are insignificant if not needed to determine the applicability of or to impose any applicable requirement.

(1) Fuel-burning equipment for indirect heating and reheating furnaces using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour.

(4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.

567—22.104(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

22.104(1) This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

22.104(2) Sources making permit revisions pursuant to rule 22.110(455B) shall not be in violation of this rule.

567—22.105(455B) Title V permit applications.

22.105(1) *Duty to apply.* For each source required to obtain a Title V permit, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, at least four copies of a complete and timely permit application in accordance with this rule.

a. Timely application. Each source applying for a Title V permit shall submit an application:

(1) By November 15, 1994, if source was existing on or before April 20, 1994, for the first time submittals of Title V permit applications. However, a source may choose to defer submittal of Part 2 of the permit application until December 31, 1995. The department will mail notice of the deadline for Part 2 of the permit application to all applicants who have filed Part 1 of the application by October 17, 1995.

(2) At least 6 months but not more than 18 months prior to the date of permit expiration if the application is for a permit renewal.

(3) By January 1, 1996, (for sulfur dioxide) or by January 1, 1998, (for nitrogen oxides) if the application is for an initial Phase II acid rain permit.

(4) At least 6 months prior to any planned significant modification of a Title V permit. See rule 22.113(455B).

(5) Within 12 months of commencing operation for a source subject to 112(g) of the Act or subject to rule 22.4(455B) (prevention of significant deterioration permitting) or subject to rule 22.5(455B) (nonattainment area permitting). Where an existing Title V permit would prohibit such construction or change in operation, the source must obtain a Title V permit revision before commencing operation.

(6) Within 12 months of becoming subject to this rule for a new source or a source which has become subject to the Title V permit requirement after April 20, 1994.

b. Complete application. To be deemed complete, an application must provide all information required pursuant to subrule 22.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

22.105(2) *Standard application form and required information.* To apply for a Title V permit, applicants shall complete the standard permit application form available only from the department of natural resources, and supply all information required by the filing instructions found on that form. The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by rule 22.106(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by paragraph 22.101(1)*"c,"* then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of rule 22.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity. Nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

j. The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

22.105(3) *Hazardous air pollutant early reduction application.* Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with its Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4)*"d."*

22.105(4) *Acid rain application content.* The acid rain application content shall be as prescribed in the acid rain rules found at rules 22.128(455B) and 22.129(455B).

567—22.106(455B) Title V permit fees.

22.106(1) *Fee established.* Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than $24 per ton without adopting the change pursuant to formal rule making.

22.106(2) *Fee calculation.* The fee amount shall be calculated based on the first 4,000 tons of each regulated air pollutant or contaminant emitted each year from each major source.

22.106(3) *Fee and documentation due dates.*

a. The fee shall be submitted annually by July 1. The fee shall be submitted with four copies of the following forms:

1. Form 1.0 "Facility identification";
2. Form 5.0 "Title V annual emissions summary/fee"; and
3. Part 3 "Application certification."

b. Four copies of the following forms shall be submitted annually by March 31 documenting actual emissions for the previous calendar year:

1. Form 1.0 "Facility identification";
2. Form 4.0 "Emission unit—actual operations and emissions" for each emission unit;
3. Form 5.0 "Title V annual emissions summary/fee"; and
4. Part 3 "Application certification."

If there are any changes to the emission calculation form, the department shall make revised forms available to the public by January 1. If revised forms are not available by January 1, forms from the previous year may be used and the year of emissions documented changed. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

22.106(4) *Phase I acid rain sources.* No fee shall be required to be paid for emissions which occur during the years 1993 through 1999 inclusive, with respect to any Phase I acid rain affected unit under Section 404 of the Act.

22.106(5) *Operation in Iowa.* The fee for a portable emissions unit or stationary source which operates both in Iowa and out of state shall be calculated only for emissions from the source while operating in Iowa.

22.106(6) *Title V deferred stationary sources.* No fee shall be required to be paid for emissions until the year in which sources deferred under subrule 22.101(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

22.106(7) *Insignificant activities.* No fee shall be required to be paid for insignificant activities, as defined in rule 22.103(455B).

567—22.107(455B) Title V permit processing procedures.

22.107(1) *Action on application.*

a. Conditions for action on application. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under rule 22.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under rule 22.112(455B), the permitting authority has complied with the requirements for public participation under subrule 22.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under subrule 22.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The administrator has received a copy of the proposed permit and any notices required under subrule 22.107(7), and has not objected to issuance of the permit under subrule 22.107(7) within the time period specified therein;

(6) If the administrator has properly objected to the permit pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, or subrule 22.107(7), then the permitting authority may issue a permit only after the administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

b. Time for action on application. The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

"Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the Act, rules 22.120(455B) to 22.147(455B), 40 CFR Parts 72, 75, 77, 78 as amended through October 24, 1997, 73 as amended through September 28, 1998, and 76 as amended through May 1, 1998, and regulations implementing Sections 407 and 410 of the Act.

"Act" means the Clean Air Act, 42 U.S.C. §7401, et seq., as amended by Public Law No. 101-549 (November 15, 1990).

"Actual SO_2 emissions rate" means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the National Allowance Database (NADB), the "1985 actual SO_2 emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO_2RTE."

"Administrator" means the administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

"Affected source" means a source that includes one or more affected units.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation.

"Affiliate" shall have the meaning set forth in Section 2(a)(11) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(11), as of November 15, 1990.

"Allocate" or *"allocation"* means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.

"Allowance" means an authorization by the administrator under the acid rain program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

"Allowance deduction" or *"deduct"* when referring to allowances means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount to account for the number of the tons of SO_2 emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in rule 567—25.2(455B), or for any other allowance surrender obligations of the acid rain program.

"Allowances held" or *"hold allowances"* means the allowances recorded by the administrator, or submitted to the administrator for recordation in accordance with 40 CFR 73.50 as amended through January 11, 1993, in an allowance tracking system account.

"Allowance tracking system" or *"ATS"* means the acid rain program system by which the administrator allocates, records, deducts, and tracks allowances.

"Allowance tracking system account" means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring, and using allowances.

"Allowance transfer deadline" means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

"Alternative contemporaneous annual emission limitation" means the maximum allowable NO_x emission rate (on a lb/mmBtu, annual average basis) assigned to an individual unit in a NO_x emissions averaging plan pursuant to 40 CFR 76.10, as amended through December 19, 1996.

"Alternative technology" means a control technology for reducing NO_x emissions that is outside the scope of the definition of low NO_x burner technology. Alternative technology does not include overfire air as applied to wall-fired boilers or separated overfire air as applied to tangentially fired boilers.

"Approved clean coal technology demonstration project" means a project using funds appropriated under the Department of Energy's "Clean Coal Technology Demonstration Program," up to a total amount of $2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Arch-fired boiler" means a dry bottom boiler with circular burners, or coal and air pipes, oriented downward and mounted on waterwalls that are at an angle significantly different from the horizontal axis and the vertical axis. This definition shall include only the following units: Holtwood unit 6, and Sunbury units 1A, 1B, 2A, and 2B. This definition shall exclude dry bottom turbo-fired boilers.

"Authorized account representative" means a responsible natural person who is authorized, in accordance with 40 CFR Part 73 as amended through September 28, 1998, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

"Basic Phase II allowance allocations" means:

(1) For calendar years 2000 to 2009 inclusive, allocations of allowances made by the administrator pursuant to Section 403 and Section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j).

(2) For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to Section 403 and Section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j).

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

"Cell burner boiler" means a wall-fired boiler that utilizes two or three circular burners combined into a single vertically oriented assembly that results in a compact, intense flame. Any low NO_x retrofit of a cell burner boiler that reuses the existing cell burner, close-coupled wall opening configuration would not change the designation of the unit as a cell burner boiler.

"Certificate of representation" means the completed and signed submission required by 40 CFR 72.20 as amended through October 24, 1997, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source(s) and of the affected units at such source(s) with regard to matters under the acid rain program.

"Certifying official" means:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

(2) For partnership or sole proprietorship, a general partner or the proprietor, respectively; and

(3) For a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 "Standard Classification of Coals by Rank."

"Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquefied or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

"Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMEFUEL."

"Coal-fired utility unit" means a utility unit in which the combustion of coal (or any coal-derived fuel) on a Btu basis exceeds 50.0 percent of its annual heat input during the following calendar year: for Phase I units, in calendar year 1990 and, for Phase II units, in the calendar year 1995 or, for a Phase II unit that did not combust any fuel that resulted in the generation of electricity in calendar year, and any calendar year during the period from 1990 through 1995. For the purposes of rules 22.120(455B) through 22.147(455B), this definition shall apply notwithstanding the definition at 40 CFR 72.2, as amended through October 24, 1997.

"Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

"Combustion controls" means technology that minimizes NO_x formation by staging fuel and combustion air flows in a boiler. This definition shall include low NO_x burners, overfire air, or low NO_x burners with overfire air.

"Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

"Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

"Common stack" means the exhaust of emissions from two or more units through a single flue.

"Compliance certification" means a submission to the department or the administrator that is required by rules 22.120(455B) to 22.147(455B), by 40 CFR Parts 72, 75, 77, 78 as amended through October 24, 1997, 73 as amended through September 28, 1998, and 76 as amended through May 1, 1998, or by regulations implementing Sections 407 or 410 of the Act to report an affected source or an affected unit's compliance or noncompliance with a provision of the acid rain program and that is signed and verified by the designated representative in accordance with Subpart B of 40 CFR Part 72 as amended through October 24, 1997, rules 22.146(455B) and 22.147(455B), and the acid rain program regulations generally.

"Compliance plan," for purposes of the acid rain program, means the document submitted for an affected source in accordance with rules 22.128(455B) and 22.129(455B) specifying the method(s) (including one or more acid rain compliance options under rule 22.132(455B) or rules implementing Section 407 of the Act) by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.

"Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to 40 CFR 73.31 (a) or (b) as amended through July 30, 1993, in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) as amended through April 4, 1995, until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35(b) as amended through April 4, 1995, allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.

"Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.

"Construction" means fabrication, erection, or installation of a unit or any portion of a unit.

"Cyclone boiler" means a boiler with one or more water-cooled horizontal cylindrical chambers in which coal combustion takes place. The horizontal cylindrical chamber(s) is (are) attached to the bottom of the furnace. One or more cylindrical chambers are arranged either on one furnace wall or on two opposed furnace walls. Gaseous combustion products exiting from the chamber(s) turn 90 degrees to go up through the boiler while coal ash exits the bottom of the boiler as a molten slag.

"Demonstration period" means a period of time not less than 15 months, approved under 40 CFR 76.10, as amended through December 19, 1996, for demonstrating that the affected unit cannot meet the applicable emission limitation under 40 CFR Sections 76.5 or 76.7 as amended through December 19, 1996, or 76.6, as amended through June 12, 1997, and establishing the minimum NO_x emission rate that the unit can achieve during long-term load dispatch operation.

"Department" means the Iowa department of natural resources and is the state acid rain permitting authority.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72 as amended through October 24, 1997, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in rules 22.100(455B) to 22.116(455B), it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

"Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American Society for Testing and Materials ASTM D975-91, "Standard Specification for Diesel Fuel Oils."

"Direct public utility ownership" means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

"Draft acid rain permit" means the version of the acid rain permit, or the acid rain portion of a Title V operating permit, that the department offers for public comment.

"Dry bottom" means the boiler has a furnace bottom temperature below the ash melting point and the bottom ash is removed as a solid.

"Economizer" means the lowest temperature heat exchange section of a utility boiler where boiler feed water is heated by the flue gas.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator, in accordance with the emissions monitoring requirements of rule 25.2(455B).

"Excess emissions" means:

1. Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the acid rain emissions limitation for sulfur dioxide for the unit; and
2. Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the acid rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

"Existing unit" means a unit (including a unit subject to Section 111 of the Act) that commenced commercial operation before November 15, 1990, and that on or after November 15, 1990, served a generator with a nameplate capacity of greater than 25 MWe. Existing unit does not include simple combustion turbines or any unit that on or after November 15, 1990, served only generators with a nameplate capacity of 25 MWe or less. Any existing unit that is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an existing unit.

"Facility" means any institutional, commercial, or industrial structure, installation, plant, source, or building.

"Flue gas" means the combustion products arising from the combustion of fossil fuel in a utility boiler.

567—22.121(455B) Measurements, abbreviations, and acronyms. Measurements, abbreviations, and acronyms used in rules 22.120(455B) to 22.147(455B) are defined as follows:

"ASTM" means American Society for Testing and Materials.

"Btu" means British thermal unit.

"CFR" means Code of Federal Regulations.

"DOE" means Department of Energy.

"EPA" means Environmental Protection Agency.

"mmBtu" means million Btu.

"MWe" means megawatt electrical.

"SO_2" means sulfur dioxide.

567—22.122(455B) Applicability.

22.122(1) Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

a. A unit listed in Table 1 of 40 CFR 73.10(a) (as adopted October 24, 1997).

b. An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10 as amended through September 28, 1998, and any other existing utility unit, except a unit under subrule 22.122(2).

c. A utility unit, except a unit under subrule 22.122(2), that:

(1) Is a new unit;

(2) Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990;

(3) Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;

(4) Was an exempt cogeneration facility under paragraph 22.122(2)*"d"* but during any three-calendar-year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;

(5) Was an exempt qualifying facility under paragraph 22.122(2)"*e*" but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

(6) Was an exempt independent power production facility under paragraph 22.122(2)"*f*" but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or

(7) Was an exempt solid waste incinerator under paragraph 22.122(2)"*g*" but during any three-calendar-year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.

(8) Is a coal-fired substitution unit that is designated in a substitution plan that was not approved and not active as of January 1, 1995, or is a coal-fired compensating unit.

22.122(2) The following types of units are not affected units subject to the requirements of the acid rain program:

a. A simple combustion turbine that commenced operation before November 15, 1990.

b. Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

c. Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

d. A cogeneration facility which:

(1) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or

(2) For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.

e. A qualifying facility that:

(1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

22.125(7) *Liability.*

a. Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under rules 22.123(455B) or 22.124(455B), including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to Section 113(c) of the Act and by the department pursuant to Iowa Code section 455B.146.

b. Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to Section 113(c) of the Act and 18 U.S.C. 1001 and by the department pursuant to Iowa Code section 455B.146.

c. No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

d. Each affected source and each affected unit shall meet the requirements of the acid rain program.

e. Any provision of the acid rain program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

f. Any provision of the acid rain program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under rule 22.132(455B) (Phase II repowering extension plans), Section 407 of the Act and regulations implementing Section 407 of the Act, and except with regard to the requirements applicable to units with a common stack under rule 567—25.2(455B), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

g. Each violation of a provision of rules 22.120(455B) to 22.147(455B) and 40 CFR Parts 72, 75, 77, 78 as amended through October 24, 1997, 73 as amended through September 28, 1998, and 76 as amended through May 1, 1998, and regulations implementing Sections 407 and 410 of the Act by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

22.125(8) *Effect on other authorities.* No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under rule 22.123(455B) or 22.124(455B) shall be construed as:

a. Except as expressly provided in Title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of Title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;

b. Limiting the number of allowances a unit can hold; provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act;

c. Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state rule, or limiting such state rule, including any prudence review requirements under such state law;

d. Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

e. Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

567—22.126(455B) Designated representative—submissions.

22.126(1) The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72 as amended through October 24, 1997, and, concurrently, shall submit a copy to the department. Whenever the term "designated representative" is used in this rule, the term shall be construed to include the alternate designated representative.

22.126(2) Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

22.126(3) In each submission under the acid rain program, the designated representative shall certify by signature:

a. The following statement, which shall be included verbatim in such submission: "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made."

b. The following statement, which shall be included verbatim in such submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

22.126(4) The department will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subrules 22.126(2) and 22.126(3).

22.126(5) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

a. By the date of submission, of any acid rain program submissions by the designated representative;

b. Within ten business days of receipt of a determination, of any written determination by the administrator or the department; and

c. Provided that the submission or determination covers the source or the unit.

22.126(6) The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subrule 22.126(5), unless the owner or operator expressly waives the right to receive such a copy.

567—22.127(455B) Designated representative—objections.

22.127(1) Except as provided in 40 CFR 72.23 as amended through January 11, 1993, no objection or other communication submitted to the administrator or the department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the department, under the acid rain program. In the event of such communication, the department is not required to stay any submission or the effect of any action or inaction under the acid rain program.

22.127(2) The department will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

567—22.133(455B) Acid rain permit contents—general.

22.133(1) Each acid rain permit (including any draft acid rain permit) will contain the following elements:

a. All elements required for a complete acid rain permit application under rule 22.129(455B), as approved or adjusted by the department;

b. The applicable acid rain emissions limitation for sulfur dioxide; and

c. The applicable acid rain emissions limitation for nitrogen oxides.

22.133(2) Each acid rain permit is deemed to incorporate the definitions of terms under rule 22.120(455B).

567—22.134(455B) Acid rain permit shield. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the Act, as provided in rules 22.120(455B) to 22.146(455B), rule 567—25.2(455B), or 40 CFR Parts 72, 75, 77, 78 as amended through October 24, 1997, 73 as amended through September 28, 1998, and 76 as amended through May 1, 1998, and the regulations implementing Section 407 of the Act, shall be deemed to be operating in compliance with the acid rain program, except as provided in paragraph 22.125(7)*"f."*

567—22.135(455B) Acid rain permit issuance procedures—general. The department will issue or deny all acid rain permits in accordance with rules 22.100(455B) to 22.116(455B), including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by rules 22.135(455B) to 22.145(455B).

567—22.136(455B) Acid rain permit issuance procedures—completeness. The department will submit a written notice of application completeness to the administrator within ten working days following a determination by the department that the acid rain permit application is complete.

567—22.137(455B) Acid rain permit issuance procedures—statement of basis.

22.137(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

22.137(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

22.137(3) The department will submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.

567—22.138(455B) Issuance of acid rain permits.

22.138(1) Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to subrules 22.107(6) and 22.107(7)), the department will address any objections by the administrator, incorporate all necessary changes and issue or deny the acid rain permit.

22.138(2) The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with rules 22.100(455B) to 22.116(455B), the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

22.138(3) Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR 70.8(c) as amended to July 21, 1992, the administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with rules 22.133(455B) and 22.134(455B).

22.138(4) No acid rain permit including a draft or proposed permit shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72 as amended through October 24, 1997.

22.138(5) Permit issuance deadline and effective date.

a. On or before December 31, 1997, the department will issue an acid rain permit to each affected source whose designated representative submitted a timely and complete acid rain permit application by January 1, 1996, in accordance with rule 22.126(455B) and meets the requirements of rules 22.135(455B) to 22.139(455B) and rules 22.100(455B) to 22.116(455B).

b. Nitrogen oxides. Not later than January 1, 1999, the department will reopen the acid rain permit to add the acid rain program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with rule 22.126(455B). Such reopening shall not affect the term of the acid rain portion of a Title V operating permit.

c. Each acid rain permit issued in accordance with paragraph 22.138(5)*"a"* shall take effect by the later of January 1, 2000, or, where the permit governs a unit under paragraph 22.122(1)*"c,"* the deadline for monitor certification under rule 567—25.2(455B).

d. Each acid rain permit shall have a term of five years commencing on its effective date.

e. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

22.138(6) Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

22.138(7) Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

567—22.139(455B) Acid rain permit appeal procedures.

22.139(1) Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the administrator under 40 CFR Parts 72, 75, 77, 78 as amended through October 24, 1997, 73 as amended through September 28, 1998, and 76 as amended through May 1, 1998, and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference at 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 as amended through October 24, 1997, and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

22.142(2) The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this rule or permit modifications under rule 22.141(455B):

a. Incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;

b. Addition of a nitrogen oxides averaging plan to a permit; and

c. Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

567—22.143(455B) Administrative permit amendment.

22.143(1) Administrative amendments shall follow the procedures set forth at rule 22.111(455B). The department will submit the revised portion of the permit to the administrator within ten working days after the date of final action on the request for an administrative amendment.

22.143(2) The following permit revisions are administrative amendments:

a. Activation of a compliance option conditionally approved by the department; provided that all requirements for activation under subrule 22.131(3) and rule 22.132(455B) are met;

b. Changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72 as amended through October 24, 1997;

c. Correction of typographical errors;

d. Changes in names, addresses, or telephone or facsimile numbers;

e. Changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the administrator and the department in accordance with Subpart B of 40 CFR Part 72 as amended through October 24, 1997;

f. Termination of a compliance option in the permit; provided that all requirements for termination under subrule 22.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

g. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with rule 22.125(455B);

h. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period; provided that the requirements of regulations implementing Section 407 of the Act are met; and

i. Incorporation of changes that the administrator has determined to be similar to those in paragraphs *"a"* through *"h"* of this subrule.

567—22.144(455B) Automatic permit amendment. The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's acid rain permit by operation of law without any further review:

22.144(1) Upon recordation by the administrator under 40 CFR Part 73 as amended through September 28, 1998, all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account; and

22.144(2) Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77 as amended through October 24, 1997.

567—22.145(455B) Permit reopenings.

22.145(1) As provided in rule 22.114(455B), the department will reopen an acid rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

22.145(2) In reopening an acid rain permit for cause, the department will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of rules 22.135(455B) to 22.139(455B).

22.145(3) Any reopening of an acid rain permit shall not affect the term of the permit.

567—22.146(455B) Compliance certification—annual report.

22.146(1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90 as amended through October 24, 1997.

22.146(2) The submission of complete compliance certifications in accordance with subrule 22.146(1) and rule 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under paragraph 22.108(15)*"e"* with regard to the acid rain portion of the source's Title V operating permit.

567—22.147(455B) Compliance certification—units with repowering extension plans. Rescinded IAB 4/8/98, effective 5/13/98.

567—22.148(455B) Sulfur dioxide opt-ins. The department adopts by reference the provisions of 40 CFR Part 74, Acid Rain Opt-Ins, as amended through April 4, 1995.

567—22.149 to 22.199 Reserved.

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

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

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

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

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

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

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

22.201(2) Exceptions.

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

b. Sources which are not major sources but subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act; or 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for a voluntary operating permit. These sources shall be required to obtain a Title V operating permit when the deferment period specified in 567—subrule 22.101(2) has expired or no longer applies, or a standard is promulgated under 40 CFR Part 60 or 63 to which the source is subject.

567—22.202(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application for an operating permit, except in compliance with a properly issued Title V operating permit or a properly issued voluntary operating permit or operating permit by rule for small sources. However, if a source submits a timely and complete application for permit issuance (including renewal), the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

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

22.203(1) *Duty to apply.* Any source which would qualify for a voluntary operating permit and which would not qualify under the provisions of rule 22.300(455B), Operating permit by rule for small sources, must apply for either a voluntary operating permit or a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in rule 22.202(455B) and rule 22.300(455B). For each source applying for a voluntary operating permit, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, an original and one copy of a timely and complete permit application in accordance with this rule.

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

(1) By July 1, 1996, if the source is existing on or before July 1, 1995, unless otherwise required to obtain a Title V permit under rule 22.101(455B);

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

(3) Within 12 months of becoming subject to rule 22.101(455B) for a new source or a source which would otherwise become subject to the Title V permit requirement after July 1, 1995.

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

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

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

567—22.209 to 22.299 Reserved.

567—22.300(455B) Operating permit by rule for small sources. Except as provided in 567—subrules 22.201(2) and 22.300(11), any source which otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources which comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

22.300(1) *Definitions for operating permit by rule for small sources.* For the purposes of rule 22.300(455B), the definitions shall be the same as the definitions found at rule 22.100(455B).

22.300(2) *Registration for operating permit by rule for small sources.*

a. Except as provided in subrules 22.300(3) and 22.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in subrule 22.300(6).

b. Eligibility for an operating permit by rule for small sources does not eliminate the source's responsibility to meet any and all applicable federal requirements including, but not limited to, a maximum achievable control technology (MACT) standard.

c. Nothing in this rule shall prevent any stationary source which has had a Title V operating permit or a voluntary operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or a voluntary operating permit or upon rescission of a Title V operating permit or a voluntary operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in subrule 22.300(6).

d. The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28.

22.300(3) *Exceptions to eligibility.*

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources which meet the registration criteria established in 22.300(2)*"a"* and meet all applicable requirements of rule 22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the deferment period specified in subrule 22.101(2) has expired or no longer applies. Sources subject to standards contained in Section 111 or 112 of the Act shall not be eligible to obtain a small source operating permit unless they are also exempted from Title V by rule 22.102(455B).

c. Sources which meet the registration criteria established in 22.300(2)*"a"* and meet all applicable requirements of rule 22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for an operating permit by rule for small sources until the final promulgation of a federal standard under 40 CFR Part 60 or 40 CFR Part 63 to which the source is subject. These sources shall be required to obtain a Title V or voluntary operating permit when the deferment period specified in subrule 22.101(2) has expired or no longer applies.

22.300(4) *Stationary source with de minimus emissions.* Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 22.300(8). Only the record-keeping and reporting provisions listed in 22.300(4)*"b"* shall apply to a stationary source with de minimus emissions or operations as specified in 22.300(4)*"a"*:

a. De minimus emission and usage limits. For the purpose of this rule a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding HAPs), and
2. 2 tons per year of a single HAP, and
3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source's emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in paragraphs "1" to "9" below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;
2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (per- chloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. 365 gallons of solvent-containing material used at a paint spray unit(s);
4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;
5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;
6. 1,400 gallons of gasoline combusted;
7. 16,600 gallons of diesel fuel combusted;
8. 500,000 gallons of distillate oil combusted; or
9. 71,400,000 cubic feet of natural gas combusted.

b. Record keeping for de minimis sources. Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable record-keeping requirements of this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimis sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or the U.S. EPA, the owner or operator of a stationary source not maintaining records pursuant to subrule 22.300(7) shall demonstrate that the stationary source's emissions or throughput is not in excess of the applicable quantities set forth in paragraph *"a"* above.

22.300(5) *Provision for air pollution control equipment.* The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions that are federally enforceable. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

22.300(6) *Emission limitations.*

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

(1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and

(2) 5 tons per year of a single hazardous air pollutant, and

(3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in paragraph *"a"* of this subrule.

22.300(7) *Record-keeping requirements for non-de minimis sources.* Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable record-keeping requirements in this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 22.300(4) shall comply with the applicable provisions of subrule 22.300(7) (record-keeping requirements) and subrule 22.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in paragraph 22.300(4)*"a."*

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 22.300(7)*"c"* below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years, and be made available to local, state, or U.S. EPA staff upon request.

c. Record-keeping requirements for emission units and emission control equipment. Record-keeping requirements for emission units are specified below in 22.300(7)*"c"*(1) through 22.300(7)*"c"*(4). Record-keeping requirements for emissions control equipment are specified in 22.300(7)*"c"*(5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: material safety data sheets (MSDS), manufacturer's product specifications, and material VOC content reports for each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used showing at least the product manufacturer, product name and code, VOC and hazardous air pollutant content;
2. A description of any equipment used during and after coating/solvent application, including type, make and model; maximum design process rate or throughput; and control device(s) type and description (if any);
3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and
4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and
2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and
2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.

(4) Emission control unit. The owner or operator of a stationary source subject to this rule that contains an emission control unit shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control unit;

2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; and maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer's design/repair/maintenance manual; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

(5) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subparagraph (1), (2), or (3) above shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make and model; and maximum design process rate or throughput;

2. A monthly log of operating hours and each raw material used and its amount; and

3. Purchase orders, invoices, or other documents to support information in the monthly log.

22.300(8) *Registration and reporting requirements.*

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources, apply for a voluntary operating permit, or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V or a valid voluntary operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in rules 22.104(455B) and 22.202(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to rule 22.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under rule 22.101(455B).

2. Within 12 months of becoming subject to rule 22.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source which would otherwise become subject to the Title V permit requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete the registration form must provide all information required pursuant to 22.300(8)*"b."*

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

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

b. At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, predicted actual emissions from the source; and to determine whether the source is subject to the exceptions listed in subrule 22.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 22.100(455B).

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

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CHAPTER 23
EMISSION STANDARDS FOR CONTAMINANTS

[Prior to 7/1/83, DEQ Ch 4]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—23.1(455B) Emission standards.

23.1(1) *In general.* The federal standards of performance for new stationary sources (new source performance standards) shall be applicable as specified in subrule 23.1(2). The federal standards for hazardous air pollutants (national emission standards for hazardous air pollutants) shall be applicable as specified in subrule 23.1(3). The federal standards for hazardous air pollutants for source categories (national emission standards for hazardous air pollutants for source categories) shall be applicable as specified in subrule 23.1(4). The federal emission guidelines (emission guidelines) shall be applicable as specified in subrule 23.1(5). Compliance with emission standards specified elsewhere in this chapter shall be in accordance with 567—Chapter 21.

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through November 24, 1998, and 40 CFR Part 503 as adopted on October 25, 1995, are adopted by reference, except § 60.530 through § 60.539b, and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. Fossil fuel-fired steam generators. A fossil fuel-fired steam generating unit of more than 250 million Btu heat input for which construction, reconstruction, or modification is commenced after August 17, 1971. Any facility covered under paragraph *"z"* is not covered under this paragraph. (Subpart D)

b. Incinerators. An incinerator of more than 50 tons per day charging rate. (Subpart E)

c. Portland cement plants. Any of the following in a Portland cement plant: kiln; clinker cooler; raw mill system; finish mill system; raw mill dryer; raw material storage; clinker storage; finished product storage; conveyor transfer points; bagging and bulk loading and unloading systems. (Subpart F)

d. Nitric acid plants. A nitric acid production unit. (Subpart G)

e. Sulfuric acid plants. A sulfuric acid production unit. (Subpart H)

f. Asphalt concrete plants. An asphalt concrete plant. (Subpart I)

g. Petroleum refineries. Any of the following at a petroleum refinery: fluid catalytic cracking unit catalyst regenerator; fluid catalytic cracking unit incinerator-waste heat boilers; fuel gas combustion devices; and claus sulfur recovery plants greater than 20 long tons per day. (Subpart J)

h. Secondary lead smelters. Any of the following in a secondary lead smelter: pot furnaces of more than 250 kilograms (550 pounds) charging capacity; blast (cupola) furnaces; and reverberatory furnaces. (Subpart L)

i. Secondary brass and bronze ingot production plants. Any of the following at a secondary brass and bronze ingot production plant; reverberatory and electric furnaces of 1000/kilograms (2205 pounds) or greater production capacity and blast (cupola) furnaces of 250 kilograms per hour (550 pounds per hour) or greater production capacity. (Subpart M)

j. Iron and steel plants. A basic oxygen process furnace. (Subpart N)

k. Sewage treatment plants. An incinerator which burns the sludge produced by municipal sewage treatment plants. (Subpart O of 40 CFR 60 and Subpart E of 40 CFR 503.)

l. Steel plants. Either of the following at a steel plant: electric arc furnaces and dust-handling equipment, the construction, modification, or reconstruction of which commenced after October 21, 1974, and on or before August 17, 1983. (Subpart AA)

m. Primary copper smelters. Any of the following at a primary copper smelter: dryer, roaster, smelting furnace and copper converter. (Subpart P)

n. Primary zinc smelters. Either of the following at a primary zinc smelter: a roaster or a sintering machine. (Subpart Q)

o. Primary lead smelter. Any of the following at a primary lead smelter: sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, converter and electric smelting furnace. (Subpart R)

p. Primary aluminum reduction plants. Either of the following at a primary aluminum reduction plant: potroom groups and anode bake plants. (Subpart S)

q. Wet process phosphoric acid plants in the phosphate fertilizer industry. A wet process phosphoric acid plant, which includes any combination of the following: reactors, filters, evaporators and hotwells. (Subpart T)

r. Superphosphoric acid plants in the phosphate fertilizer industry. A superphosphoric acid plant which includes any combination of the following: evaporators, hotwells, acid sumps, and cooling tanks. (Subpart U)

s. Diammonium phosphate plants in the phosphate fertilizer industry. A granular diammonium phosphate plant which includes any combination of the following: reactors, granulators, dryers, coolers, screens and mills. (Subpart V)

t. Triple super phosphate plants in the phosphate fertilizer industry. A triple super phosphate plant which includes any combination of the following: mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills and facilities which store run-of-pile triple superphosphate. (Subpart W)

u. Granular triple superphosphate storage facilities in the phosphate fertilizer industry. A granular triple superphosphate storage facility which includes any combination of the following: storage or curing piles, conveyors, elevators, screens and mills. (Subpart X)

v. Coal preparation plants. Any of the following at a coal preparation plant which processes more than 200 tons per day: thermal dryers; pneumatic coal cleaning equipment (air tables); coal processing and conveying equipment (including breakers and crushers); coal storage systems; and coal transfer and loading systems. (Subpart Y)

w. Ferroalloy production. Any of the following: electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment. (Subpart Z)

x. Kraft pulp mills. Any of the following in a kraft pulp mill: digester system; brown stock washer system; multiple effect evaporator system; black liquor oxidation system; recovery furnace; smelt dissolving tank; lime kiln; and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of the standard of performance are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. (Subpart BB)

y. Lime manufacturing plants. A rotary lime kiln or a lime hydrator used in the manufacture of lime at other than a kraft pulp mill. (Subpart HH)

e. Vinyl chloride. Ethylene dichloride purification and the oxychlorination reactor in ethylene dichloride plants. Vinyl chloride formation and purification in vinyl chloride plants. Any of the following involving polyvinyl chloride plants: reactor; stripper; mixing, weighing, and holding containers; monomer recovery system; sources following the stripper(s). Any of the following involving ethylene dichloride, vinyl chloride, and polyvinyl chloride plants: relief valve discharge; fugitive emission sources. (Subpart F)

f. Equipment leaks of benzene (fugitive emission sources). Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle benzene. (Subpart J)

g. Equipment leaks of volatile hazardous air pollutants (fugitive emission sources). Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle volatile hazardous air pollutants. (Subpart V)

h. Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities. Each metallic arsenic production plant and each arsenic trioxide plant that processes low-grade arsenic bearing materials by a roasting condensation process. (Subpart P)

i. Inorganic arsenic emissions from glass manufacturing plants. Each glass melting furnace (except pot furnaces) that uses commercial arsenic as a raw material. (Subpart N)

j. Inorganic arsenic emissions from primary copper smelters. Each copper converter at any new or existing primary copper smelter except as noted in 40 CFR §61.172(a). (Subpart O)

k. Benzene emissions from coke by-product recovery plants. Each of the following sources at furnace and foundry coke by-product recovery plants: tar decanters, tar storage tanks, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing, final coolers, final-cooler cooling towers, and the following equipment that is intended to operate in benzene service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by 40 CFR §61.135.

The provisions of this subpart also apply to benzene storage tanks, BTX storage tanks, light-oil storage tanks, and excess ammonia-liquor storage tanks at furnace coke by-product recovery plants. (Subpart L)

l. Benzene emissions from benzene storage vessels. Unless exempted, each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified in ASTM D 836-84 for Industrial Grade Benzene, ASTM D 835-85 for Refined Benzene-485, ASTM D 2359-85a for Refined Benzene-535, and ASTM D 4734-87 for Refined Benzene-545. These specifications are incorporated by reference as specified in 40 CFR §61.18. (Subpart Y)

m. Benzene emissions from benzene transfer operations. Unless exempted, the total of all loading racks at which benzene is loaded into tank trucks, rail cars, or marine vessels at each benzene production facility and each bulk terminal. (Subpart BB)

n. Benzene waste operations. Unless exempted, the provisions of this subrule apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by any of these listed facilities. (Subpart FF)

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended through December 28, 1998, are adopted by reference, except 40 CFR §§ 63.6(g) and (h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), 63.10(f), 63.12, 63.14, 63.15, 63.40(a), 63.42(a), (b), 63.43(c), (f)-(m), 63.560 (b), (e) (2), (3), and 63.562 (c), (d), and shall apply to the following affected facilities. The corresponding 40 CFR Part 63 Subpart designation is in parentheses. 40 CFR Part 63 Subpart B incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purpose of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule an "area source" means any stationary source of hazardous air pollutants that is not a major stationary source as defined in this paragraph. Paragraph 23.1(4)*"a,"* general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

a. General provisions. General provisions apply to owners or operators of affected activities or facilities except when otherwise specified in a particular subpart or in a relevant standard. (Subpart A)

b. Requirements for control technology determinations for major sources in accordance with Clean Air Act Sections 112(g) and 112(j). (Subpart B)

(1) Section 112(g) requirements. For the purposes of this subparagraph, the definitions shall be the same as the definitions found in 40 CFR 63.2 and 40 CFR 63.41 as amended through December 27, 1996. The owner or operator of a new or reconstructed major source of hazardous air pollutants must apply maximum achievable control technology (MACT) for new sources to the new or reconstructed major source. If the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to Section 112(d), Section 112(h), or Section 112(j) of the Clean Air Act and incorporated in another subpart of 40 CFR Part 63, excluded in 40 CFR 63.40(e) and (f), or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998, then the major source in question is not subject to the requirements of this subparagraph. The owner or operator of an affected source shall apply for a construction permit as required in 567—paragraph 22.1(1)*"b."* The construction permit application shall contain an application for a case-by-case MACT determination for the major source.

(2) Section 112(j) requirements. The owner or operator of a new or existing major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the U.S. Environmental Protection Agency has failed to promulgate an emission standard within 18 months of the deadline established under 112(d) must submit an application for a Title V permit or an application for a significant permit modification or for an administrative amendment, whichever is applicable. The application must be made in accordance with procedures established under Title V, by the Section 112(j) deadline. In addition, the owner or operator of a new emission unit may submit an application for a Notice of MACT Approval before construction.

c. Reserved.

d. Compliance extensions for early reductions of hazardous air pollutants. Compliance extensions for early reductions of hazardous air pollutants are available to certain owners or operators of an existing source who wish to obtain a compliance extension from a standard issued under Section 112(d) of the Act. (Subpart D)

e. Reserved.

f. Emission standards for organic hazardous air pollutants from the synthetic chemical manufacturing industry. These standards apply to chemical manufacturing process units that are part of a major source. These standards include applicability provisions, definitions and other general provisions that are applicable to Subparts F, G, and H of 40 CFR 63. (Subpart F)

g. Emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater. These standards apply to all process vents, storage vessels, transfer racks, and wastewater streams within a source subject to Subpart F of 40 CFR 63. (Subpart G)

h. Emission standards for organic hazardous air pollutants for equipment leaks. These standards apply to emissions of designated organic hazardous air pollutants from specified processes that are located at a plant site that is a major source. Affected equipment includes: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems and control devices or systems required by this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63. In organic hazardous air pollutant or in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAPs as determined according to the provisions of 40 CFR Part 63.161. The provisions of 40 CFR Part 63.161 also specify how to determine that a piece of equipment is not in organic HAP service. (Subpart H)

i. Emission standards for organic hazardous air pollutants for certain processes subject to negotiated regulation for equipment leaks. These standards apply to emissions of designated organic hazardous air pollutants from specified processes (defined in 40 CFR 63.190) that are located at a plant site that is a major source. Subject equipment includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems at certain source categories. These standards establish the applicability of Subpart H for sources that are not classified as synthetic organic chemical manufacturing industries. (Subpart I)

j. Reserved.

k. Reserved.

l. Emission standards for coke oven batteries. These standards apply to existing coke oven batteries, including by-product and nonrecovery coke oven batteries and to new coke oven batteries, or as defined in the subpart. (Subpart L)

m. Perchloroethylene air emission standards for dry cleaning facilities. These standards apply to the owner or operator of each dry cleaning facility that uses perchloroethylene. New and existing major source dry cleaning facilities are required to control emissions to the level of the maximum achievable control technology (MACT). New and existing area source dry cleaning facilities are required to control emissions to the level achieved by generally available control technologies (GACT) or management practices. All coin-operated dry cleaning machines are exempt from the requirements of this subpart. (Subpart M)

n. Emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks. These standards limit the discharge of chromium compound air emissions from existing and new hard chromium electroplating, decorative chromium electroplating, and chromium anodizing tanks at major and area sources. (Subpart N)

o. Emission standards for hazardous air pollutants for ethylene oxide commercial sterilization and fumigation operations. New and existing major source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level of the maximum achievable control technology (MACT). New and existing area source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level achieved by generally available control technologies (GACT). Certain sources are exempt as described in 40 CFR 63.360. (Subpart O)

p. Emission standards for primary aluminum reduction plants. These standards apply to each new or existing potline, paste production plant, or anode bake furnace associated with a primary aluminum reduction plant, and for each new pitch storage tank associated with a primary aluminum production plant, except existing furnaces not located on the same site as the primary aluminum reduction plant. (Subpart LL)

q. Emission standards for hazardous air pollutants for industrial process cooling towers. These standards apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals on or after September 8, 1994, and are either major sources or are integral parts of facilities that are major sources. (Subpart Q)

r. Emission standards for hazardous air pollutants for sources categories: gasoline distribution: (Stage 1). These standards apply to all existing and new bulk gasoline terminals and pipeline breakout stations that are major sources of hazardous air pollutants or are located at plant sites that are major sources. Bulk gasoline terminals and pipeline breakout stations located within a contiguous area or under common control with a refinery complying with 40 CFR Subpart CC are not subject to 40 CFR Subpart R standards. (Subpart R)

s. Emission standards for hazardous air pollutants for pulp and paper (noncombustion). These standards apply to pulping and bleaching process sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. Affected sources include pulp mills and integrated mills (mills that manufacture pulp and paper/paperboard) that chemically pulp wood fiber (using kraft, sulfite, soda, or semichemical methods); pulp secondary fiber; pulp nonwood fiber; and mechanically pulp wood fiber. (Subpart S)

t. Emission standards for hazardous air pollutants: halogenated solvent cleaning. These standards require batch vapor solvent cleaning machines and in-line solvent cleaning machines to meet emission standards reflecting the application of maximum achievable control technology (MACT) for major and area sources; area source batch cold cleaning machines are required to achieve generally available control technology (GACT). The subpart regulates the emissions of the following halogenated hazardous air pollutant solvents: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, and chloroform. (Subpart T)

u. Emission standards for hazardous air pollutants: Group I polymers and resins. Applicable to existing and new major sources that emit organic HAP during the manufacture of one or more elastomers including but not limited to producers of butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon ™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polybutadiene rubber/styrene butadiene rubber by solution, polysulfide rubber, styrene butadiene rubber by emulsion, and styrene butadiene latex. MACT is required for major sources. (Subpart U)

v. Reserved.

w. Emission standards for hazardous air pollutants for epoxy resins production and nonnylon polyamides production. These standards apply to all existing, new and reconstructed manufacturers of basic liquid epoxy resins and manufacturers of wet strength resins that are located at a plant site that is a major source. (Subpart W)

x. National emission standards for hazardous air pollutants from secondary lead smelting. These standards apply to all existing and new secondary lead smelters sources which use blast, reverberatory, rotary, or electric smelting furnaces for lead recovery of scrap lead that are located at major or area sources. The provisions apply to smelting furnaces, refining kettles, agglomerating furnaces, dryers, process fugitive sources, and fugitive dust. Excluded from the rule are primary lead smelters, lead refiners, and lead remelters. Hazardous air pollutants regulated under this standard include but are not limited to lead compounds, arsenic compounds, and 1,3-butadiene. (Subpart X)

y. Emission standards for marine tank vessel loading operations. This standard requires existing and new major sources to control emissions using maximum achievable control technology (MACT) to control hazardous air pollutants (HAP). (Subpart Y)

z. to *ab.* Reserved.

ac. National emission standards for hazardous air pollutants: petroleum refineries. These standards apply to petroleum refining process units and colocated emission points at new and existing major sources. Affected sources include process vents, equipment leaks, storage vessels, transfer operations, and wastewater streams. The standards also apply to marine tank vessel and gasoline loading racks. Excluded from the standard are catalyst regeneration from catalytic cracking units and catalytic reforming units, and vents from sulfur recovery units. Compliance with the standard includes emission control and prevention. (Subpart CC)

ad. Emission standards for hazardous air pollutants for off-site waste and recovery operations. This rule applies to major sources of HAP emissions which receive certain wastes, used oil, and used solvents from off-site locations for storage, treatment, recovery, or disposal at the facility. Maximum achievable control technology (MACT) is required to reduce HAP emissions from tanks, surface impoundments, containers, oil-water separators, individual drain systems and other material conveyance systems, process vents, and equipment leaks. Regulated entities include but are not limited to businesses that operate any of the following: hazardous waste treatment, storage, and disposal facilities; Resource Conservation and Recovery Act (RCRA) exempt hazardous wastewater treatment facilities other than publicly owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; used oil re-refineries. The regulations also apply to federal agency facilities that operate any of the waste management or recovery operations. (Subpart DD)

ae. Emission standards for magnetic tape manufacturing operations. These standards apply to major sources performing magnetic tape manufacturing operations. (Subpart EE)

af. Reserved.

ag. National emission standards for hazardous air pollutants for source categories: aerospace manufacturing and rework facilities. These standards apply to major sources involved in the manufacture, repair, or rework of aerospace components and assemblies, including but not limited to airplanes, helicopters, missiles, and rockets for civil, commercial, or military purposes. Hazardous air pollutants regulated under this standard include chromium, cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol, and glycol ethers. (Subpart GG)

ah. Reserved.

ai. Emission standards for hazardous air pollutants for shipbuilding and ship repair (surface coating) operations. Requires existing and new major sources to control hazardous air pollutant (HAP) emissions using the maximum achievable control technology (MACT). (Subpart II)

aj. Emission standards for hazardous air pollutants for hazardous air pollutant (HAP) emissions from wood furniture manufacturing operations. These standards apply to each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source. (Subpart JJ)

ak. Emission standards for hazardous air pollutants for the printing and publishing industry. Existing and new major sources are required to control hazardous air pollutants (HAP) using the maximum achievable control technology (MACT). Affected units are publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing. (Subpart KK)

al. to *bf.* Reserved.

bg. Emission standards for hazardous air pollutants for pharmaceutical manufacturing. These standards apply to producers of finished dosage forms of drugs, for example, tablets, capsules, and solutions, that contain an active ingredient generally, but not necessarily, in association with inactive ingredients. Pharmaceuticals include components whose intended primary use is to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The regulations do not apply to research and development facilities. (Subpart GGG)

bh. Reserved.

bi. Emission standards for hazardous air pollutants for flexible polyurethane foam production. These standards apply to producers of slabstock, molded, and rebond flexible polyurethane foam. The regulations do not apply to processes dedicated exclusively to the fabrication (i.e., gluing or otherwise bonding foam pieces together) of flexible polyurethane foam or to research and development. (Subpart III)

bj. Emission standards for hazardous air pollutants: Group IV polymers and resins. Applicable to existing and new major sources that emit organic HAP during the manufacture of the following polymers and resins: acrylonitrile butadiene styrene resin (ABS), styrene acrylonitrile resin (SAN), methyl methacrylate acrylonitrile butadiene styrene resin (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene resin, poly (ethylene terephthalate) resin (PET), and nitrile resin. MACT is required for major sources. (Subpart JJJ)

23.1(5) *Emission guidelines.* The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through November 24, 1998, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. Emission guidelines for municipal solid waste landfills (Subpart Cc). Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWW (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60.

(1) Definitions. For the purpose of 23.1(5) *"a,"* the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A (General Provisions), B, and WWW, if not defined in this subparagraph.

"Municipal solid waste landfill" or *"MSW landfill"* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

(2) Designated facilities.

1. The designated facility to which the emission guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

2. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, Subpart WWW (40 CFR 60.750).

3. For MSW landfills subject to 567—subrule 22.101(1) only because of applicability to subparagraph 23.1(5)*"a"*(2), the following apply for obtaining and maintaining a Title V operating permit under 567—22.104(455B):

The owner or operator of an MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain an operating permit for the landfill.

The owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on or before June 22, 1998, becomes subject to the requirements of 567—subrule 22.105(1) on September 20, 1998. This requires the landfill to submit a Title V permit application to the Air Quality Bureau, Department of Natural Resources, no later than September 20, 1999.

The owner or operator of a closed MSW landfill does not have to maintain an operating permit for the landfill if either of the following conditions are met: the landfill was never subject to the requirement for a control system under subparagraph 23.1(5)"*a*"(3); or the owner or operator meets the conditions for control system removal specified in 40 CFR § 60.752(b)(2)(v).

(3) Emission guidelines for municipal solid waste landfill emissions.

1. MSW landfill emissions at each MSW landfill meeting the conditions below shall be controlled. A design capacity report must be submitted to the director by November 18, 1997.

The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

The landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. All calculations used to determine the maximum design capacity must be included in the design capacity report.

The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or more. If the MSW landfill's design capacity exceeds the established thresholds in 23.1(5)"*a*"(3)"1," the NMOC emission rate calculations must be provided with the design capacity report.

2. The planning and installation of a collection and control system shall meet the conditions provided in 40 CFR 60.752(b)(2) at each MSW landfill meeting the conditions in 23.1(5)"*a*"(3)"1."

3. MSW landfill emissions collected through the use of control devices must meet the following requirements, except as provided in 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency.

An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18; a control system designed and operated to reduce NMOC by 98 weight percent; or an enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

(4) Test methods and procedures. The following must be used:

1. The calculation of the landfill NMOC emission rate listed in 40 CFR 60.754, as applicable, to determine whether the landfill meets the condition in 23.1(5)"*a*"(3)"3";

2. The operational standards in 40 CFR 60.753;

3. The compliance provisions in 40 CFR 60.755; and

4. The monitoring provisions in 40 CFR 60.756.

(5) Reporting and record-keeping requirements. The record-keeping and reporting provisions listed in 40 CFR 60.757 and 60.758, as applicable, except as provided under 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency, shall be used.

(6) Compliance times.

1. Except as provided for under 23.1(5)"*a*"(6)"2," planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under 23.1(5)"*a*"(3) shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions greater than or equal to 50 megagrams per year.

2. For each existing MSW landfill meeting the conditions in 23.1(5)"*a*"(3)"1" whose NMOC emission rate is less than 50 megagrams per year on August 20, 1997, installation of collection and control systems capable of meeting emission guidelines in 23.1(5)"*a*"(3) shall be accomplished within 30 months of the date when the condition in 23.1(5)"*a*"(3)"1" is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

b. Emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce). This paragraph contains emission guidelines and compliance times for the control of certain designated pollutants from hospital/medical/infectious waste incinerator(s) (HMIWI) in accordance with Subparts Ce and Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators) of 40 CFR Part 60.

(1) Definitions. For the purpose of paragraph 23.1(5)*"b,"* the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A, B, and Ec, if not defined in this subparagraph.

"Hospital/medical/infectious waste incinerator" or *"HMIWI"* means any device that combusts any amount or combination of hospital or medical/infectious waste.

"Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

"Large HMIWI" means:

1. An HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour; or
2. A continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or
3. A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.

"Medical/infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in numbered paragraphs "1" through "7" of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in 40 CFR Part 261; household waste, as defined in 40 CFR § 261.4(b)(1); ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in 40 CFR § 261.4(a)(1).

1. Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

2. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy or other medical procedures, and specimens of body fluids and their containers.

3. Human blood and blood products including: liquid waste human blood, products of blood, items saturated or dripping with human blood; or items that were saturated or dripping with human blood that are now caked with dried human blood, including serum, plasma, and other blood components, and their containers, which were used or intended for use in patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

4. Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

5. Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

6. Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or from isolated animals known to be infected with highly communicable diseases.

7. Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

"Medium HMIWI" means:

1. An HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

2. A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

3. A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.

"Remote HMIWI" means a small HMIWI meeting the following conditions:

1. Located 50 miles from the boundary of the nearest standard metropolitan statistical area (SMSA). The SMSA boundary is established by the political borders of the counties, provided in the definition of an SMSA, which are listed in parentheses.

2. Burns less than 2,000 lb/week of hospital waste and medical/infectious waste.

b. Trees and tree trimmings. The open burning of trees and tree trimmings not originated on the premises provided that the burning site is operated by a local governmental entity, the burning site is fenced and access is controlled, burning is conducted on a regularly scheduled basis and is supervised at all times, burning is conducted only when weather conditions are favorable with respect to surrounding property, and the burning site is limited to areas at least one-quarter mile from any inhabited building unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department and to the local governmental entity prior to the first instance of open burning at the site which occurs after November 13, 1996. The written waiver shall become effective only upon recording in the office of the recorder of deeds of the county in which the inhabited building is located. However, when the open burning of trees and tree trimmings causes air pollution as defined in Iowa Code section 455B.131(3), the department may take appropriate action to secure relocation of the burning operation. Rubber tires shall not be used to ignite trees and tree trimmings.

This exemption shall not apply within the area classified as the PM10 (inhalable) particulate Group II area of Mason City. This Group II area is described as follows: the area in Cerro Gordo County, Iowa, in Lincoln Township including Sections 13, 24 and 25; in Lime Creek Township including Sections 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34 and 35; in Mason Township the W ½ of Section 1, Sections 2, 3, 4, 5, 8, 9, the N ½ of Section 11, the NW ¼ of Section 12, the N ½ of Section 16, the N ½ of Section 17 and the portions of Sections 10 and 15 north and west of the line from U.S. Highway 18 south on Kentucky Avenue to 9th Street SE; thence west on 9th Street SE to the Minneapolis and St. Louis railroad tracks; thence south on Minneapolis and St. Louis railroad tracks to 19th Street SE; thence west on 19th Street SE to the section line between Sections 15 and 16.

c. Flare stacks. The open burning or flaring of waste gases, providing such open burning or flaring is conducted in compliance with 23.3(2)*"d"* and 23.3(3)*"e."*

d. Landscape waste. The disposal by open burning of landscape waste originating on the premises. However, the burning of landscape waste produced in clearing, grubbing and construction operations shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning. Rubber tires shall not be used to ignite landscape waste.

e. Recreational fires. Open fires for cooking, heating, recreation and ceremonies, provided they comply with 23.3(2)*"d."* Burning rubber tires is prohibited from this activity.

f. Residential waste. Backyard burning of residential waste at dwellings of four-family units or less. The adoption of more restrictive ordinances or regulations of a governing body of the political subdivision, relating to control of backyard burning, shall not be precluded by these rules.

g. Training fires. Fires set for the purpose of bona fide training of public or industrial employees in firefighting methods, provided that written notification is postmarked or delivered to the director at least ten working days before such action commences. Notification shall be made in accordance with 40 CFR Section 61.145, "Standard for demolition and renovation," of the asbestos National Emission Standards for Hazardous Air Pollutants, as amended through January 16, 1991. All asbestos-containing materials shall be removed prior to the training fire. Asphalt shingles may be burned in a training fire only if the notification to the director contains testing results indicating that none of the layers of the asphalt shingles contain asbestos. Each fire department may conduct no more than two training fires per calendar year where asphalt roofing has not been removed, provided that for each of those training fires the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Rubber tires may not be burned during a training fire.

h. Paper or plastic pesticide containers and seed corn bags. The disposal by open burning of paper or plastic pesticide containers (except those formerly containing organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic) and seed corn bags resulting from farming activities occurring on the premises. Such open burning shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning, livestock area, wildlife area, or water source. The amount of paper or plastic pesticide containers and seed corn bags that can be disposed of by open burning shall not exceed one day's accumulation or 50 pounds, whichever is less. However, when the burning of paper or plastic pesticide containers or seed corn bags causes a nuisance, the director may take action to secure relocation of the burning operation. Since the concentration levels of pesticide combustion products near the fire may be hazardous, the person conducting the open burning should take precautions to avoid inhalation of the pesticide combustion products.

i. Agricultural structures. The open burning of agricultural structures, provided that the open burning occurs on the premises and, for agricultural structures located within a city or town, at least one-fourth mile from any building inhabited by a person other than the landowner, a tenant, or an employee of the landowner or tenant conducting the open burning unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department prior to the open burning; all chemicals and asphalt shingles are removed; burning is conducted only when weather conditions are favorable with respect to surrounding property; and permission from the local fire chief is secured in advance of the burning. Rubber tires shall not be used to ignite agricultural structures.

For the purposes of this subrule, "agricultural structures" means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations.

23.2(4) *Unavailability of exemptions in certain areas.* Notwithstanding 23.2(2) and 23.2(3)*"b," "d," "f,"* and *"i,"* no person shall allow, cause or permit the open burning of trees or tree trimmings, residential or landscape waste or agricultural structures in the cities of: Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, and Pleasant Hill.

This rule is intended to implement Iowa Code section 455B.133.

567—23.3(455B) Specific contaminants.

23.3(1) *General.* The emission standards contained in this rule shall apply to each source operation unless a specific emission standard for the process involved is prescribed elsewhere in this chapter, in which case the specific standard shall apply.

23.3(2) *Particulate matter.* No person shall cause or allow the emission of particulate matter from any source in excess of the emission standards specified in this chapter, except as provided in 567—Chapter 24.

a. General emission rate.

(1) For sources constructed, modified or reconstructed after July 21, 1999, the emission of particulate matter from any process shall not exceed an emission standard of 0.1 grain per dry standard cubic foot of exhaust gas, except as provided in 567—21.2(455B), 23.1(455B), 23.4(455B), and 567—Chapter 24.

(2) For sources constructed, modified or reconstructed prior to July 21, 1999, the emission of particulate matter from any process shall not exceed the amount determined from Table I, or amount specified in a permit if based on an emission standard of 0.1 grain per standard cubic foot of exhaust gas, or established from standards provided in 23.1(455B) and 23.4(455B).

(3) Reclassified areas. Reasonable precautions implemented pursuant to the nonattainment area provisions of subparagraph (2) shall remain in effect if the nonattainment area is redesignated to either attainment or unclassified after March 6, 1980.

d. Visible emissions. No person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, equal to or in excess of 40 percent opacity or that level specified in a construction permit, except as provided below and in 567—Chapter 24.

(1) *Residential heating equipment.* Residential heating equipment serving dwellings of four family units or less is exempt.

(2) *Gasoline-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from gasoline-powered motor vehicles for longer than five consecutive seconds.

(3) *Diesel-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered motor vehicles in excess of 40 percent opacity, for longer than five consecutive seconds.

(4) *Diesel-powered locomotives.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered locomotives in excess of 40 percent opacity, except for a maximum period of 40 consecutive seconds during acceleration under load, or for a period of four consecutive minutes when a locomotive is loaded after a period of idling.

(5) *Startup and testing.* Initial start and warmup of a cold engine, the testing of an engine for trouble, diagnosis or repair, or engine research and development activities, is exempt.

(6) *Uncombined water.* The provisions of this paragraph shall apply to any emission which would be in violation of these provisions except for the presence of uncombined water, such as condensed water vapor.

23.3(3) *Sulfur compounds.* The provisions of this subrule shall apply to any installation from which sulfur compounds are emitted into the atmosphere.

a. Sulfur dioxide from use of solid fuels.

(1) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the following counties: Black Hawk, Clinton, Des Moines, Dubuque, Jackson, Lee, Linn, Lousia, Muscatine and Scott.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 5 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the remaining 89 counties of the state not listed in subparagraph 23.3(3)*"a"*(1).

(3) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from any new solid fuel-burning unit (i.e., a unit which was not in operation or for which components had not been purchased, or which was not under construction prior to September 23, 1970) which has a capacity of 250 million Btu or less per hour heat input, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input.

(4) Subparagraphs (1) through (3) notwithstanding, a fossil fuel-fired steam generator to which 23.1(2)*"a,"* 23.1(2)*"z"* or 23.1(2)*"ccc"* applies shall comply with 23.1(2)*"a,"* 23.1(2)*"z"* or 23.1(2)*"ccc,"* respectively.

b. Sulfur dioxide from use of liquid fuels.

(1) No person shall allow, cause, or permit the combustion of number 1 or number 2 fuel oil exceeding a sulfur content of 0.5 percent by weight.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere in an amount greater than 2.5 pounds of sulfur dioxide, replicated maximum three-hour average, per million Btu of heat input from a liquid fuel-burning unit.

(3) Notwithstanding this paragraph, a fossil fuel-fired steam generator to which 23.1(2)*"a,"* 23.1(2)*"z"* or 23.1(2)*"ccc"* applies shall comply with 23.1(2)*"a,"* 23.1(2)*"z"* or 23.1(2)*"ccc."*

c. Sulfur dioxide from sulfuric acid manufacture. After January 1, 1975, no person shall allow, cause or permit the emission of sulfur dioxide from an existing sulfuric acid manufacturing plant in excess of 30 pounds of sulfur dioxide, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

d. Acid mist from sulfuric acid manufacture. After January 1, 1974, no person shall allow, cause or permit the emission of acid mist calculated as sulfuric acid from an existing sulfuric acid manufacturing plant in excess of 0.5 pounds, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

e. Other processes capable of emitting sulfur dioxide. After January 1, 1974, no person shall allow, cause or permit the emission of sulfur dioxide from any process, other than sulfuric acid manufacture, in excess of 500 parts per million, based on volume. This paragraph shall not apply to devices which have been installed for air pollution abatement purposes where it is demonstrated by the owner of the source that the ambient air quality standards are not being exceeded.

This rule is intended to implement Iowa Code section 455B.133.

567—23.4(455B) Specific processes.

23.4(1) *General.* The provisions of this rule shall not apply to those facilities for which performance standards are specified in 23.1(2). The emission standards specified in this rule shall apply and those specified in 23.3(2)*"a"* and 23.3(2)*"b"* shall not apply to each process of the types listed in the following subrules, except as provided below.

EXCEPTION: Whenever the director determines that a process complying with the emission standard prescribed in this section is causing or will cause air pollution in a specific area of the state, the specific emission standard may be suspended and compliance with the provisions of 23.3(455B) may be required in such instance.

23.4(2) *Asphalt batching plants.* No person shall cause, allow or permit the operation of an asphalt batching plant in a manner such that the particulate matter discharged to the atmosphere exceeds 0.15 grain per standard cubic foot of exhaust gas.

23.4(3) *Cement kilns.* Cement kilns shall be equipped with air pollution control devices to reduce the particulate matter in the gas discharged to the atmosphere to no more than 0.3 percent of the particulate matter entering the air pollution control device. Regardless of the degree of efficiency of the air pollution control device, particulate matter discharged from such kilns shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(4) *Cupolas for metallurgical melting.* The emissions of particulate matter from all new foundry cupolas, and from all existing foundry cupolas with a process weight rate in excess of 20,000 pounds per hour, shall not exceed the amount specified in paragraph 23.3(2)*"a,"* except as provided in 567—Chapter 24.

The emissions of particulate matter from all existing foundry cupolas with a process weight rate less than or equal to 20,000 pounds per hour shall not exceed the amount determined from Table II of these rules, except as provided in 567—Chapter 24.

23.4(13) *Painting and surface-coating operations.* No person shall allow, cause or permit painting and surface-coating operations in a manner such that particulate matter in the gas discharge exceeds 0.01 grain per standard cubic foot of exhaust gas.

This rule is intended to implement Iowa Code section 455B.133.

567—23.5(455B) Anaerobic lagoons.

23.5(1) Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of rules 567—65.9(455B) and 65.15(455B) to 65.17(455B).

23.5(2) Criteria for approval of industrial anaerobic lagoons.

a. Lagoons designed to treat 100,000 gpd or less.

(1) The sulfate content of the water supply shall not exceed 250 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

b. Lagoons designed to treat more than 100,000 gpd.

(1) The sulfate content of the water supply shall not exceed 100 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

This rule is intended to implement Iowa Code section 455B.133.

567—23.6(455B) Alternative emission limits (the "bubble concept"). Emission limits for individual emission points included in 23.3(455B) (except 23.3(2)*"d,"* 23.3(2)*"b"*(3), and 23.3(3)*"a"*(3)) and 23.4(455B) (except 23.4(12)*"b"* and 23.4(6)) may be replaced by alternative emission limits. The alternative emission limits must be consistent with 567—22.7(455B) and 567—subrule 25.1(12). Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

Rules 23.3(455B) to 23.6(455B) are intended to implement Iowa Code section 455B.133.

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CHAPTER 25
MEASUREMENT OF EMISSIONS

[Prior to 7/1/83, DEQ Ch 7]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—25.1(455B) Testing and sampling of new and existing equipment.

25.1(1) *Continuous monitoring of opacity from coal-fired steam generating units.* The owner or operator of any coal-fired or coal-gas-fired steam generating unit with a rated capacity of greater than 250 million Btus per hour heat input shall install, calibrate, maintain, and operate continuous monitoring equipment to monitor opacity. If an exhaust services more than one steam generating unit as defined in the preceding sentence, the owner has the option of installing opacity monitoring equipment on each unit or on the common stack. Such monitoring equipment shall conform to performance specifications specified in 25.1(9) and shall be operational within 18 months of the date these rules become effective. The director may require the owner or operator of any coal-fired or coal-gas-fired steam generating unit to install, calibrate, maintain and operate continuous monitoring equipment to monitor opacity whenever the compliance status, history of operations, ambient air quality in the vicinity surrounding the generator or the type of control equipment utilized would warrant such monitoring.

25.1(2) Reserved.

25.1(3) Reserved.

25.1(4) *Continuous monitoring of sulfur dioxide from sulfuric acid plants.* The owner or operator of any sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall install, calibrate, maintain and operate continuous monitoring equipment to monitor sulfur dioxide emissions. Said monitoring equipment shall conform to the minimum performance specifications specified in 25.1(9) and shall be operational within 18 months of the date these rules become effective.

25.1(5) *Maintenance of records of continuous monitors.* The owner or operator of any facility which is required by any of 25.1(1) to 25.1(4) to install, calibrate, maintain and operate continuous monitoring equipment shall maintain, for a minimum of two years, a file of all information pertinent to each monitoring system present at the facility. Such information must include but is not limited to all emissions data (raw data, adjusted data, and any or all adjusted factors used to convert emissions from units of measurement to units of the applicable standard), performance evaluations, calibrations and zero checks, and records of all malfunctions of monitoring equipment or source and repair procedures performed.

25.1(6) *Reporting of continuous monitoring information.* The owner or operator of any source affected by 25.1(1) to 25.1(4) shall provide quarterly reports to the director, no later than 30 calendar days following the end of the calendar quarter, on forms provided by the director. All periods of recorded emissions in excess of the applicable standards, the results of all calibrations and zero checks and performance evaluations occurring during the reporting period, and any periods of monitoring equipment malfunctions or source upsets and any apparent reasons for these malfunctions and upsets shall be included in the report.

25.1(7) *Tests by owner.* The owner of new or existing equipment or the owner's authorized agent shall conduct emission tests to determine compliance with applicable rules in accordance with these requirements.

a. General. The owner of new or existing equipment or the owner's authorized agent shall notify the director in writing, not less than 30 days before a required test or performance evaluation of a continuous emission monitor is performed to determine compliance with applicable requirements of 567—Chapter 23 or a permit condition. For the department to consider test results a valid demonstration of compliance with applicable rules or a permit condition, such notice shall be given. Such notice shall include the time, the place, the name of the person who will conduct the tests and other information as required by the department. Unless specifically waived by the department, a pretest meeting shall be held not later than 15 days prior to conducting the compliance demonstration. The department may accept a testing protocol in lieu of the pretest meeting. A representative of the department shall be permitted to witness the tests. Results of the tests shall be submitted in writing to the director in the form of a comprehensive report within six weeks of the completion of the testing.

b. New equipment. Unless otherwise specified by the department, all new equipment shall be tested by the owner or the owner's authorized agent to determine compliance with applicable emission limits. Tests conducted to demonstrate compliance with the requirements of the rules or a permit shall be conducted within 60 days of achieving maximum production but no later than 180 days of startup, unless a shorter time frame is specified in the permit.

c. Existing equipment. The director may require the owner or the owner's authorized agent to conduct an emission test on any equipment if the director has reason to believe that the equipment does not comply with applicable requirements. Grounds for requiring such a demonstration of compliance include a modification of control or process equipment, age of equipment, or observation of opacities or other parameters outside the range of those indicative of properly maintained and operated equipment. Testing may be required as necessary to determine actual emissions from a source where that source is believed to have a significant impact on the public health or ambient air quality of an area. The director shall provide the owner or agent not less than 30 days to perform the compliance demonstration and shall provide written notice of the requirement.

25.1(8) *Tests by department.* Representatives of the department may conduct separate and additional air contaminant emission tests and continuous monitor performance tests of an installation on behalf of the state and at the expense of the state. Sampling holes, safe scaffolding and pertinent allied facilities, but not instruments or sensing devices, as needed, shall be requested in writing by the director and shall be provided by and at the expense of the owner of the installation at such points as specified in the request. The owner shall provide a suitable power source to the point or points of testing so that sampling instruments can be operated as required. Analytical results shall be furnished to the owner.

25.1(9) *Methods and procedures.* Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are those specified in the "Compliance Sampling Manual*" adopted by the commission on May 19, 1977, as revised through January 1, 1995. Sampling methods, analytical determinations, minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are those found in Appendices A (as amended through March 12, 1996), B (as amended through December 15, 1994) and F (as amended through February 11, 1991, 40 CFR Part 60, and 40 CFR 75, Appendices A (as amended through May 22, 1996), B (as amended through May 17, 1995), and H (as amended through July 30, 1993).

25.1(10) *Exemptions from continuous monitoring requirements.* The owner or operator of any source affected by 25.1(1) to 25.1(4) is exempt if it can be demonstrated that any of the conditions set forth in this subrule are met with the provision that periodic recertification of the existence of these conditions can be requested.

a. An affected source is subject to a new source performance standard promulgated in 40 CFR Part 60 as amended through November 24, 1998.

*Available from department.

b. An affected steam generator had an annual capacity factor for calendar year 1974, as reported to the Federal Power Commission, of less than 30 percent or the projected use of the unit indicates the annual capacity factor will not be increased above 30 percent in the future.

c. An affected steam generator is scheduled to be retired from service within five years of the date these rules become effective.

d. Rescinded IAB 1/20/93, effective 2/24/93.

e. The director may provide a temporary exemption from the monitoring and reporting requirements during any period of monitoring system malfunction, provided that the source owner or operator shows, to the satisfaction of the director, that the malfunction was unavoidable and is being repaired as expeditiously as practical.

25.1(11) *Extensions.* The owner or operator of any source affected by 25.1(1) to 25.1(4) may request an extension of time provided for installation of the required monitor by demonstrating to the director that good faith efforts have been made to obtain and install the monitor in the prescribed time.

25.1(12) *Continuous monitoring of sulfur dioxide from emission points involved in an alternative emission control program.* The owner or operator of any facility applying for an alternative emission control program under 567—subrule 567—22.7(1) that involves the trade-off of sulfur dioxide emissions shall install, calibrate, maintain and operate continuous sulfur dioxide monitoring equipment consistent with EPA reference methods (40 CFR Part 60, Appendix B, as amended through December 15, 1994). The equipment shall be operational within three months of EPA approval of an alternative emission control program.

567—25.2(455B) Continuous emission monitoring under the acid rain program. The continuous emission monitoring requirements for affected units under the acid rain program as provided in 40 CFR 75 as adopted January 11, 1993, and as corrected or amended through October 24, 1997, are adopted by reference.

These rules are intended to implement Iowa Code section 455B.133.

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CHAPTER 105
ORGANIC MATERIALS COMPOSTING FACILITIES

567—105.1(455B,455D) General. This chapter shall apply to the composting of solid wastes. Composting is the controlled biological decomposition of organic matter under aerobic conditions resulting in a stable, innocuous final product. Composting facilities may include vermicomposting, turned windrows, aerated static piles, aerated in-vessel systems, or other methods approved by the department. A composting facility is defined as all related receiving, processing, production, curing, and storage areas and necessary roads, buildings, equipment, litter control devices, pollution control devices, fire control devices, landscaping, gates, personnel and maintenance facilities, sewer and water lines, and process water. Composting facilities existing as of July 21, 1999, must comply with the requirements of this chapter within one year or by the permit renewal date, whichever is later.

105.1(1) Two types of composting are allowed:

a. Yard waste composting. Yard waste composting involves only yard waste, defined as vegetative matter such as grass clippings, leaves, garden waste, brush, and trees, and any clean wood waste free of coatings and preservatives necessary as bulking agent. Use of any other materials as bulking agent shall require prior approval by the department. Yard waste composting facilities are exempt from having a permit if operated in conformance with 567—105.3(455B,455D) and 567—105.4(455B,455D).

b. Solid waste composting. Solid waste composting involves any organic material in addition to or other than yard waste. No one shall construct or operate a solid waste composting facility without first obtaining a permit from the department. On-farm composting of dead animals generated on the same farm as the composting facility is exempt from having a permit if operated in conformance with 567—105.9(455B,455D). Solid waste composting facilities involving municipal sewage sludge shall also operate in conformance with 567—Chapter 67, Iowa Administrative Code.

105.1(2) Burial of yard waste at a sanitary landfill is prohibited. Acceptance of yard waste by a hauling firm or at a transfer station for burial at a sanitary landfill is also prohibited. However, yard waste which has been separated at its source from other solid waste may be accepted by a sanitary landfill for the purposes of soil conditioning or composting. Yard waste accepted by a sanitary landfill for the purposes of soil conditioning shall only be used on finished areas of the landfill that have received the final earthen cover, developed areas with intermediate cover, and restoration of soil borrow areas. Burning of yard waste at a sanitary landfill or transfer station is prohibited.

105.1(3) Each city and county shall, by ordinance, require persons within the city or county to separate yard waste from other solid waste generated. Municipalities which provide for collection of solid waste shall also provide for separate collection of yard waste.

105.1(4) The use of yard waste as land cover or soil conditioner is not prohibited. Land application of yard waste shall be in conformance with this rule.

a. The yard waste shall be taken out of containers and the containers shall be removed from the land application site.

b. The site shall be managed to prevent waste from leaving the property line.

c. The land application shall not exceed 20 tons per acre per year.

d. Yard waste can be stored for two weeks before it must be land-applied.

567—105.2(455B,455D) Exemptions. The following projects are exempt from this chapter. This exemption is not a defense to a nuisance action brought pursuant to Iowa Code chapter 657.

105.2(1) Yard waste composted and used on the same premises where it originated.

105.2(2) Household organic waste composted and used on the same premises where it originated.

105.2(3) Composting facilities involving only animal manure, animal bedding, or crop residues and any clean wood waste free of coatings and preservatives necessary as bulking agent. Use of any other materials as bulking agent shall require prior approval by the department. If animal manure or animal bedding is mixed with other solid wastes for the purpose of composting, then this chapter shall apply unless the other solid wastes have been preapproved by the department as necessary as bulking agent.

105.2(4) Yard waste, household organic waste, animal manure, animal bedding, and crop residues generated on the same premises may be composted together on the same premises where they originated.

567—105.3(455B,455D) General requirements for all composting facilities except dead animal composting facilities. All composting facilities shall meet the following requirements, except on-farm composting of dead animals generated on the same farm if operated in conformance with 105.9(455B,455D).

105.3(1) The composting facility shall be 500 feet from any existing inhabited residence at the time of facility construction unless there is a written agreement with the owner of the residence and the site is screened by natural objects, plantings, fences or by other appropriate means.

105.3(2) Access to the facility shall be restricted and a gate shall be provided at the entrance to the facility and left locked when an employee, agent or representative of the compost facility is not on duty.

105.3(3) Emergency access shall be provided to the facility. Fire lanes shall be maintained to provide access for firefighting equipment.

105.3(4) The facility shall have a permanent sign posted at the entrance specifying:

a. Name of operation,

b. Operating hours,

c. Name and telephone number of the responsible official,

d. Materials which are accepted or the statement "All materials must have prior approval," and

e. Name and telephone number of emergency contact person.

105.3(5) Solid waste shall be unloaded at the composting facility only when an employee, agent or representative of the facility is on duty.

105.3(6) Solid waste which cannot be composted or which is removed during processing shall be disposed of in accordance with the Iowa Administrative Code. Infectious waste as defined in Iowa Code section 455B.501(1)*"b"* and broken glass shall not be accepted for composting at any composting facility unless approved by the department.

105.3(7) Measures shall be taken to prevent water from running onto the facility from adjacent land and to prevent water from running off the composting facility.

105.3(8) Facilities shall be designed, constructed, and maintained so as to avoid or minimize ponding of water or liquids. Any ponding that does occur shall be corrected through routine facility maintenance within 48 hours after the termination of the event causing the ponding.

105.3(9) The operating area for composting shall be surrounded with appropriate barriers to prevent litter from blowing beyond the operating area. At the conclusion of each day of operation, any litter strewn beyond the confines of the operating area shall be collected and stored in covered leakproof containers or properly disposed.

105.3(10) Solid waste materials shall be managed through the entire process in accordance with best management practices, to minimize and prevent conditions such as odors, dust, and vectors which may create nuisance conditions. For the purposes of this chapter, "best management practices" is defined as the practices described in the most recent version of the Compost Facility Operating Guide published by the United States Composting Council or other best management practices as approved by the department. A copy of the Compost Facility Operating Guide is available for review at the field offices and records center of the department.

105.3(11) Storage of finished compost shall be limited to 18 months.

105.3(12) If finished compost is offered for sale as a soil conditioner or fertilizer, the compost must be registered by the department of agriculture and land stewardship under Iowa Code chapter 200, Iowa fertilizer law. Sale shall be in compliance with all applicable federal and state laws and local ordinances and regulations.

105.3(13) Compost shall not be applied to land or sold or given away unless the concentration of human-made inert materials such as glass, metal, and plastic is less than 1.5 percent by dry weight. Compost shall not be applied to land or sold or given away unless the size of any human-made inert materials is less than 13 mm.

105.3(14) The composting facility shall obtain an NPDES permit as required in 567—Chapter 64.

567—105.4(455B,455D) Specific requirements for yard waste composting facilities. Yard waste compost facility operators are encouraged to be trained, tested, and certified by a department-approved certification program upon adoption of such a program by the department.

105.4(1) Before opening a yard waste composting facility, the waste management assistance division and the field office of the department serving the composting facility's location shall be notified in writing of the following:

a. The location of the composting facility,
b. Legal description of the facility,
c. Landowner's name, telephone number, and mailing address,
d. Responsible party's name, telephone number, and mailing address,
e. Annual capacity of the facility,
f. Source of the yard waste and any necessary bulking agent, and
g. Method of composting to be employed.

105.4(2) An all-weather surface must be used for receiving and for access to the facility. The all-weather surface shall be made of materials that will permit accessibility during periods of inclement weather.

105.4(3) The area of the composting facility must be large enough for the volume of yard waste composted.

105.4(4) Yard waste to be composted must be taken out of containers. Yard waste may be left in bags only if the bags are biodegradable.

105.4(5) Aerobic conditions shall be maintained in accordance with best management practices as defined in 105.3(10).

105.4(6) Reporting. An annual report summarizing the records required in 105.4(6)*"a"* to *"c"* shall be submitted to the waste management assistance division of the department and the field office of the department serving the composting facility's location by July 31 of each year. The report shall summarize the records from the fiscal year beginning July 1 of the preceding calendar year and ending June 30 of the current year. The records required in 105.4(6)*"a"* to *"c"* shall be condensed into monthly totals and an annual total of the following:

a. Amount of yard waste and any necessary bulking agent accepted in tons,
b. Amount of finished compost removed from the facility in tons, and
c. How the compost removed from the facility was used and, if possible, the number of tons per use.

These records shall be maintained for a period of two years after last use of the compost facility. These records shall be maintained at the facility for inspection and evaluation by the department at any time during normal operating hours.

567—105.5(455B,455D) Permit requirements for solid waste composting facilities. All solid waste composting facilities shall meet the following requirements, except on-farm composting of dead animals generated on the same farm if operated in conformance with 105.9(455B,455D). Application for a permit to construct and operate a solid waste composting facility shall be made on Form 50 (542-1542) and submitted to the department's Des Moines central office. This permit is issued under the authority of Iowa Code section 455B.305 for sanitary disposal projects which comply with the requirements of this chapter. A comprehensive solid waste management plan, completed in accordance with 567 IAC 101.4(455B,455D), shall be submitted to and approved by the waste management assistance division of the department before a permit can be issued.

This application must be accompanied by an operating plan encompassing, at a minimum, the design plans, specifications and additional information required by this chapter. Such permits are issued for a period of three years and are renewable for a period of three years.

The department shall either approve or deny a permit to a person applying for a permit within six months from the date that the department receives a complete application. A complete application which is not denied within the six-month period shall be approved by default. The department shall issue a permit to the applicant within ten days following the date of default approval.

If an application for a solid waste composting facility permit is found not to be in full compliance with this chapter, the applicant will be notified of that fact and of the specific deficiencies. If the deficiencies are not corrected within 30 days following such notification, the application may be returned as incomplete without prejudice to the applicant's right to reapply. The applicant may be granted, upon request, an additional 30 days to complete the application.

105.5(1) A permit application for a new facility shall include a completed Form 50 (542-1542) and a map or aerial photograph. This map or aerial photograph shall identify:

1. The boundaries of the facility,
2. Wells, streams, creeks, rivers, ponds, sinkholes, and drainage wells,
3. North or other principal compass points,
4. Zoning and land use within one-half mile,
5. Haul routes to and from the facility with load limits or other restrictions,
6. Homes and buildings within one-half mile,
7. Section lines or other legal boundaries, and
8. Any nearby runway used or planned to be used by turbojet or piston-type aircraft at FAA-certified airports.

105.5(2) Design requirements. Design documents must be prepared by a professional engineer licensed in the state of Iowa (Iowa Code chapter 542B) and must include the following:

a. Equipment to be installed, litter control devices, pollution control devices, fire control devices, landscaping, gates, personnel and maintenance facilities, sewer and water lines, and process water, and dimensions, details, and capacities of the proposed receiving, processing, production, curing, and storage areas.

b. Design calculations justifying the size of the composting areas. The areas for composting must be adequate for the volume of solid waste being composted.

c. Descriptions, specifications, and capacities of proposed equipment to be used in composting.

d. Flow diagram of all operating steps.

e. Composition of the operating surface. Receiving, processing, production, and curing must take place on a constructed, impervious base that can support the load of the equipment used under all weather conditions. The permeability coefficient of the base must be less than 1×10^{-7} cm/sec (0.00028 feet/day). Storage areas for finished compost must be made of materials that will permit accessibility during periods of inclement weather.

f. Dimensions, details, and capacities of storm water management systems to prevent run-on and runoff from the composting facility. The storm water management systems must be designed to collect and store all runoff water from the proposed receiving, processing, production, curing, and storage areas resulting from a 25-year, 24-hour precipitation event. Storm water management systems must meet applicable federal and state storm water regulations and shall not discharge to surface waters except as allowed by an NPDES permit.

105.5(3) Operating requirements. The operating plan shall provide the following:

a. Method of composting.

b. Duration of composting with a time frame for receiving, processing, production, curing, and storage.

c. Description of storage of raw materials including quantity and types. All materials received must be incorporated into the composting process within 24 hours of receipt unless storage of these materials is specified in the plan and approved by the department.

d. Description of the types, amounts, and sources of wastes to be received and processed daily. Prior to the facility's expanding the amount or types of materials accepted, the facility shall make a request in writing and obtain approval from the department for an amendment to the permit.

e. Description of the aeration method and the aeration frequency to be used to maintain aerobic conditions in accordance with best management practices as defined in 105.3(10).

f. Description of the methods to prevent, minimize, and manage odors.

g. Description of the methods to prevent, minimize, and manage dust.

h. Description of the methods to prevent, minimize, and manage flies, rodents and other vermin.

i. Description of the specific procedures to be followed in case of equipment breakdown, maintenance downtime, and fire in equipment, composting material or buildings to include methods to be used to remove or dispose of accumulated waste and burned and damaged material.

j. Plans for using or marketing the finished compost.

k. Method(s) of disposing of collected storm water.

l. Method(s) of maintaining storm water management systems to maintain design volume and to locate and repair leaks in the system.

m. Description of the monitoring, sampling, and analysis procedures and schedule for testing the composting process and product including sampling frequency, sample size and number, and sample locations. Sample collection, preservation, and analysis must be done in a manner which ensures valid and representative results. Two guidance documents describing in more detail methods for composting and compost monitoring, sampling and analysis are the most recent versions of the Compost Facility Operating Guide and the Test Methods for the Examination of Composting & Compost published by the United States Composting Council. A copy of each publication is available for review at the records center of the department. The department may inspect the facility and perform testing on the composting process and product at any time. Unless otherwise proposed in the operating plan and authorized in the permit, the permit holder shall test at a minimum:

(1) Twice weekly temperature readings of compost piles, batches, and windrows. Compost must be held at a temperature above 55 degrees Celsius (131 degrees Fahrenheit) for at least two weeks for the purpose of pathogen destruction. Other time periods may be approved by the department.

(2) Weekly moisture levels of compost piles, batches, and windrows.

(3) Testing of the finished product. Compost shall not be applied to land or sold or given away unless the concentrations of human-made inert materials comply with 105.3(13) and the concentrations of all metals are less than the following:

Metal	Concentration mg/kg dry weight
Arsenic (As)	41
Cadmium (Cd)	39
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Nickel (Ni)	420
Selenium (Se)	36
Zinc (Zn)	2800

105.5(4) Application for permit renewal must be made on Form 50 (542-1542) and must be received at the department's Des Moines office at least 90 days before the expiration date of the existing permit. The renewal application shall include any proposed changes to the design or operation of the facility, a revised closure plan if necessary, and a confirmation that a revised subsequent comprehensive plan has been approved.

The department shall conduct an inspection of the composting facility following receipt of the application for renewal. Following the inspection, the permit holder shall be notified of all measures needed to bring the composting facility into conformance with the permit and these rules.

A permit shall be renewed when a complete application has been received and all corrective measures have been completed.

If an application for a solid waste composting facility permit renewal is found by the department to be incomplete, the applicant will be notified of that fact and of the specific deficiencies. If the deficiencies in the application have not been corrected within 30 days following the notification, the application may be denied.

567—105.6(455B,455D) Record keeping and reporting requirements for solid waste composting facilities. All solid waste composting facilities shall meet the following requirements, except on-farm composting of dead animals generated on the same farm if operated in conformance with 105.9(455B,455D).

105.6(1) *Record keeping.* The following records shall be maintained at the facility at all times and shall be submitted to the department upon request:

a. Analytical results described in 105.5(3)*"m."* These results shall be recorded on a department-approved reporting form.

b. Types and weight of waste accepted at the facility daily and annually, in tons.

c. Weight of compost removed from the facility daily and annually, in tons.

d. How the compost removed from the facility was used and, if possible, the number of tons per use.

e. A copy of the plan, the permit, annual reports, and the current storm water pollution prevention plan.

105.6(2) *Reporting.* An annual report summarizing the records required in 105.6(1)*"a"* to *"d"* shall be submitted to the solid waste section and the waste management assistance division of the department by July 31 of each year. The report shall summarize the records from the fiscal year beginning July 1 of the preceding calendar year and ending June 30 of the current year. The records required in 105.6(1)*"b"* to *"d"* shall be condensed into monthly totals and an annual total.

567—105.7(455B,455D) Closure requirements for solid waste composting facilities. All solid waste composting facilities shall meet the following requirements, except on-farm composting of dead animals generated on the same farm if operated in conformance with 105.9(455B,455D). For each composting facility, a closure plan shall be submitted to the department containing a description of the steps necessary to close the facility. A permit shall not be issued unless the closure plan is approved.

105.7(1) An updated closure plan, including a schedule for closure, shall be submitted to the department at least 60 calendar days prior to the proposed termination date for the facility.

105.7(2) Unless an alternative schedule is approved by the department, within 14 calendar days of the facility's ceasing operation, all waste and unfinished and finished compost shall be removed from the site.

567—105.8(455B,455D) Operator certification for solid waste composting facilities. All solid waste composting facilities shall meet the following requirements, except on-farm composting of dead animals generated on the same farm if operated in conformance with 105.9(455B,455D). Solid waste composting facility operators shall be trained, tested, and certified by a department-approved certification program upon adoption of such a program by the department. The person responsible for daily operation of the facility shall be certified.

567—105.9(455B,455D) Specific requirements for on-farm composting of dead animals generated on site. The owner of an animal feeding operation is encouraged to notify the waste management assistance division and the field office of the department serving the composting facility's location before initiating on-farm composting. On-farm composting facility operators are encouraged to be trained, tested, and certified by a department-approved certification program upon adoption of such a program by the department. On-farm composting of dead animals generated on the same farm is exempt from having a permit if the following operating requirements are met.

105.9(1) Dead animals are incorporated into the composting process within 24 hours of death and covered with sufficient animal manure, animal bedding, crop residues and clean wood waste free of coatings and preservatives necessary as bulking agent to prevent access by domestic or wild animals.

105.9(2) Composting is done in a manner that prevents formation and release of runoff and leachate and controls odors, flies, rodents and other vermin.

105.9(3) Dead animals are not removed from composting until all flesh, internal organs, and other soft tissue are fully decomposed.

105.9(4) Storage of finished compost shall be limited to 18 months and shall be applied to cropland or pastureland at rates consistent with the nitrogen use levels necessary to obtain optimum crop yields and shall be applied in a manner as to prevent runoff to surface waters of the state. Application of compost to other lands shall require prior approval by the department.

105.9(5) Composting must be done on an all-weather surface of compacted soil, compacted granular aggregates, asphalt, concrete or similar relatively impermeable material that will permit accessibility during periods of inclement weather and prevent contamination of surface and groundwater.

If composting is done in a permanent structure, composter construction shall utilize weather- and rot-resistant materials capable of supporting composting operations without damage. Although not mandatory, a roof over the composting facility is recommended to prevent excess moisture accumulation that can lead to production of undesirable odors and leachate.

105.9(6) Composting must be done outside of wetlands or the 100-year flood plain and at least 100 feet from private wells, 200 feet from public wells, 50 feet from property lines, 500 feet from inhabited residences, and 100 feet from flowing or intermittent streams, lakes, or ponds.

These rules are intended to implement Iowa Code sections 455B.304 and 455D.9.

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CHAPTER 106
RECYCLING OPERATIONS

[Prior to 7/1/83, DEQ Ch 31]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—106.1(455B) Specific design requirements. The plans required in 567—102.12(455B) shall include a complete description of initial and permanent roads, buildings and equipment to be installed; unloading and holding areas; fences and gates; landscaping and screening devices; personnel and maintenance facilities; sewer and water lines; the method of processing reclaimed salvageable materials, the disposition of such materials, the transfer points to which they will be moved, capacities of such points, and frequency of interchange shall be shown.

567—106.2(455B) Specific operating requirements for all recycling operations. The plans required in 567—102.12(455B) shall detail the means by which the following requirements will be complied with.

106.2(1) Material which cannot be recycled or removed during processing shall be handled in a manner which will not create pollution or a nuisance and shall be disposed of by another method provided in these rules.

106.2(2) Solid waste shall be unloaded at the operating areas only when an operator is on duty at that area. Solid waste may be deposited in storage containers inside the site under the supervision of an attendant or operator.

106.2(3) The operating area for solid waste shall be as small as practicable and shall be surrounded with appropriate barriers to prevent litter from blowing beyond the operating area.

106.2(4) The site shall be fenced to control access and a gate shall be provided at the entrance to the site and kept locked when an attendant or operator is not on duty.

106.2(5) A copy of the permit, engineering plans and reports shall be kept at the site at all times.

106.2(6) Sites not open to the public shall have a permanent sign posted at the site entrance specifying:

a. Name of operation.
b. The site permit number.
c. That the site is not open to the public.
d. The name and telephone number of the responsible official.

These rules are intended to implement Iowa Code section 455B.304.

567—106.3(455B) Recycling operations processing paper, cans, and bottles. Recycling operations which handle only paper, cans, and bottles are exempt from 106.1(455B) and 106.2(455B), and 567—Chapters 102 and 104 if the operation has no mechanical processing facilities or if the operation receives on average less than two tons of paper, cans, and bottles per day. Such operations shall submit the following information to the department for distribution to the public: address or legal description of site, organization operating the facility, name and telephone number of the responsible official of the facility, type of waste to be handled, operating days and hours.

567—106.4(455B) Closure requirements. All recycling operations shall be closed in conformance with their approved closure plan, this rule, rule 567—104.11(455B), and the requirements of 567—Chapter 102.

These rules are intended to implement Iowa Code section 455B.304.

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PROFESSIONAL LICENSURE DIVISION[645]

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

CHAPTER 147
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES
(Uniform Rules)

CHAPTER 148
DECLARATORY RULINGS
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CHAPTERS 149 to 179
Reserved

OPTOMETRY EXAMINERS

CHAPTER 180
BOARD OF OPTOMETRY EXAMINERS

STUDY COMPLIANCE FOR LICENSE RENEWAL AND REINSTATEMENT AND DISCIPLINARY PROCEDURES

CHAPTERS 181 to 199
Reserved

PHYSICAL AND
OCCUPATIONAL THERAPY

CHAPTER 200
PHYSICAL THERAPY EXAMINERS

CHAPTER 201
OCCUPATIONAL THERAPY EXAMINERS

SOCIAL WORKERS

CHAPTER 280
BOARD OF SOCIAL WORK EXAMINERS

SOCIAL WORK CONTINUING EDUCATION

DISCIPLINARY PROCEDURES FOR SOCIAL WORKERS

CHAPTERS 281 to 299
Reserved

SPEECH PATHOLOGY AND AUDIOLOGY

CHAPTER 300
BOARD OF SPEECH PATHOLOGY AND AUDIOLOGY EXAMINERS

CHAPTER 301
SPEECH PATHOLOGY AND AUDIOLOGY CONTINUING EDUCATION AND DISCIPLINARY PROCEDURES

CHAPTER 302
SPEECH PATHOLOGY AND AUDIOLOGY ASSISTANTS

645—20.112(272C) Reinstatement of an instructor's license. If the license has been lapsed or inactive for five years or less, the instructor shall hold a current barber's license in the state of Iowa and pay only the current renewal fee. If the instructor's license has been lapsed or inactive for more than five years, the instructor shall also pay the examination fee and take and pass the instructor's examination.

645—20.113(272C) Waiver from taking first available examination. The board may grant a waiver to an applicant if the applicant shows good cause for not taking the first available examination after issuance of a temporary work permit.

645—20.114 to **20.199** Reserved.

645—20.200(272C) Definitions. For the purpose of these rules, the following definitions shall apply:
"Board" means the board of barber examiners.
"Licensee" means any person licensed to practice barbering in the state of Iowa.

645—20.201(272C) Complaint. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.202(272C) Report of malpractice claims or actions. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.203(272C) Investigation of complaints or malpractice claims. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.204(272C) Alternative procedures and settlements. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.205(272C) License denial. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.206(272C) Notice of hearing. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.207(272C) Hearing open to the public. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.208(272C) Hearings. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.209(272C) Appeal. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.210(272C) Transcript. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.211(272C) Publication of decisions. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.212(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 645—13.1(272C), including civil penalties in an amount not to exceed $1000, when the board determines that a licensee is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

4. Habitual intoxication or addiction to the use of drugs.

5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

6. Fraud in representations as to skill or ability.

7. Use of untruthful or improbable statements in advertisements.

8. Willful or repeated violations of the provisions of Iowa Code chapter 147.

9. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

10. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

11. Practicing the profession while the license is suspended.

12. Suspension or revocation of license by another state.

13. Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

14. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

15. Practice outside the scope of a license.

16. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.

17. Verbally or physically abusing clients.

18. False or misleading advertising.

19. Betrayal of a professional confidence.

20. Falsifying clients' records.

21. Failure to report a change of name or address within 30 days after it occurs.

22. Submission of a false report of continuing education or failure to submit the annual report of continuing education.

23. Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

24. Failure to comply with a subpoena issued by the board.

25. Failure to report to the board as provided in rule 645—20.212(272C) any violation by another licensee of the reasons for disciplinary action as listed in this rule.

This rule is intended to implement Iowa Code chapters 17A and 272C.

645—20.213(272C) Peer review committees. Rescinded IAB 6/16/99, effective 7/21/99.

645—20.214(147) License fees. All fees are nonrefundable.

20.214(1) License to practice barbering issued on basis of examination is $75. Retake of examination is $75.

20.214(2) License by reciprocity is $100.

20.214(3) Renewal of barbering license for biennial is $60. Penalty for late renewal is $25, in addition to renewal fee, if not postmarked by the July 1 expiration date.

20.214(4) License for new barber school is $500.

20.214(5) Renewal or change of location of barber school license is $250.

20.214(6) License to instruct in barber school on basis of examination is $75.

20.214(7) Renewal of instructor's license for biennial is $70.

20.214(8) License for new barbershop is $30.

20.214(9) Renewal of barbershop license is $30. Penalty for late renewal is $10, in addition to renewal fee if not postmarked by the July 1 expiration date.

20.214(10) Transfer of barbershop or barber school license is $25.

20.214(11) An original barber assistant license is $25.

20.214(12) Renewal of barber assistant license is $5.

20.214(13) Temporary permit to practice barbering is $10.

20.214(14) Verified statement that a licensee is licensed in this state is $10.

20.214(15) Duplicate license is $10.

20.214(16) A demonstrator's permit is $35 for the first day and $10 for each day thereafter that the permit is valid.

This rule is intended to implement Iowa Code section 147.80.

645—20.215 to **20.299** Reserved.

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

645—20.300(28A) Conduct of persons attending meetings. Rescinded IAB 6/16/99, effective 7/21/99.

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CHAPTER 22
BARBER ASSISTANTS
[Prior to 7/29/87, Health Department(470), ch 154]

645—22.1(158) Course of study. Each Iowa school of barbering licensed by the Iowa board of barber examiners shall conduct a course of study for the barber assistant not to exceed 160 hours. Such course of study shall include the following:

22.1(1) Supervised practical instruction. The following shall be included:

Shampooing	80 hours
Rinses	
Hair treatments	

22.1(2) Demonstrations and lectures. The following shall be included:

Scalp care rinses, treatments	80 hours
Anatomy of scalp and hair	
Sanitation and sterilization	

22.1(3) Any person who has at least 1000 hours of credit in an accredited barber school or an accredited cosmetology school may also apply to the board of barber examiners for a license to practice in Iowa as a barber assistant.

This rule is intended to implement Iowa Code sections 147.36, 147.76, 147.90 and 157.14.

645—22.2(158) Employment limitations. A licensed barber assistant may be employed in a licensed barber shop only and may assist the barber in shampooing and sterilizing so long as such shampooing and sterilizing is performed under the direct personal supervision of a licensed barber. A barber's assistant shall not be permitted to cut or style hair or otherwise engage in the practice of barbering.

This rule is intended to implement Iowa Code sections 147.36, 147.76, 147.90 and 157.14.

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CHAPTER 23
AGENCY PROCEDURE FOR RULE MAKING
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 24
PETITIONS FOR RULE MAKING
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 25
DECLARATORY RULINGS
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 26
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 27
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 28
Reserved

CHAPTER 29
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 6/16/99, effective 7/21/99

31.4(2) Failure to receive renewal application shall not relieve the licensee of the responsibility of meeting continuing education requirements and submitting the renewal fee by September 30 of the even-numbered year.

31.4(3) Audit of continuing education reports.

a. After each educational biennium the board will audit a percentage of the continuing education reports at random before the renewal licenses are issued to those being audited.

b. All renewal license applications that are submitted late (after September 30 of the even-numbered year) shall be subject to an audit.

c. Any licensee against whom a complaint is filed may be subject to an audit of the licensee's continuing education.

d. The licensee must make the following information available to the board for auditing purposes:

(1) Date, place, course title, schedule, presenter(s).

(2) Number of contact hours for program attended.

(3) Official signature of sponsor indicating successful completion of course.

e. For auditing purposes the licensee must retain the above information for four years.

645—31.5(272C) Hearing. In the event of denial, in whole or part, of credit for continuing education activity, the licensee shall have the right, within 20 days after sending of the notification of denial by ordinary mail, to request a hearing which will be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board. If the hearing is conducted by an administrative law judge, the law judge shall submit a transcript of the hearing including exhibits to the board after the hearing with the proposed decision of the law judge. The decision of the board or decision of the administrative law judge after adoption by the board shall be final.

645—31.6(272C) Disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements. No waiver or extension of time shall be granted unless written application is made on forms provided by the board and is signed by the licensee and the appropriately licensed health care professional and the waiver is acceptable to the board. Waivers of the minimum continuing education requirements may be granted by the board for any period of time not to exceed one calendar year or in the event that the disability or illness upon which a waiver has been granted continues beyond the period for which the waiver has been granted. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—31.7(147,154D,272C) Complaint. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.8(147,154D,272C) Grounds for discipline. The board may revoke or suspend a license, place a licensee on probation, impose a civil penalty which shall not exceed $1000, or impose other discipline described in Iowa Code section 272C.3(2) for any of the following reasons:

31.8(1) All grounds listed in Iowa Code sections 147.55 and 272C.10.

31.8(2) Violations of rules promulgated by the board.

31.8(3) For marital and family therapists, violation of the code of conduct for marital and family therapists.

31.8(4) For mental health counselors, violation of the code of conduct for mental health counselors.

31.8(5) Fraud in procuring a license.

31.8(6) Professional incompetency.

31.8(7) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

31.8(8) Habitual intoxication or addiction to the use of drugs.

31.8(9) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

31.8(10) Fraud in representations as to skill or ability.

31.8(11) Use of untruthful or improbable statements in advertisements.

31.8(12) Willful or repeated violations of the provisions of Iowa Code chapter 147 or 154D.

31.8(13) Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

31.8(14) Holding oneself out as a licensee when the license has been suspended or revoked.

31.8(15) Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the Iowa board a revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country.

31.8(16) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

31.8(17) Prohibited acts consisting of the following:

a. Permitting another person to use the license for any purpose.

b. Practice outside the scope of the license.

c. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.

d. Verbally or physically abusing clients.

e. Any sexual intimidation or sexual relationship between a licensee and a client.

31.8(18) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying client's records.

b. Mental heath counselors know and take into account the traditions and practices of other professional groups with members of such groups when research, services, and other functions are shared or in working for the benefit of public welfare.

c. Ethical practice requires the investigator to inform the participant of all features of the research that reasonably might be expected to influence willingness to participate, and to explain all other aspects of the research about which the participant inquires. Failure to make full disclosure gives added emphasis to the investigator's abiding responsibility to protect the welfare and dignity of the research participant.

d. Openness and honesty are essential characteristics of the relationship between investigator and research participant. When the methodological requirements of a study necessitate concealment or deception, the investigator is required to ensure as soon as possible the participant's understanding of the reasons for this action and to restore the quality of the relationship with the investigator.

e. In the pursuit of research, mental health counselors give sponsoring agencies, host institutions, and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. They are aware of their obligation to future research workers and ensure that host institutions are given feedback information and proper acknowledgment.

f. Credit is assigned to those who have contributed to a publication, in proportion to their contribution.

g. The ethical investigator protects participants from physical and mental discomfort, harm and danger. If the risk of such consequences exists, the investigator is required to inform the participant of that fact, secure consent before proceeding, and take all possible measures to minimize distress. A research procedure may not be used if it is likely to cause serious and lasting harm to participants.

h. After the data is collected, ethical practice requires the investigator to provide the participant with a full clarification of the nature of the study and to remove any misconceptions that may have arisen. Where scientific or humane values justify delaying or withholding information, the investigator acquires a special responsibility to ensure that there are no damaging consequences for the participants.

i. Where research procedures may result in undesirable consequences for the participant, the investigator has the responsibility to detect and remove or correct these consequences, including, where relevant, long-term aftereffects.

j. Information obtained about the research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to such information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to the participants as a part of the procedure for obtaining informed consent.

645—31.11(147,154D,272C) Report of malpractice claims or actions or disciplinary actions. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.12(147,154D,272C) Investigation of complaints or malpractice claims. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.13(147,154D,272C) Informal licensee interview. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.14(147,154D,272C) Alternative procedure. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.15(147,154D,272C) License denial. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.16(17A,147,154D,272C) Hearings open to the public. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.17(17A,147,154D,272C) Judicial review. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.18(147,154D,272C) Publication of decisions. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.19(147,154D,272C) Peer review committees. Rescinded IAB 6/16/99, effective 7/21/99.

645—31.20(147,154D,272C) Conduct of persons attending meetings. Rescinded IAB 6/16/99, effective 7/21/99.

These rules are intended to implement Iowa Code chapters 17A, 147, 154D, and 272C.

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CHAPTER 32
CONTESTED CASES
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 33
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 34
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 35
Reserved

CHAPTER 36
PETITIONS FOR RULE MAKING
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 37
DECLARATORY RULINGS
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 38
AGENCY PROCEDURE FOR RULE MAKING
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 39
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 6/16/99, effective 7/21/99

UTILIZATION AND COST CONTROL REVIEW

645—40.19(514F) Utilization and cost control review.

40.19(1) The board shall establish U.C.C.R. (Utilization and Cost Control Review) committee(s). The name(s) of the committee(s) shall be on file with the board and available to the public. The designation of the committee(s) shall be reviewed annually.

40.19(2) Members of the U.C.C.R. committee shall:

a. Hold a current license.

b. Have practiced chiropractic in the state of Iowa for a minimum of five years prior to appointment.

c. Be actively involved in a chiropractic practice during the term of appointment as a U.C.C.R. committee member.

d. Have no pending board disciplinary actions or discipline taken during the three years prior to appointment and no discipline pending or taken during the period of appointment.

e. Have no malpractice awards granted against the appointed committee member during the three years prior to appointment or during the period of appointment.

f. Not assist in the review or adjudication of claims in which the committee member may reasonably be presumed to have a conflict of interest.

g. Have completed a utilization review course that has been previously approved by the board.

40.19(3) Procedures for utilization and cost control review. A request for review may be made to the board by any person governed by the various chapters of Title XX of the Code, self-insurers for health care benefits to employees, other third-party payers, chiropractic patients or licensees.

a. There shall be a reasonable fee, as established by the board, for services rendered, which will be made payable directly to the U.C.C.R. committee. The committee shall make a yearly accounting to the board.

b. A request for service shall be submitted to the executive director of the U.C.C.R. committee on an approved submission form and shall be accompanied by four copies of all information. All references to identification and location of patient and doctor shall be deleted and prepared for blind review by the executive director of the U.C.C.R. committee. The information shall be forwarded to the U.C.C.R. committee.

c. The U.C.C.R. committee shall respond in writing to the parties involved with its findings and recommendations within 90 days. The committee shall review the appropriateness of levels of treatment and give an opinion as to the reasonableness of charges for diagnostic or treatment services rendered as requested. The U.C.C.R. committee shall submit a quarterly report of their activities to the board. The U.C.C.R. committee shall meet at least annually with the board chair or the board chair's designee.

40.19(4) Types of cases reviewed shall include:

a. Utilization.

(1) Frequency of treatment,

(2) Amount of treatment,

(3) Necessity of service,

(4) Appropriateness of treatment.

b. Usual and customary service.

40.19(5) Criteria for review may include but are not limited to:

a. Was diagnosis compatible and consistent with information?

b. Were X-ray and other examination procedures adequate, or were they insufficient or nonrelated to history or diagnosis?

c. Were clinical records adequate, complete, and of sufficient frequency?

d. Was treatment consistent with diagnosis?

e. Was treatment program consistent with scientific knowledge and academic and clinical training in accredited chiropractic colleges?

f. Were charges reasonable and customary for the service?

40.19(6) Members of the U.C.C.R. committee shall observe the requirements of confidentiality imposed by Iowa Code chapter 272C.

40.19(7) Action of the U.C.C.R. committee does not constitute an action of the board.

This rule is intended to implement Iowa Code sections 514F.1 and 514F.2.

645—40.20 Reserved.

DISCIPLINE

645—40.21(151,272C) General. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.22(151,272C) Method of discipline. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.23(272C) Discretion of board. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.24(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 645—13.1(151,272C), including civil penalties in an amount not to exceed $1000, when the board determines that the licensee is guilty of any of the following acts or offenses:

40.24(1) Fraud in procuring a license.

a. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice chiropractic and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the state department of health any false or forged diploma, or certificate or affidavit or identification or qualification in making an application for a license in this state.

b. Reserved.

40.24(2) Professional incompetency.

a. Professional incompetency includes, but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the chiropractic physician's practice;

(2) A substantial deviation by the chiropractic physician from the standards of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances;

(3) A failure by a chiropractic physician to exercise in a substantial respect that degree of care which is ordinarily exercised by the average chiropractic physician in the state of Iowa acting in the same or similar circumstances;

(4) A willful or repeated departure from or the failure to conform to the minimal standard or acceptable and prevailing practice of chiropractic in the state of Iowa.

(5) Failure to maintain clinical and fiscal records in support of services rendered for a minimum of five years from one of the following dates as applicable. For the purposes of this rule, clinical records shall include all laboratory and diagnostic imaging studies.

1. For an adult patient in an uncontested case, the last office visit.
2. For a minor patient in an uncontested case, the last office visit plus the age of 18 years.

(6) Failure to comply with the health department standards for radiation-emitting equipment as used by a doctor of chiropractic, set forth in Iowa Code chapter 136C.

b. Reserved.

40.24(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a chiropractic physician in the practice of chiropractic and includes any representation contrary to the chiropractic physician's legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another. Activities under this paragraph include, but are not limited to:

(1) Alleging superiority in any way.
(2) Guarantees of any type.
(3) Improper titles.
(4) Inflated or unjustified expectations of favorable results.
(5) Self-laudatory claims of specialty practice for which credentials do not exist.
(6) Representations that patients easily misunderstand.
(7) Claims of extraordinary skills that are not recognized in the profession.

b. Engaging in unethical conduct includes, but is not limited to, a violation of the standards and principles of chiropractic ethics and code of ethics as set out in rule 40.51(147,272C) as interpreted by the board.

c. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a chiropractic physician to possess and exercise that degree of skill, learning and care expected of a reasonably prudent chiropractic physician acting in the same or similar circumstances in this state or when a chiropractic physician is unable to practice chiropractic with reasonable skill and safety to patients as a result of a mental or physical impairment or chemical abuse.

40.24(4) Habitual intoxication or addiction to the use of drugs.

a. Habitual intoxication or addiction to the use of drugs includes, but is not limited to, the inability of a chiropractic physician to practice chiropractic with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other type of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair a chiropractic physician's ability to practice the profession with reasonable skill and safety.

b. Reserved.

40.24(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

a. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession includes, but is not limited to, the conviction of a chiropractic physician who has committed a public offense in the practice of the profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of chiropractic, or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon the licensee as a chiropractic physician in this state.

b. Reserved.

40.24(6) Fraud in representations as to skill or ability.

a. Fraud in representations as to skill or ability includes, but is not limited to, a chiropractic physician having made misleading, deceptive or untrue representations as to the chiropractic physician's competency to perform professional services for which the chiropractic physician is not qualified to perform by training or experience.

b. Reserved.

40.24(7) Use of untruthful or improbable statements in advertisements.

a. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a chiropractic physician in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

(1) Inflated or unjustified expectations of favorable results.

(2) Self-laudatory claims that imply that the chiropractic physician is a skilled chiropractic physician engaged in a field or specialty of practice for which the chiropractic physician is not qualified.

(3) Representations that are likely to cause the average person to misunderstand; or

(4) Extravagant claims or to proclaim extraordinary skills not recognized by the chiropractic profession.

b. Reserved.

40.24(8) Willful or repeated violations of the provisions of this Act.

a. Willful or repeated violations of the provisions of this Act includes, but is not limited to, a chiropractic physician having intentionally or repeatedly violated a lawful rule or regulation promulgated by the board of chiropractic examiners or the state department of health or violated a lawful order of the board or the state department of health in a disciplinary hearing or has violated the chiropractic practice Acts or rules promulgated thereunder.

b. Reserved.

40.24(9) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of chiropractic.

40.24(10) Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the board of chiropractic examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

40.24(11) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice chiropractic.

40.24(12) Being guilty of a willful or repeated departure from, or the failure to conform to, the chiropractic practice Acts or rules promulgated therein. An actual injury to a patient need not be established.

40.24(13) Inability to practice chiropractic with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

40.24(14) Willful or repeated violation of lawful rule or regulation promulgated by the board.

40.24(15) Violating a lawful order of the board, previously entered by the board in a disciplinary hearing.

40.24(16) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

40.24(17) Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

40.24(18) Indiscriminately or promiscuously prescribing, administering or dispensing any order for other than lawful purpose.

40.24(19) Submission of a false report of continuing education or failure to submit the annual report of continuing education.

40.24(20) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

40.24(21) Failure to comply with a subpoena issued by the board.

40.24(22) Failure to file the reports required by rule 40.32(272C) concerning acts or omissions committed by another licensee.

40.24(23) Repeated malpractice.

40.24(24) Obtaining any fee by fraud or misrepresentation.

40.24(25) Negligence in failing to exercise due care in the delegation of chiropractic services to or supervision of assistants, employees or other individuals, whether or not injury results.

40.24(26) Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code chapter 151.

40.24(27) Failure to maintain clean and sanitary conditions at the premises in keeping with sound public health standards.

40.24(28) Failure to respond, when requested, to communications of the board within 30 days of the mailing of such communication by registered or certified mail.

40.24(29) Failure to report child abuse or dependent adult abuse.

40.24(30) Obtaining third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

a. Reporting incorrect treatment dates for the purpose of obtaining payment;

b. Reporting charges for services not rendered;

c. Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or

d. Aiding a patient in fraudulently obtaining payment from a third-party payer.

40.24(31) Practicing without a current license or practicing when a license is lapsed.

40.24(32) Failure to notify the board of a change of name or address within 30 days of its occurrence.

This rule is intended to implement Iowa Code section 232.69.

645—40.25(272C) Procedure for peer review. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.26(272C) Peer review committees. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.27(272C) Duties of peer review committees. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.28(272C) Board review of recommendations. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.29(272C) Reporting of judgments or settlements. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.30(272C) Investigation of reports of judgments and settlements. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.31(272C) Reporting of acts or omissions. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.32(272C) Failure to report licensee. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.33(272C) Immunities. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.34(272C) Doctor-patient privileged communications. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.35(272C) Confidentiality of investigative files. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.36(151) Acupuncture.

40.36(1) "Acupuncture" is the procedure of puncturing the skin with needles for treatment.

40.36(2) Rescinded IAB 8/19/92, effective 9/23/92.

40.36(3) Venipuncture for withdrawal of blood is not an acupuncture procedure.

645—40.37(151) Nonprofit nutritional product sales.

40.37(1) Profit shall mean all moneys remaining after the cost of operating a chiropractic practice.

40.37(2) The sale price of the nutritional product may not include a profit exceeding the cost of the practice overhead and the product.

645—40.38(151) Chiropractic insurance consultant.

40.38(1) Definition. The term *"chiropractic insurance consultant"* shall mean an Iowa-licensed chiropractic physician registered with the board who serves as a liaison and advisor to an insurance company and who advises said insurance company of: Iowa standards of recognized and accepted chiropractic services and procedures permitted by the Iowa Code and administrative rules; and advice on the propriety of chiropractic diagnosis and care.

40.38(2) Licensed chiropractic physicians shall not hold themselves out as chiropractic insurance consultants unless they meet the following requirements:

a. Hold a current license.

b. Practice chiropractic in the state of Iowa for a minimum of five years.

c. Be actively involved in a chiropractic practice during the term of appointment as a chiropractic insurance consultant.

40.38(3) Rescinded IAB 8/19/92, effective 9/23/92.

This rule is intended to implement Iowa Code sections 151.1 and 151.11.

645—40.39(151) Adjunctive procedures.

40.39(1) Adjunctive procedures defined. Procedures related to differential diagnosis.

40.39(2) Any applicant for licensure to practice chiropractic in the state of Iowa who chooses to be tested in limited adjunctive procedures, those limited procedures must be adequate for the applicant to come to a differential diagnosis in order to pass the examination.

40.39(3) Applicants for licenses to practice chiropractic who refuse to utilize any of the adjunctive procedures which they have been taught in approved colleges of chiropractic must adequately show the examiners that they can come to an adequate differential diagnosis without the use of adjunctive procedures.

This rule is intended to implement Iowa Code sections 151.1 and 151.11.

645—40.40(151) Physical examination. The chiropractic physician is to perform physical examinations to determine human ailments, or the absence thereof, utilizing principles taught by chiropractic colleges. Physical examination procedures shall not include prescription drugs or operative surgery.

645—40.41(151) Gonad shielding. Gonad shielding of not less than 0.25 millimeter lead equivalent shall be used for chiropractic patients who have not passed the reproductive age during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

645—40.42 to **40.46** Reserved.

DISCIPLINARY PROCEDURE

645—40.47(147,151,17A,272C) Disciplinary procedure. Rescinded IAB 6/16/99, effective 7/21/99.

645—40.48 to **40.50** Reserved.

PRINCIPLES OF PROFESSIONAL ETHICS

645—40.51(147,272C) Principles of chiropractic ethics. The following principles of chiropractic ethics are hereby adopted by the board relative to the practice of chiropractic in this state.

40.51(1) These principles are intended to aid chiropractic physicians individually and collectively in maintaining a high level of ethical conduct. These are standards by which a chiropractic physician may determine the propriety of the chiropractic physician's conduct in the chiropractic physician's relationship with patients, with colleagues, with members of allied professions, and with the public.

40.51(2) The principal objective of the chiropractic profession is to render service to humanity with full respect for the dignity of man. Chiropractic physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

40.51(3) Chiropractic physicians should strive continually to improve chiropractic knowledge and skill, and should make available to their patients and colleagues the benefits of their professional attainments.

40.51(4) A chiropractic physician should practice a method of healing founded on a scientific basis, and should not voluntarily associate professionally with anyone who violates this principle.

40.51(5) The chiropractic profession should safeguard the public and itself against chiropractic physicians deficient in moral character or professional competence. Chiropractic physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

40.51(6) A chiropractic physician may choose whom to serve. In an emergency, however, services should be rendered to the best of the chiropractic physician's ability. Having undertaken the case of a patient, the chiropractic physician may not neglect the patient; and, unless the patient has been discharged, the chiropractic physician may discontinue services only after giving adequate notice.

40.51(7) A chiropractic physician should not dispose of services under terms or conditions which tend to interfere with or impair the free and complete exercise of professional judgment and skill or tend to cause a deterioration of the quality of chiropractic care.

40.51(8) A chiropractic physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of chiropractic service may be enhanced thereby.

40.51(9) A chiropractic physician may not reveal the confidences entrusted in the course of chiropractic attendance, or the deficiencies observed in the character of patients, unless required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

40.51(10) The honored ideals of the chiropractic profession imply that the responsibilities of the chiropractic physician extend not only to the individual, but also to society where these responsibilities deserve interest and participation in activities which have the purpose of improving both the health and well-being of the individual and the community.

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

645—40.52(151,272C) Conduct of persons attending meetings.

40.52(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

40.52(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board person presiding at the meeting.

645—40.53 to **40.60** Reserved.

CONTINUING EDUCATION

645—40.61(272C) Definitions. Rescinded IAB 2/12/97, effective 3/19/97.

645—40.62(272C) Continuing education requirements.

40.62(1) Each person licensed to practice chiropractic in this state shall complete during the biennium ending in an odd-numbered year a minimum of 60 hours of continuing education.

40.62(2) The continuing education compliance period shall extend from January 1 of every even-numbered year to December 31 of every odd-numbered year, during which period attendance at approved continuing education may be used as evidence of fulfilling continuing education requirements for the subsequent biennial renewal period beginning July 1 of the even-numbered years.

40.62(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which meets the requirement herein and is approved by the board pursuant to rule 40.64(151).

40.62(4) Carryover credit of continuing education shall not be permitted.

40.62(5) It is the responsibility of each licensee to finance their costs of continuing education.

40.62(6) If a new license holder is licensed during the first year of the biennial continuing education period, the license holder is only required to complete 30 hours of continuing education for renewal. If a new license holder is licensed during the second year of the biennial continuing education period, the license holder will be exempt from meeting the continuing education requirements for the first license renewal. The new license holder will be required to obtain 60 hours of continuing education for the second license renewal. Effective January 1, 1998, at least 40 percent of the accrued hours must be prescribed credit hours. The remaining hours may be accrued as follows:

1. Not more than 10 percent of the hours from elective, self-study activities.
2. Not more than 10 percent of the hours from prescribed child abuse, dependent adult abuse, or OSHA training hours.
3. Not more than 14 percent of the hours from elective state, district, or organizational meetings.
4. Not more than 20 percent of the hours from elective chiropractic practice management.
5. Not more than 60 percent of the hours from undergraduate teaching at a CCE- or IBCE-approved institution. (Prescribed)
6. Not more than 60 percent of the hours from postgraduate teaching through a CCE- or IBCE-approved institution or organization, but no more than equal to the hours accrued for the initial session per subject matter. (Prescribed)
7. Not more than 60 percent of the hours from proctoring of the National Board examinations.

645—40.63(151) Standards for approval. A continuing education activity shall be qualified for approval if the board determines that:

40.63(1) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

40.63(2) It pertains to common subjects or other subject matters which integrally relate to the current national and international standards of the practice of chiropractic; and

40.63(3) It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and is accompanied by a paper, manual or written outline which substantively pertains to the subject matter of the program. Except as may be allowed pursuant to rule 40.71(151) hereof, no licensee shall receive credit exceeding 10 percent of the biennial total required hours for self-study, including TV viewing, video or sound-recorded programs, correspondence work, or research, or by other similar means as authorized by the board.

645—40.64(151) Approval of sponsors, programs, and activities.

40.64(1) Accreditation of sponsors. An approved college or nonprofit organization which desires accreditation as a sponsor of courses, programs, or other continuing education activities, shall apply for accreditation to the board stating its educational history for the preceding two years, including:

a. Dates and subjects offered.

b. Total hours of instruction presented.

c. Names and qualifications of instructors.

d. Monitoring and certification procedures.

Standard for programs and activities shall meet the requirements set forth in rule 40.63(151).

By January 31 of each year, commencing January 31, 1980, all accredited sponsors shall submit a report in writing to the board disclosing the educational programs provided for Iowa licensees during the preceding calendar year including dates, titles and hours of instruction provided each licensee in a form approved by the board.

The board may at any time reevaluate an accredited sponsor. If after such reevaluation, the board finds there is basis for consideration of revocation of the accreditation of an accredited sponsor, the board shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least 30 days prior to said hearing. The decision of the board after such hearing shall be final.

40.64(2) Accreditation for sponsors shall be terminated four years from the date of approval. By January 31, one year previous to the date of termination, each sponsor shall be required to reapply for approval. The application shall include those items listed under rule 40.64(1).

40.64(3) Rescinded, effective August 12, 1981.

40.64(4) Review of programs. The board may monitor or review any continuing education program already approved by the board and upon evidence of significant variation in the program presented from the program approved may disapprove all or any part of the approved hours granted in the program.

40.64(5) When it is necessary to monitor a sponsor of continuing education, the sponsor shall reimburse the board member for necessary traveling and other expenses in accordance with the guidelines of the state of Iowa for board members and per diem at the rate of $50 per day for each day actually spent in travel and monitoring of the program.

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

645—40.65(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right within 20 days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 40.47(147,151,17A,272C). If the hearing is conducted by an administrative law judge, the administrative law judge shall submit a transcript of the hearing including exhibits to the board after the hearing with the proposed decision of the administrative law judge. The decision of the board or decision of the administrative law judge after adoption by the board shall be final.

645—40.66(272C) Reports and records. Each licensee shall file evidence of continuing chiropractic education satisfactory to the board previous to the date of relicensure in which claimed continuing education hours were completed. A report of continuing chiropractic education on a form furnished by the board shall be sent to the Board Administrator, Iowa Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075, or to any other address as may be designated on the form.

40.66(1) The board relies upon each individual licensee's integrity in certifying to compliance with the continuing chiropractic education requirements herein provided. Nevertheless, the board reserves the right to require, if it so elects, any licensee to submit, in addition to such report, further evidence satisfactory to the board demonstrating compliance with the continuing chiropractic education requirements herein provided. Accordingly, it is the responsibility of each licensee to retain or otherwise be able to have, or cause to be made, available at all times, reasonably satisfactory evidence of such compliance.

40.66(2) The licensee shall maintain a file in which records of the activities are kept, including dates, subjects, duration of programs, registration receipts where appropriate and other appropriate documentations for a period of three years after the date of the program.

645—40.67(272C) Attendance record. The board shall monitor licensee attendance at approved programs by random inquiries of accredited sponsors.

645—40.68(272C) Attendance report. Rescinded IAB 2/12/97, effective 3/19/97.

645—40.69(272C) Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of chiropractic in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

645—40.70(272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of chiropractic in the state of Iowa, satisfy the following requirements for reinstatement:

40.70(1) Submit written application for reinstatement to the board upon forms provided by the board, pay the current renewal fee; and

40.70(2) Furnish in the application evidence of one of the following:

a. The practice of chiropractic in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of accredited continuing education hours substantially equivalent under these rules computed by multiplying 30 by the number of years a certificate of exemption shall have been in effect for the applicant. Hours need not exceed 90 hours for reinstatement, if obtained within the past two years, except when there is a demonstrated deficiency for specialized education as determined by the board through a personal interview with the applicant; or

c. Successful completion of the Iowa state license examination, or a special purposes examination approved by the board, conducted within one year immediately prior to the submission of such application for reinstatement.

645—40.71(272C) Exemptions for active practitioners. A chiropractic physician licensed to practice chiropractic shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services, or for periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and meets all requirements of that state or district for practice therein, or for periods that the licensee is a government employee working as a licensed chiropractic physician and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the board. Prior to engaging in active practice in Iowa, the licensee shall submit for board approval evidence of continuing education obtained in another state or district.

645—40.72(272C) Physical disability, illness or exemption of continuing education. The board may, in individual cases involving physical disability, illness or for other just cause determined by the board, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and a physician licensed in the state of Iowa. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability, or illness or other just cause determined by the board upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—40.73(272C) Reinstatement of lapsed license. Application for reinstatement of a lapsed license may not preclude disciplinary actions by the board as provided in this chapter.

40.73(1) A licensee who allows a license to lapse by failing to renew such license within 60 days of renewal date may be reinstated as follows:

a. Submit a completed application for reinstatement of a license to practice chiropractic.

b. Pay the renewal fee(s) as required by subrules 40.12(2) and 40.12(3).

c. Have a personal interview with the board at the board's request.

d. Provide evidence of completion of 30 hours of continuing education for each lapsed year. Hours need not exceed 90 hours if obtained within the past two years, except when there is a demonstrated deficiency for specialized education as determined by the board through a personal interview.

(1) The board may grant an extension of time of up to one year to allow compliance with continuing education requirements for reinstatement.

(2) An exemption from the required reporting of continuing education for the purpose of reinstatement of an active practitioner may be granted by the board in accordance with rule 40.72(272C).

40.73(2) The board may require a licensee applying for reinstatement to successfully complete the state examination or a special purposes examination when, through a personal interview, the board finds reason to doubt the licensee's ability to practice with reasonable skill and safety.

These rules are intended to implement Iowa Code sections 147.32, 147.76 and 272C.2.

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CHAPTER 41
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 42
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTERS 43 to 48
Reserved

CHAPTER 49
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTERS 50 to 59
Reserved

60.2(3) Students who complete their training prior to the date of examination may qualify by complying with the above requirements; however, the exact date of graduation shall be shown on the application.

60.2(4) The cosmetology board examination shall consist of a written theory and written Iowa law examination. A score of 75 percent or greater on each section of the above-listed examinations shall be a passing score.

645—60.3(157) Licensure of applicants licensed in cosmetology arts and sciences in other states and countries.

60.3(1) The board may enter into reciprocal agreements with other states pursuant to the provisions of Iowa Code sections 147.44 to 147.49.

a. Reciprocal agreements. The board may enter into a full reciprocal agreement with any state which, as determined by the examining board, has similar educational and examining standards and which shall reciprocate with this state. Each applicant shall show proof of licensure validity in the state with which this state has a full reciprocal agreement; upon acceptance of said proof and the successful completion of the Iowa law examination, the applicant shall be issued a license to practice in this state.

b. Conditional reciprocal agreements. The board may enter into conditional reciprocal agreements with another state which conducts examinations. Every person licensed in that state, when applying for a license to practice in this state, shall successfully complete the Iowa law examination and shall furnish satisfactory proof to the department that the applicant has been licensed and actively engaged in the practice of any of the professions under the jurisdiction of the board for the period 12 months just prior to application.

c. For applicants licensed in a state having reciprocity with Iowa, the application procedures shall be as follows:

(1) Applicant shall submit a completed application form prescribed by the board and accompanied by the fee specified in 645—subrule 62.1(2).

(2) Applicant shall submit with application a certification of licensure in another state with which Iowa has a reciprocal agreement.

60.3(2) For applicants licensed in states which do not have reciprocity with Iowa, the application procedure shall be as follows:

a. Applicant shall submit a completed application form prescribed by the board and accompanied by the fee as specified in 645—subrule 62.1(2).

b. Applicant shall submit a proof of licensure in another state for at least 12 months in the 24-month period preceding the application.

c. If the applicant completes the requirements of 60.3(2) *"a"* and *"b,"* the applicant shall be allowed to take the written theory and Iowa law examinations given by the board.

60.3(3) Any applicant licensed in another state or country who does not meet the requirements of subrule 60.3(1) or 60.3(2) shall present a completed application and notarized copy of the license from the other state or country. The application shall be reviewed to determine if additional hours of training are necessary or if the applicant qualifies to take the examination.

60.3(4) Upon request, persons who are licensed in other states and countries who are determined to be eligible to take the written theory and Iowa law examinations shall be issued a temporary permit as set forth in subrule 60.11(1).

645—60.4(157) Cosmetology arts and sciences examination.

60.4(1) Examinees taking state board examinations shall have at their disposal for the examination all necessary materials requested by the cosmetology board of arts and sciences examiners.

60.4(2) Before commencing the examinations, each applicant will be given a confidential number which shall be inscribed on the answer sheet.

60.4(3) Any applicant taking the state board examination who desires to practice prior to examination shall obtain a temporary permit issued by the department.

60.4(4) A certificate of licensure shall be issued by the department to an applicant who has passed the examination conducted by the board determining minimum competency in the practice. The examination shall be consistent with the prescribed curriculum for the schools of cosmetology arts and sciences of this state. The examination is to be conducted by the board or its designee.

a. An applicant who has failed one of the examinations, written theory or Iowa law, must be reexamined. The applicant receiving a failing grade in any one of these examinations shall be reexamined in the section of the examination where the failure occurred and obtain a passing grade of 75 percent or greater on each section of the examination. Applicants receiving a failing grade in any one of these examinations may be reexamined at a time and location determined by the board.

b. Failure to appear and take the examination shall result in forfeiture of the fee and temporary permit unless the failure to appear shall have been due to illness or similar cause in which written request setting forth reasons why forfeiture should not occur shall be made to the board of cosmetology arts and sciences examiners.

c. An applicant who fails one section and does not pass that section within two years must be reexamined in all sections.

60.4(5) The examination rooms will be closed to everyone except examinees, examiners, and administrative staff.

645—60.5(157) Requirements for license to practice electrology.

60.5(1) A person who practices electrology in the state of Iowa is required to be licensed as an electrologist.

60.5(2) A person applying for an electrology license shall:

a. Present to the board a diploma or similar evidence indicating successful completion of a course of at least 425 hours of training related to electrology, and taught by an electrology instructor who is licensed to teach the clinical and theoretical practice of electrology, in a licensed school of cosmetology arts and sciences in Iowa, or from any school in another state which is licensed or approved by the board and which teaches the practice of electrology. The board shall not require that a person be licensed as a cosmetologist in order to obtain a license to practice electrolysis; however, the board shall credit the holder of a current cosmetology license with 200 hours toward the electrology licensing course.

b. Attach to the application a photocopy of a high school diploma or equivalent.

d. Submit application and fees; certification of completion of instructor's training from school of cosmetology arts and sciences or proof of two years' active practice in the field of cosmetology arts and sciences; and proof of attendance at an advanced instructor's institute prescribed by the board, prior to the starting date of employment as an instructor by a school of cosmetology arts and sciences.

e. The department shall issue to the applicant a notice of registration which shall be displayed for public view. Such notice shall be valid for 12 months.

f. Pass an instructor's and Iowa law examination within the first 12 months of employment to receive the original instructor's license.

g. Notwithstanding paragraph *"b,"* an instructor teaching courses in electrology, esthetics and nail technology shall hold a current license in the practice and possess an instructor license to teach that practice or be a licensed cosmetology instructor who possesses the skill and knowledge required to instruct in that practice.

h. An instructor teaching courses in electrology shall have 60 hours of practical application experience, excluding school hours, in the area of electrolysis prior to application. The 60 hours must be documented by the employer.

60.10(2) Reserved.

645—60.11(157) Temporary permits.

60.11(1) *Trainee permit.* A person who completes the requirements for licensure listed in Iowa Code section 157.3, except for the examination, shall be known as a trainee and, upon request, the department shall issue a temporary permit which allows the applicant to practice in the cosmetology arts and sciences, under the supervision of a licensee of cosmetology arts and sciences, barber, or person holding the same license in cosmetology arts and sciences, from the date of application until passage of the examination subject to that practice. An applicant shall take the first available examination administered by the board and may retain the temporary permit if the applicant does not pass the first examination. An applicant who does not pass the first examination shall take the next available examination administered by the board. The temporary permit of an applicant who does not pass the second examination shall be revoked.

60.11(2) *Demonstrator's permit.* The department may issue a demonstrator's permit for the purpose of demonstrating cosmetology arts and sciences to the consuming public upon recommendation of the board. The board shall determine and state its recommendations and the length of time the temporary permit is valid.

a. A demonstrator permit shall be valid for a salon, or person. The location, purpose and duration shall be stated on the permit.

b. A demonstrator permit shall be applied for at least 30 days in advance of dates of intended use.

c. A demonstrator permit shall be issued for from one to ten days.

d. The application shall be accompanied by the fee as set forth in 645—subrule 62.1(15).

e. No more than four permits shall be issued to any applicant during a calendar year.

645—60.12(157) Reinstatement of inactive (exempt) practitioners of cosmetology arts and sciences. Inactive practitioners who have requested and been granted a waiver of compliance with the renewal requirements as outlined in 645—64.5(272C) or Iowa Code chapter 157 or 272C and who have obtained a certificate of exemption shall, prior to engaging in the practice of the profession in Iowa, satisfy the following requirements for reinstatement:

60.12(1) Submit written application for reinstatement to the board upon forms provided by the boards; and

60.12(2) Furnish in the application evidence of one of the following:

a. Verification of current active licensure in another state of the United States or the District of Columbia and a notarized statement of active practice of 12 months during the 24 months preceding application for reinstatement of Iowa license. If exempt four years or more, the person shall pass the Iowa Law Examination; or

b. Completion of a total number of hours of approved continuing education computed by multiplying four hours by the number of years, to a maximum of four years, or completion of a refresher course through a licensed Iowa school of cosmetology. If exempt four years or more, the person shall pass the Iowa Law Examination (see 645—subrule 64.7(1)); or

c. Successful completion of the Iowa state license examination conducted within one year immediately prior to the submission of such application for reinstatement.

60.12(3) Submit reinstatement fee equivalent to two renewal periods.

645—60.13(272C) Reinstatement of lapsed license.

60.13(1) Those persons who have failed to renew a license to practice issued by the department pursuant to Iowa Code chapter 157 and who have not previously received a certificate of exemption shall:

a. For a lapsed cosmetology arts and sciences license, pay past due renewal and penalty fees in addition to completion of all past due continuing education to a maximum of four years. If lapsed four years or more, the person shall complete a refresher course approved by the board and retake the written theory and Iowa law portions of the state board examination.

EXCEPTION: A person applying for reinstatement of a license which has lapsed for four years or more who can show proof of current licensure in another state and active practice for 12 out of 24 months preceding submission of the application for reinstatement will not be required to take the brush-up course or continuing education hours; however, the person will be required to successfully complete the Iowa law examination. Proof of current licensure would be shown by a certification of licensure with a raised state seal from the state in which the applicant is licensed. Proof of active practice would be shown by notarized statements from previous employers.

b. For a lapsed manicuring license, pay past renewal and penalty fees in addition to completion of all past due continuing education to a maximum of four years and pass the Iowa law examination.

c. For a lapsed instructor license, pay past renewal and penalty fees to a maximum of four years, take a Micro Teaching Technical Skills Institute course, and pass the instructor and Iowa law examinations within six months of date of reinstatement.

60.13(2) Rescinded IAB 12/4/96, effective 1/8/97.

645—60.14(157) Display of license. The original practitioner's license and renewal or trainee permit shall be displayed in the licensee's primary place of practice. Following the first renewal, a wallet-sized duplicate license, obtained from the department, shall be available at all satellite places of practice upon request by a client or inspector.

645—60.15(157) Notification of change of name or mailing address.

60.15(1) Each licensee or trainee shall notify the department of a change of the licensee's mailing address within 30 days after change.

60.15(2) Each licensee or trainee shall notify the department of a change of the licensee's name within 30 days after change.

These rules are intended to implement Iowa Code sections 147.29, 147.36, 147.44 to 147.49, 157.3, 157.4, 157.5, and Iowa Code chapter 272C.

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CHAPTER 65
DISCIPLINARY PROCEDURES FOR COSMETOLOGY ARTS AND SCIENCES LICENSEES

[Prior to 7/29/87, Health Department[470] Ch 151]
[Prior to IAC 12/23/92, see 645—Chapter 62]

645—65.1(272C) Complaint. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.2(272C) Report of malpractice claims or actions. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.3(272C) Investigation of complaints or malpractice claims. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.4(272C) Alternative procedure. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.5(272C) License denial. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.6(272C) Notice of hearing. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.7(272C) Hearings open to public. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.8(272C) Hearings. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.9(272C) Appeal. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.10(272C) Transcript. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.11(272C) Publications of decisions. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.12(272C) Discipline. For all acts and offenses listed in this rule, the board may impose any of the disciplinary methods outlined in Iowa Code section 272C.3(2)*"a" to "f,"* including the imposition of a civil penalty which shall not exceed $1,000. The board may discipline a licensee for any of the following reasons:

65.12(1) All grounds listed in Iowa Code section 147.55 which are:

a. Fraud in procuring a license.

b. Professional incompetency:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the licensee's practice; or

(2) A willful or repeated departure from, or the failure to conform to the minimal standard of, accepted or prevailing practice.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs.

e. Conviction of a felony related to the profession or occupation of the licensee or the conviction of a felony that would affect the licensee's ability to practice within a profession which includes, but is not limited to, a felonious act which is so contrary to honesty, justice or good morals and so reprehensible as to violate the public confidence and trust imposed upon the licensee.

f. Fraud in representations as to skill or ability.

g. Use of untruthful or improbable statements in advertisements.

h. Willful or repeated violations of the provisions of Iowa Code chapter 147.

65.12(2) Violation of the rules promulgated by the board.

65.12(3) Violation of the terms of a decision and order issued by the board.

65.12(4) Violation of the terms of a settlement agreement entered into and issued by the board.

65.12(5) Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for the treatment of mental illness, drug addiction or alcoholism.

65.12(6) Practicing the profession while the license is under suspension, lapsed or delinquent for any reason.

65.12(7) Suspension or revocation of license by another state.

65.12(8) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

65.12(9) Prohibited acts consisting of the following:

a. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

b. Permitting another person to use the licensee's license for any other purpose.

c. Practice outside the scope of a license.

d. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.

e. Verbally or physically abusing clients.

f. Permitting a licensed person under the licensee's control to practice outside the scope of the person's license.

65.12(10) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service (directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from a person, place, facility, or business in which the licensee has a financial interest).

65.12(11) Failure to report a change of name or mailing address.

65.12(12) Failure to submit continuing education certificate with license renewal by March 31 of renewal year.

65.12(13) Failure to complete the required continuing education within the compliance period.

65.12(14) Submission of a false report of continuing education, or failure to submit the annual report of continuing education.

65.12(15) Failure to return, by ordinary mail, to the department the salon license within 30 days of discontinuance of business under that license.

65.12(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

65.12(17) Failure to comply with a subpoena issued by the board.

65.12(18) Failure to report to the board as provided in rule 645—65.1(272C) any violation by another licensee of the reasons for a disciplinary action as listed in this rule.

65.12(19) Performing any of those practices coming within the jurisdiction of the board pursuant to Iowa Code chapter 157 with or without compensation in any place other than a licensed salon, a licensed school of cosmetology arts and sciences, or a licensed barbershop as defined in Iowa Code section 158.1 except that a licensee may practice at a location which is not a licensed salon or school of cosmetology arts and sciences under extenuating circumstances arising from physical or mental disability or death of a customer.

645—65.13(272C) Peer review committee. Rescinded IAB 6/16/99, effective 7/21/99.

645—65.14 to **65.100** Reserved.

645—65.101(272C) Conduct of persons attending meetings. Rescinded IAB 6/16/99, effective 7/21/99.

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CHAPTER 66
AGENCY PROCEDURE FOR RULE MAKING
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CHAPTER 67
PETITIONS FOR RULE MAKING
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CHAPTER 68
DECLARATORY RULINGS
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CHAPTER 69
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
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CHAPTER 70
CHILD SUPPORT NONCOMPLIANCE
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CHAPTER 71
IMPAIRED PRACTITIONER REVIEW COMMITTEE
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CHAPTERS 72 to 79
Reserved

645—180.18(154,272C) Continuing education exemption for active practitioners. An optometrist licensed to practice optometry shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services as a practicing optometrist, or for nontherapeutically certified optometrists for periods that the licensee is a government employee practicing optometry and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the board.

Rules 180.12(154) to 180.18(154,272C) are intended to implement Iowa Code section 272C.2.

645—180.19 to **180.99** Reserved.

645—180.100(272C) Definitions. Rescinded IAB 1/6/93, effective 2/10/93. Text transferred to 645—180.1(154).

645—180.101(272C) Complaint. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.102(272C) Report of malpractice claims or actions. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.103(272C) Investigation of complaints or malpractice claims. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.104(154) Alternative procedure and settlements. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.105(272C) License denial. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.106(272C) Notice of hearing. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.107(272C) Hearings open to the public. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.108(272C) Hearings. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.109(272C) Appeal. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.110(272C) Transcript. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.111(272C) Publication of decisions. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.112(272C) General. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.113(272C) Method of discipline. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.114(272C) Discretion of board. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.115(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 180.113(272C), including civil penalties in an amount not to exceed $1,000 or maximum allowed, when the board determines that the licensee is guilty of any of the following acts or offenses:

180.115(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice optometry in this state, and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the Iowa department of public health any false or forged diploma, or certificate or affidavit or identification or qualification in making an application for a license in this state.

180.115(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the optometrist's practice;

b. A substantial deviation by the optometrist from the standards of learning or skill ordinarily possessed and applied by other optometrists in the state of Iowa acting in the same or similar circumstances;

c. Failure by an optometrist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average optometrist in the state of Iowa acting in the same or similar circumstances;

d. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of optometry in the state of Iowa.

180.115(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Practice harmful or detrimental to the public includes, but is not limited to, the failure of an optometrist to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent optometrist acting in the same or similar circumstances in this state.

b. Practice harmful or detrimental to the public includes, but is not limited to, the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a physical handicap, to make a written signature or mark, however, may substitute, in lieu of a signature, a rubber stamp which is adopted by the handicapped person for all purposes requiring a signature and which is affixed by the handicapped person or affixed by another person upon the request of the handicapped person and in that person's presence.

c. Practice harmful or detrimental to the public includes, but is not limited to, the practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

180.115(4) Habitual intoxication or addiction to the use of drugs. The inability of an optometrist to practice optometry with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other type of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair an optometrist's ability to practice the profession with reasonable skill and safety.

180.115(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession includes, but is not limited to, the conviction of an optometrist who has committed a public offense in the practice of the profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of optometry, or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon an optometrist in this state.

180.115(6) Use of untruthful or improbable statements in advertisements. This includes, but is not limited to, an action by an optometrist, or on behalf of an optometrist, in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

a. Inflated or unjustified expectations of favorable results.

b. Self-laudatory claims that imply that the optometrist is a skilled optometrist engaged in a field or specialty of practice for which the optometrist is not qualified.

c. Extravagant claims or proclaiming extraordinary skills not recognized by the optometric profession.

180.115(7) Willful or repeated violations of the provisions of these rules and Iowa Code chapter 147.

180.115(8) Violating a regulation or law of this state, or the United States, which relates to the practice of optometry.

180.115(9) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, district, territory or country within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

180.115(10) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements to restrict the practice of optometry entered into in another state, district, territory or country.

180.115(11) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice optometry.

180.115(12) Failure to identify oneself as an optometrist to the public.

180.115(13) Violating a lawful order of the board, previously entered by the board in a disciplinary hearing or pursuant to informal settlement.

180.115(14) Being adjudged mentally incompetent by a court of competent jurisdiction.

180.115(15) Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

180.115(16) Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose. Indiscriminately or promiscuously prescribing, administering or dispensing includes, but is not limited to, the prescribing, administering or dispensing any drug for purposes which are not eye or vision related.

180.115(17) Knowingly submitting a false report of continuing education or failure to submit the biennial report of continuing education.

180.115(18) Failure to comply with a subpoena issued by the board.

180.115(19) Failure to file the reports required by rule 645—180.101(272C) concerning acts or omissions committed by another licensee.

180.115(20) Obtaining any fee by fraud or misrepresentation.

180.115(21) Failing to exercise due care in the delegation of optometric services to or supervision of assistants, employees or other individuals, whether or not injury results.

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

645—180.116(272C) Reporting of judgments or settlements. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.117(272C) Investigation of reports of judgments and settlements. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.118(272C) Reporting of acts or omissions. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.119(272C) Failure to report licensee. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.120(272C) Immunities. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.121(272C) Privileged communications. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.122(272C) Peer review committees. Rescinded IAB 6/16/99, effective 7/21/99.

645—180.123 to **180.199** Reserved.

645—180.200(155A) Prescription drug orders. Each prescription drug order furnished in this state by a therapeutically certified optometrist shall meet the following requirements:

180.200(1) Written prescription drug orders shall contain:

a. The date of issuance;

b. The name and address of the patient for whom the drug is dispensed;

c. The name, strength, and quantity of the drug, medicine, or device prescribed;

d. The directions for use of the drug, medicine, or device prescribed;

e. The name, address, and written signature of the practitioner issuing the prescription;

f. The federal drug enforcement administration number, if required under Iowa Code chapter 204; and

g. The title, "Therapeutically Certified Optometrist" by the name of the practitioner issuing the prescription.

180.200(2) The practitioner issuing oral prescription drug orders shall furnish the same information required for a written prescription, except for the written signature and address of the practitioner.

This rule is intended to implement Iowa Code section 155A.27.

645—180.201 to **180.299** Reserved.

PROCEDURES FOR USE OF CAMERAS
AND RECORDING DEVICES
AT OPEN MEETINGS

645—180.300(21) Conduct of persons attending meetings. Rescinded IAB 6/16/99, effective 7/21/99.

These rules are intended to implement Iowa Code sections 147.2, 147.3, 147.10, 147.11, 147.29, 147.49, 147.54, 147.80, 154.3, 154.6, 155A.27, 272C.2, and 272C.3.

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CHAPTER 181 to 185
Reserved

CHAPTER 186
AGENCY PROCEDURE FOR RULE MAKING
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 187
DECLARATORY RULINGS
[Prior to 10/16/91, see 645—180.11(17A)]
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 188
PETITIONS FOR RULE MAKING
[Prior to 10/16/91, see 645—180.4(154)]
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 189
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 190
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 191
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTERS 192 to 199
Reserved

PODIATRY

CHAPTER 220
PODIATRY EXAMINERS
[Prior to 5/18/88, see Health Department[470], Ch 139]

645—220.1(147,149) Examination and licensure requirements.

220.1(1) All applications for examination must be made upon the official forms supplied by the Board of Podiatry Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

Incomplete applications on file for two years will be destroyed. Application fees are not refundable.

220.1(2) The application forms fully completed per instructions on forms shall be filed with the board of podiatry examiners, with all required supporting documents and fee at least 30 days before the date of examination. Application requirements are as follows:

a. Submit a completed application form with official supporting documents and the appropriate application fee to the Iowa board of podiatry examiners;

b. Submit the appropriate examination fee, if taking the PMLexis in Iowa, directly to the National Board of Podiatric Medical Examiners;

c. Present with the application an official copy (8" x 11") of diploma and official transcript proving graduation from a college of podiatric medicine approved by the American Association of Colleges of Podiatric Medicine;

d. Pass all of Part 1 and Part 2 of the National Board of Podiatry Examiners Examination with substantiating documentation;

e. For any applicant who graduates from podiatric college on or after January 1, 1995, present documentation of successful completion of a one-year residency or preceptorship approved by the American Podiatric Medical Association's Council on Podiatric Medical Education or a college of podiatric medicine approved by the American Association of Colleges of Podiatric Medicine;

f. If licensed in another state, also present with the application an official copy of license and current renewal of license to practice podiatry issued by another state, and an official statement issued by a licensing board or department that no disciplinary action is pending against the applicant and the applicant does not have a suspended or revoked podiatry license in any other state.

220.1(3) Applicants who file incomplete applications will not be allowed to take the examination.

220.1(4) Applicants who graduated from podiatric college in 1961 or before that year, are currently licensed in another state and have practiced for the immediate 24 months prior to application may be exempted from the application requirement listed in 220.1(2)*"c"* based on their credentials and the discretion of the board.

220.1(5) The statements made on the application form and supporting documents shall be subscribed and sworn to by the applicant and attested under seal by a notary public.

220.1(6) A senior student expecting to graduate from an accredited podiatry college at the end of the spring term may be admitted to the state examinations held in June upon a presentation of a certificate from the dean of the college stating that the applicant has conformed to all the college requirements and will be granted a diploma at commencement. The examination papers will not be rated until the diploma has been received and verified by the board of podiatry examiners, department of public health.

220.1(7) No candidate shall under any circumstances enter the examination late unless excused by the examiners and no candidates shall leave the room after the distribution of the examination. Candidates shall not be permitted to leave the room during the examination unless accompanied by one of the examiners or a clerk endorsed by the board.

220.1(8) The candidates will not be permitted to communicate with each other during the examination, nor to have in their possession assistance of any kind. Any applicant detected in seeking or giving assistance during the examination will be dismissed and the candidate's examination canceled.

220.1(9) Applicants passing the PMLexis (Virginia) written examination given by Iowa within three years prior to making application in Iowa shall not be required to pay examination fees or take the examination. However, these applicants shall meet all other requirements for licensure, as outlined in subrule 220.1(2) and shall show official certification of grades and passing score as stated in subrule 220.1(5).

Applicants who passed the PMLexis more than three years prior to date of application in Iowa must submit verification of proof of podiatry practice for one of the last three years.

220.1(10) to **220.1(12)** Rescinded IAB 7/12/89, effective 8/16/89.

220.1(13) Rescinded IAB 1/4/95, effective 2/8/95.

220.1(14) Rescinded IAB 7/12/89, effective 8/16/89.

220.1(15) A passing score as recommended by the administrators of the PMLexis (Virginia) examination will be required to pass the state-issued examination. This is not to be confused with requirements for passage of national boards.

220.1(16) Rescinded, effective 5/19/82.

220.1(17) At the conclusion of the examination each candidate will be required to sign the following:

Declaration of Honorable Conduct in Taking Examination:

We, the undersigned, each declare that we are applicants for certificates from the Iowa Department of Public Health as certified to it by the State Board of Podiatry Examiners authorizing us to practice Podiatry in Iowa, and that we were present and took the examination held at ....., ... Iowa, on ....., 19 .....

We further declare we neither received nor extended any aid to others nor resorted to any means whatsoever to secure the required ratings to enable us to pass.

We further declare that we did not see any of the sets of questions used at this examination until they were distributed by the examiners.

220.1(18) Rescinded IAB 7/12/89, effective 8/16/89.

This rule is intended to implement Iowa Code sections 147.36 and 147.80.

645—220.2 Rescinded IAB 7/12/89, effective 8/16/89.

645—220.3(147) Fees. All fees are nonrefundable. Checks should be made payable to the Iowa Board of Podiatry Examiners.

220.3(1) Application fee or reinstatement fee for a license to practice podiatry is $100.

220.3(2) Rescinded IAB 8/2/95, effective 9/6/95.

220.3(3) Fee for renewal of license to practice podiatry for a biennial period is $140.

220.3(4) Fee for a certified statement that a licensee is licensed in this state is $10.

220.3(5) Fee for a replacement license is $10.

220.3(6) Application for a temporary license is $100. The annual renewal fee for a temporary license is $15.

220.3(7) Penalty fee for failure to renew at required time is $50.

220.3(8) Penalty fee for failure to complete continuing education requirements as provided in rule 220.101(272C) is $50.

220.3(9) Penalty fee for failure to file the Report of Continuing Education Hours for License Renewal at the required time is $25.

220.3(10) Fee for a returned check is $15.

This rule is intended to implement Iowa Code sections 147.34, 147.76 and 147.80 and chapter 149.

645—220.7(272C) License renewal.

220.7(1) The biennial renewal period for a license to practice as a podiatrist shall extend from July 1 of each even-numbered year until June 30 of the next even-numbered year. Beginning July 1, 2000, the continuing education compliance period shall extend from July 1 of each even-numbered year until June 30 of the next even-numbered year.

An application and a continuing education report form for renewal of license to practice as a podiatrist shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

220.7(2) Beginning July 1, 2000, the continuing education compliance period will coincide with the renewal compliance period. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing education report form with the renewal fee as specified in rule 220.3(147). Individuals who were issued their initial license within six months of license renewal will not be required to renew their license until the next renewal two years later. The new licensee shall be exempt from meeting the continuing education requirement for the continuing education biennium in which the licensee is originally licensed. Podiatrists will be required to report 40 hours of continuing education for the first renewal and every renewal thereafter.

220.7(3) Late renewal. If the renewal fee is received by the board within 30 days after the renewal expiration date, a penalty fee is charged. If the renewal fee is received more than 30 days after the renewal expiration date, the license is lapsed. An application for reinstatement must be filed with the board with the reinstatement fee, the renewal fee and the penalty fee as outlined in rule 220.3(147). Individuals who fail to submit the renewal application and complete documentation of continuing education hours shall be required to pay a penalty fee and shall be subject to an audit of their continuing education report.

220.7(4) Podiatrists who have not fulfilled the requirements for license renewal or an exemption in the required time frame will have a lapsed license and shall not engage in the practice of podiatry.

645—220.8(272C) Reinstatement of lapsed license. Individuals allowing a license to lapse and not renewing within 30 days of the renewal date must apply for reinstatement prior to engaging in the practice of podiatry in Iowa. The following requirements for reinstatement must be satisfied:

220.8(1) Submit written application for reinstatement to the board upon forms provided by the board with the reinstatement fee, all penalty fees, and current and past renewal fees not to exceed five renewals; and

220.8(2) Furnish in the application evidence of one of the following:

a. The full-time practice of podiatry in another state of the United States or the District of Columbia and completion of continuing education for each renewal period that the license is lapsed substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of 30 hours of accredited continuing education for each renewal period prior to 1990 and 40 hours of accredited continuing education for each renewal period since 1990 that license has been lapsed, not to exceed five renewal periods; or

c. Successful completion of the Iowa state license examination conducted within one year immediately prior to the submission of such application for reinstatement.

These rules are intended to implement Iowa Code section 272C.2.

645—220.9 to **220.99** Reserved.

PODIATRIST CONTINUING EDUCATION AND DISCIPLINARY PROCEDURES

645—220.100(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

"Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules.

"Board" means the board of podiatry examiners.

"Hour" of continuing education means a clock-hour spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"License" means a license to practice podiatry.

"Licensee" means any person licensed to practice podiatry in the state of Iowa.

645—220.101(272C) Continuing education requirements.

220.101(1) It is the responsibility of each licensee to arrange for financing of costs of continuing education.

220.101(2) Each person licensed to practice podiatry in this state shall complete during each continuing education compliance period a minimum of 40 hours of continuing education obtained by attending and participating in a continuing education activity which meets the requirements herein.

220.101(3) The continuing education compliance period shall be each biennium beginning July 1 of each even-numbered year and ending two years later on June 30 of the next even-numbered year. For the 2000 renewal cycle only, 50 hours of continuing education will be due by July 1, 2000. Continuing education hours will return to 40 hours each biennium at the end of this prorated compliance period.

220.101(4) Carryover credit of continuing education hours into the next continuing education compliance period is not permitted.

220.101(5) When an initial license is issued via examination, the new licensee shall be exempt from meeting the continuing education requirement for the continuing education biennium in which the license is originally issued.

220.101(6) A report of continuing education activities shall be submitted on a board-approved form with the renewal application by the end of the biennial license renewal period. All continuing education activities submitted must be completed in the continuing education compliance period for which the license was issued or a penalty fee will be assessed as outlined in 220.3(8).

220.101(7) Licensees are responsible for keeping on file required documents that can support the continuing education attendance and participation reports submitted to the board for license renewal. These documents shall include a program brochure which includes the statement of purpose, course objectives, qualifications of speakers, program outline with a time frame designation and a certification of attendance. Programs or other educational activities that do not meet board standards will be disallowed. The licensee is required to make available to the board upon request documents to support the continuing education activities for auditing purposes. The licensee should maintain these records for four years.

645—220.212(272C) Discipline. For all acts and offenses listed in this rule, the board may impose any of the disciplinary methods outlined in Iowa Code section 272C.3(2)*"a"* to *"f"* including the imposition of a civil penalty which shall not exceed $1000. The board may discipline a licensee for any of the following reasons:

220.212(1) All grounds listed in Iowa Code section 147.55 which are:

a. Fraud in procuring a license.

b. Professional incompetency.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs.

e. Conviction of a felony related to the profession of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

f. Fraud in representations as to skill or ability.

g. Use of untruthful or improbable statements in advertisements.

h. Willful or repeated violations of the provisions of Iowa Code chapter 147.

220.212(2) Violation of the rules promulgated by the board.

220.212(3) Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

220.212(4) Practicing the profession while the license is suspended.

220.212(5) Suspension or revocation of license by another state.

220.212(6) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

220.212(7) Prohibited acts consisting of the following:

a. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

b. Permitting another person to use the licensee's license for any purpose.

c. Practice outside the scope of a license.

d. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances for other than lawful therapeutic purposes.

e. Verbally or physically abusing patients.

220.212(8) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying patients' records.

220.212(9) Failure to report a change of name or address within 30 days after it occurs.

220.212(10) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

220.212(11) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

220.212(12) Failure to comply with a subpoena issued by the board.

220.212(13) Failure to report to the board as provided in rule 645—220.201(272C) any violation by another licensee of the reasons for disciplinary action as listed in this rule.

220.212(14) Failure to comply with 645—220.6(139C) for preventing HIV and HBV transmission.

645—220.213(272C) Peer review committees.

220.213(1) A complaint may be assigned to a peer review committee for review, investigation, and report to the board.

220.213(2) The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review and report to the board.

220.213(3) Members of the peer review committees shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

220.213(4) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

645—220.214 to **220.299** Reserved.

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

645—220.300(21) Conduct of persons attending meetings.

220.300(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

220.300(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board person presiding at the meeting.

This rule is intended to implement Iowa Code section 21.7.

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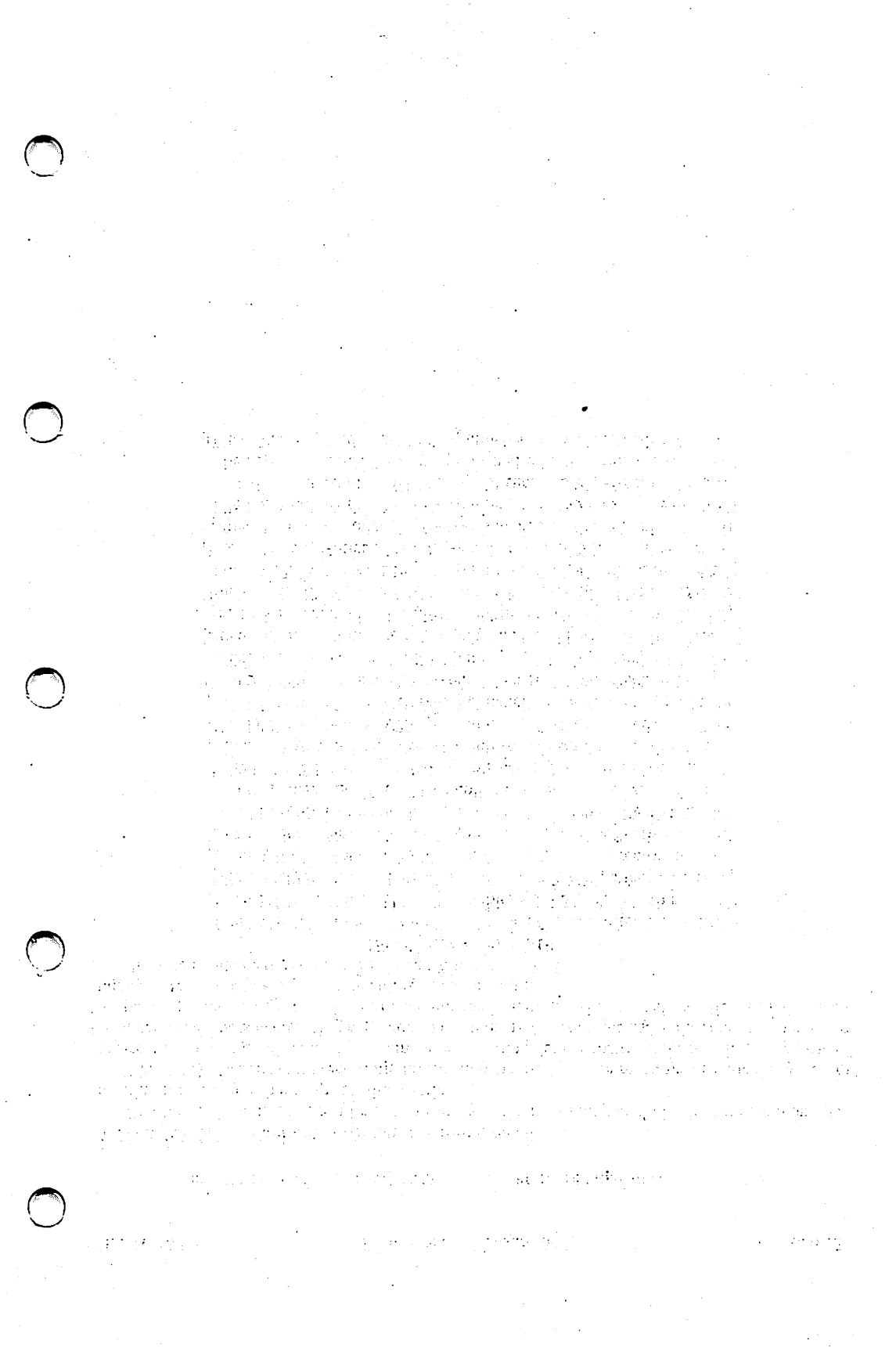

CHAPTER 221
MINIMUM TRAINING STANDARDS FOR PODIATRY ASSISTANTS ENGAGING IN PODIATRIC RADIOGRAPHY

645—221.1(136C,147,149) Definitions. As used in this chapter:

"Approved program or course of study" means didactic and clinical training the Iowa board of podiatry examiners has determined to be adequate to train students to meet the requirements specified in subrules 221.3(1) to 221.3(3).

"Clinical experience" means direct and personal participation of the student in radiographic procedures incidental to patient diagnostic problems.

"Clinical podiatric sponsor" means a person licensed under Iowa Code chapter 149 and supervising the student.

"Podiatric radiography" means the application of x-radiation to the human foot and ankle for diagnostic purposes only.

"Podiatry assistant" means an individual employed in a podiatry office who assists in podiatric radiography.

"Student" means a person enrolled in or participating in an approved program or course of study.

645—221.2(136C,147,149) General.

221.2(1) All applications for student status and examination must be made upon official forms supplied by the Board of Podiatry Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

221.2(2) Incomplete applications on file for two years will be destroyed. Application fees are not refundable.

221.2(3) A notarized copy of the official document of name change, if applicable, is required with initial student or certification application.

221.2(4) Each applicant shall submit with initial student or certification application satisfactory documentation evidencing graduation from high school or its equivalent and attainment of 18 years of age.

645—221.3(136C,147,149) Training requirements. No person shall be certified to operate radiation emitting equipment for purposes of podiatric radiography without having first successfully completed an approved program or course of study which includes the following:

221.3(1) Theoretical considerations underlying radiation hygiene and podiatric radiological practices including radiation health and safety, lower extremity on anatomy, physics, concepts, physiology, techniques, positioning, equipment maintenance with efficiencies to minimize radiation exposure and frequency of retakes. The program or course of study shall include at least 15 hours of didactic training.

221.3(2) Complete a radiographic clinical program sufficient to demonstrate proficiency to a podiatric sponsor. This would include equipment maintenance and review, exposings, processing, evaluating for quality, mounting and filing of radiographic projections/films usually involved in podiatric radiography. The program or course of study shall include at least 50 total exposures with direct supervision by a podiatrist or certified person to take podiatric X-rays. The program or course of study shall include at least 20 working days of clinical training in a podiatric office or clinic.

221.3(3) Submit a statement on a form supplied by the board office from a clinical podiatric sponsor certifying completion of and competency of subrule 221.3(2).

221.3(4) An applicant for certification in podiatric radiography shall be deemed eligible for certification upon compliance with the provisions of subrules 221.3(1) to 221.3(3) and passing the written examination outlined in rule 221.6(136C,147,149).

645—221.4(136C,147,149) Approval of programs. A program or course of study may be approved by the board if the following conditions are met:

221.4(1) The program constitutes an organized program of learning which contributes to the proficiency and skills of an individual operating radiation emitting equipment or otherwise engaging in podiatric radiography; and

221.4(2) The program is conducted by individuals having special education, training and experience by reason of which said individuals may be deemed qualified to conduct the program in podiatric radiography, and are licensed or certified to take foot/ankle X-rays; and

221.4(3) The program meets the requirements of subrules 221.3(1) to 221.3(3).

221.4(4) Application for approval of a program or course of study shall be made to the board.

221.4(5) The board may retroactively approve previously administered programs or courses of study given after July 1, 1990, if the program or course of study meets the requirements of subrules 221.3(1) to 221.3(3) and 221.4(1) to 221.4(4).

645—221.5(136C,147,149) Exemptions.

221.5(1) Students enrolled in an approved accredited podiatry or medical assistant program who, as part of their course of study under a licensed person's supervision, apply ionizing radiation for podiatric radiography.

221.5(2) Podiatry assistants under student status who are enrolled in a board-approved podiatric radiography program or course of study as a part of their program or course of study, apply ionizing radiation to a human being while under the direct supervision of a licensed podiatrist in a podiatry office or school, provided the course of study is completed in not more than 12 months from its inception. Prior to engaging in program or course of study, the podiatry assistant must make application for student status to the board on the form approved by the board.

221.5(3) Podiatry assistants who hold a permit to practice limited diagnostic radiography in extremities or foot by the bureau of environmental health.

221.5(4) Persons licensed as podiatrists under Iowa Code chapter 149.

645—221.6(136C,147,149) Examination and proficiency evaluation. Except as otherwise provided in this chapter, no person shall operate radiation emitting equipment in any podiatry office without first having also successfully passed a written examination with a score of 70 percent or greater given under standard, controlled conditions by the board of podiatry examiners and proctored by appropriate personnel. The examination will be given in June and December and at other times at the discretion of the board.

221.6(1) In the event a podiatry assistant under student status pursuant to subrule 221.5(2) fails twice to successfully complete the examination, a third examination may be taken so long as the third examination is taken within 60 days after expiration of the 12-month period of student status. In the event the podiatry assistant fails the third examination, student status shall be revoked and the podiatry assistant shall be deemed ineligible to participate in podiatric radiography under student status unless the student status is obtained pursuant to subrule 221.5(2).

221.6(2) A podiatry assistant who takes the examination for issuance of a renewal as defined in subrule 221.9(6) of a certificate is allowed to take the examination not more than two times. The board may require the podiatry assistant to take remedial training prior to being allowed to retake the examination. Podiatry assistants in this category may not participate in podiatric radiography before successful completion of the examination and issuance of a certificate or issuance of a renewal of an existing certificate.

221.6(3) A podiatry assistant who holds a permit to practice limited diagnostic radiography in extremities or foot by the bureau of environmental health may apply for and be granted a certificate in podiatric radiography without meeting the training requirements in rule 221.3(136C,147,149) or the exam requirements in rule 221.6(136C,147,149). A temporary permit issued by the bureau of environmental health does not qualify under this subrule.

221.6(4) Certification by endorsement of equivalency training. Any person who is the holder of a current certificate in podiatric radiography issued by another state, jurisdiction, agency or recognized professional registry may, upon presentation of the certificate to the board, be considered to meet the requirements of subrules 221.3(1) to 221.3(3) provided that the board finds that the standards and procedures for certification in the state, jurisdiction, agency or recognized professional registry which issued the certificate afford protection to the public equivalent to that afforded by this chapter.

645—221.7(136C,147,149) Application for student status.

221.7(1) Applications for student status shall be made to the board on the form provided by the board prior to engaging in clinical training under a podiatrist.

221.7(2) The student application must include the following:

a. Verification of completion of high school or equivalent;

b. Fee of $25 for student status.

645—221.8(136C,147,149) Application for board certification. Applications for issuance of a certificate shall be made to the board on the form provided by the board and must be completely answered.

221.8(1) Applications must be filed with the board along with:

a. Verification of completion of an approved didactic course of study.

b. Signature of an Iowa-licensed podiatrist attesting to the reasonable clinical proficiency of the applicant having observed the applicant for a period of not less than 20 working days and that the applicant has logged 50 foot/ankle X-rays for a period of not less than 20 working days within the last 12-month period as stated in subrule 221.3(2).

c. Proof that the applicant has successfully completed the written examination administered by the board.

d. Signed verification as to the truth of the statements and that the applicant has read the requirements of these rules and understands the regulations pertaining to podiatric radiography.

e. The fee as specified in these rules.

f. Additional information the board may require relating to character, education and experience as may be necessary to pass upon the applicant's certification.

221.8(2) Any person who does not meet the requirements of subrule 221.8(1) may apply for student status as defined in subrule 221.5(2).

645—221.9(136C,147,149) Renewal requirements.

221.9(1) The biennial renewal period for a certificate to practice as a podiatry assistant shall extend from July 1 of each even-numbered year until June 30 of the next even-numbered year. Beginning July 1, 2000, the continuing education compliance period shall extend from July 1 of each even-numbered year until June 30 of the next even-numbered year.

An application and a continuing education report form for renewal of certificate to practice as a podiatry assistant shall be mailed to the licensee at least 60 days prior to the expiration of the certificate. Failure to receive the renewal application shall not relieve the certificate holder of the obligation to pay biennial renewal fees on or before the renewal date.

221.9(2) Beginning July 1, 2000, the continuing education compliance period will coincide with the renewal compliance period. The certificate holder shall submit to the board office 30 days before certificate expiration the application and continuing education report form with the renewal fee as specified in rule 221.10(136C). Individuals who were issued their initial certificate within six months of certificate renewal will not be required to renew their certificate until the next renewal two years later. The new certificate holder shall be exempt from meeting the continuing education requirement for the continuing education biennium in which the initial certificate is originally issued. Podiatry assistants will be required to report two hours of continuing education for the first renewal and every renewal thereafter.

Continuing education requirements can be satisfied by attending courses in diagnostic radiography conducted by teaching institutions approved by the bureau of environmental health or given by the American Podiatric Medical Association (APMA) or the Iowa Podiatric Medical Society (IPMS). Proof of attendance at such courses of study shall be retained for four years by the podiatry assistant and submitted to the board as further proof of compliance at the request of the board.

221.9(3) Late renewal. If the renewal fee is received by the board within 30 days after the renewal expiration date, a penalty fee is charged. If renewal fee is received more than 30 days after the renewal expiration date, the certificate is lapsed. An application for reinstatement must be filed with the board with the renewal fee and the penalty fee as outlined in rule 221.10(136C). Individuals who fail to submit the renewal application and complete documentation of continuing education hours shall be required to pay a penalty fee and shall be subject to an audit of their continuing education report.

221.9(4) Podiatry assistants who have not fulfilled the requirements for certificate renewal or an exemption in the required time frame will have a lapsed certificate and shall not engage in the practice of podiatric radiography. The holder of a certificate who fails to renew within five years after its expiration may obtain a renewal certificate only by following the procedures for application and testing provided in these rules.

221.9(5) The board may require recertification, qualification and clinical evaluation of a podiatry assistant holding a certificate in podiatric radiography if the board, in its discretion, believes such action is necessary for the protection of the public.

645—221.10(136C) Certificate in podiatric radiography—fees.

221.10(1) The fee for application for a certificate in podiatric radiography or student status leading to certification is $25.

221.10(2) The fee for the podiatric radiography exam is $10.

221.10(3) The fee for renewal of a certificate is $10.

221.10(4) The fee for renewal if the applicant has failed to renew the certificate within 30 days after expiration is $35.

221.10(5) Fee for a returned check is $15.

645—221.11(136C,147,149) Responsibilities of certificate holder.

221.11(1) The podiatry assistant holding a certificate issued by the board shall conspicuously display the certificate in the office of employment.

221.11(2) The podiatry assistant holding a certificate issued by the board shall notify the office of the board of any address change within 60 days.

645—221.12(136C,147,149) Enforcement.

221.12(1) Any individual except a licensed podiatrist, a certified podiatric radiography assistant, or a limited diagnostic radiologic technologist certified in extremities or foot by the bureau of environmental health who participates in podiatric radiography in violation of this chapter or Iowa Code chapter 136C shall be subject to the criminal and civil penalties set forth in Iowa Code sections 136C.4 and 136C.5.

221.12(2) Any licensed podiatrist who permits a person to engage in podiatric radiography contrary to this chapter of Iowa Code chapter 136C shall be subject to discipline by the board pursuant to rule 645—220.212(272C).

These rules are intended to implement Iowa Code section 136C.3 and chapters 147 and 149.

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CHAPTERS 222 to 224
Reserved

CHAPTER 225
IMPAIRED PRACTITIONER REVIEW COMMITTEE

The board of podiatry examiners hereby adopts 641—Chapter 193, "Impaired Practitioner Review Committee," as 645—Chapter 225, with the following amendment.

645—225.1(272C) Impaired practitioner review committee. Pursuant to the authority of Iowa Code Supplement section 272C.3(1)*"k,"* the department establishes the impaired practitioner review committee.

225.1(1) *Definitions.*

"Board" means the board of podiatry examiners.

These rules are intended to implement Iowa Code Supplement chapter 272C.

[Filed emergency 7/24/96—published 8/14/96, effective 7/24/96]

SOCIAL WORKERS
CHAPTER 280
BOARD OF SOCIAL WORK EXAMINERS
[Prior to 5/18/88, see Health Department[470], Ch 161]

645—280.1(154C) Definitions.

"AASSWB" means the American Association of State Social Work Boards.

"Board" means the board of social work examiners.

"Department" means the department of public health.

"Hour" of continuing education means a 50-minute clock-hour.

"License" means a license to practice social work.

"Licensee" means a person licensed to practice social work.

"LISW" means licensed independent social worker.

"Private practice" means social work practice conducted only by an LISW who is either self-employed or a member of a partnership or of a group practice providing diagnosis and treatment of mental and emotional disorders or conditions. In this context, "group practice" means an association of professionals in which an LISW is independently engaged in the practice of social work and has ongoing control of the clinical, financial, administrative, and professional arrangements between the LISW and the clients/patients of the LISW.

645—280.2(154C) Organization and proceedings.

280.2(1) As of July 1, 1998, the board shall consist of a total of seven members, five who are licensed to practice social work, with at least one from each of three levels of licensure described in Iowa Code section 154C.3, subsection 1, two employed by a licensee under Iowa Code chapter 237, and two who are not licensed social workers and who shall represent the general public. A quorum shall consist of four members of the board.

280.2(2) A chairperson, vice chairperson, and secretary to the board, and delegate and alternate delegate to the American Association of State Social Work Boards (AASSWB) shall be elected at the first meeting after April 30 of each year.

280.2(3) The board shall hold an annual meeting and at least three interim meetings and may hold additional meetings called by the chairperson or by a majority of its members. The chairperson shall designate the date, place, and time prior to each meeting of the board. The board shall follow the latest edition of Robert's Revised Rules of Order at its meeting whenever any objection is made as to the manner in which it proceeds at a meeting.

645—280.3(154C) Requirements for licensure. An applicant for a license as a bachelor social worker, master social worker, or independent social worker shall meet the following requirements.

280.3(1) *Bachelor social worker.* An applicant for a license as a bachelor social worker shall present evidence satisfactory to the board that the applicant:

a. Possesses a bachelor's degree in social work from a college or university accredited by the accrediting body of the Council on Social Work Education at the time of graduation. A certificate of equivalency issued by the Council on Social Work Education is required for graduates of foreign colleges and universities.

b. Has passed the basic level examination of the AASSWB.

c. Has and will conduct all professional activities as a bachelor social worker in accordance with standards for rules of conduct as described in rule 645—280.213(154C).

280.3(2) *Master social worker.* An applicant for a license as a master social worker shall present evidence satisfactory to the board that the applicant:

a. Possesses a master's degree in social work from a college or university accredited by the accrediting body of the Council on Social Work Education at the time of graduation or a doctoral degree from a college or university approved by the board. A certificate of equivalency issued by the Council on Social Work Education is required for graduates of foreign colleges and universities.

b. Has passed the intermediate level examination of the AASSWB.

c. Has and will conduct all professional activities as a master social worker in accordance with standards for rules of conduct as described in rule 645—280.213(154C).

280.3(3) *Independent social worker.* An applicant for a license as an independent social worker shall present evidence satisfactory to the board that the applicant:

a. Possesses a master's degree in social work from a college or university accredited by the accrediting body of the Council on Social Work Education at the time of graduation or a doctoral degree from a college or university approved by the board. A certificate of equivalency issued by the Council on Social Work Education is required for graduates of foreign colleges and universities.

b. Has passed the clinical level examination of the AASSWB.

c. Has and will conduct all professional activities as a social worker in accordance with standards for rules of conduct as described in rule 645—280.213(154C).

d. Has engaged in the practice of social work, under supervision for at least two years as a full-time employee or completion, under supervision, of 4000 hours of part-time employment after the granting of the master's or doctoral degree in social work.

e. Supervision shall be provided in any of the following manners:

(1) By a social worker licensed at the independent level of social work as qualified under rule 280.8(154C).

(2) By another qualified professional, if the board of social work examiners determines that supervision by a social worker as defined in rule 280.8(154C) is unobtainable or in other situations considered appropriate by the board.

280.3(4) *Transition provisions from certain license requirements.* Rescinded IAB 8/12/98, effective 9/16/98.

645—280.4(154C) Application.

280.4(1) Any person seeking a license shall complete and submit to the board a completed application form, which form is provided by the board, to the board office no later than 45 days prior to the date of the electronic examination.

280.4(2) The application form shall be completed in accordance with instructions contained in the application. If the application is not completed in accordance with instructions, the application may be held until the next examination.

280.4(3) Each application shall be accompanied by a check or money order in the amount required in rule 280.7(154C) payable to the Iowa Board of Social Work Examiners.

280.4(4) No application will be considered by the board until official copies of academic transcripts have been received by the board.

280.4(5) An applicant shall submit the information as requested by the board on the application form.

SOCIAL WORK CONTINUING EDUCATION

645—280.100(154C) Continuing education requirements.

280.100(1) The biennial continuing education compliance period shall extend from January 1 of each odd-numbered year to December 31 of each even-numbered year. During this period of time 27 hours of approved continuing education shall be obtained by the licensee in order to renew the license for each biennial license period beginning January 1 of each odd-numbered year. Three hours of the 27 must be specifically in ethics. (To implement this rule change, the continuing education period for the December 31, 2000, renewal will run from July 1, 1998, to December 31, 2000).

280.100(2) If a new license holder is licensed during the first year of the biennial continuing education period, the licensee is only required to complete 12 hours of continuing education for renewal. If a new license holder is licensed during the second year of the biennial continuing education period, the licensee is exempt from meeting continuing education requirements for the first license renewal.

280.100(3) Hours of continuing education may be obtained by attending and participating in a continuing education activity offered by a provider approved by the board. Any nonapproved provider that meets the criteria set forth in rule 280.101(154C) will be subject to review by the board at the time of the audit.

280.100(4) Hours of continuing education shall not be carried over into the next continuing education period.

280.100(5) It is the responsibility of licensees to finance their own costs of continuing education.

280.100(6) Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent license renewal period.

645—280.101(154C) Standards for approval of providers and approval of continuing education activities.

280.101(1) An organization, institution, agency or individual shall be qualified for approval as a provider of continuing education activities by application to the board demonstrating the following:

a. The provider presents organized programs of learning; and

b. The provider presents subject matter which integrally relates to the practice of social work; and

c. The provider's program activities contribute to the professional competency of the licensee; and

d. The provider's program presenters are individuals who have education, training or experience by reason of which said individuals may be considered qualified to present the subject matter of the programs.

280.101(2) A continuing education activity shall be qualified for approval if the provider-approved program meets the content areas set out by the board in subrule 280.102(1) or any continuing education activity offered by AASSWB Approved Continuing Education (ACE) Program.

645—280.102(154C) Procedures for approval of providers and continuing education activities.

280.102(1) Knowledge and content areas. The knowledge and content areas mandated by the board as relevant to continuing education endeavors are as follows:

a. Human development and behavior.

(1) Theoretical approaches to understanding individuals, families, and groups.
(2) Community and organizational theories.
(3) Normal development in the life cycle of individuals, families, and groups.
(4) Abnormal and addictive behaviors.
(5) Dynamics of abuse and neglect.

b. Effects of culture, race ethnicity, sexual orientation, and gender.

c. Diagnosis and assessment in social work practice.

(1) Psychosocial history and collateral data.
(2) Clinical assessment instruments.
(3) Indicators of abuse and neglect.
(4) Problem identification.
(5) Identification and evaluation of psychosocial and behavioral strengths and weaknesses.
(6) Effects of the environment on client behavior.

d. Diagnosis of mental and behavior disorders.

(1) Utilization of DSM-IV.
(2) Assessment of client danger to self and others.

e. Models of psychotherapy and clinical practice (e.g., psychodynamic, behavioral, cognitive therapies, task-centered, psychosocial, crisis intervention approaches).

(1) Components of the treatment process.
(2) Theoretical approaches and models of practice.
(3) Couple and family therapy.
(4) Group work and group psychotherapy.
(5) Client-centered focus.
(6) The clinical interview.
(7) Establishing treatment goals and monitoring progress.
(8) Techniques of clinical practice.
(9) Differential treatment planning.

f. Elements of therapeutic communication.

(1) Theories and principles of communication.
(2) Techniques of communicating.

g. The therapeutic relationship.

(1) Responsibility to the client.
(2) Use of relationship in clinical practice.
(3) Use of self in the therapeutic relationship.

h. Professional values and ethics.

(1) Responsibility to the client.
(2) Responsibility to the profession of social work.
(3) Responsibility to the community.

i. Clinical supervision and consultation-interdisciplinary consultation and collaboration.
j. Practice evaluation and the utilization of research.
(1) Research design and data analysis.
(2) Methods of data collection.
k. Policies and procedures governing service delivery.
(1) Client rights and entitlements.
(2) Implementation of organizational policies and procedures.
(3) Advocacy and prevention in clinical practice.
l. Clinical practice in the organization setting.
(1) Management of clinical staff and other personnel.
(2) Management of clinical programs.
(3) Social and institutional policies affecting clinical practice.

280.102(2) The provider shall keep on record a list of licensees attending the continuing education program and a content outline of that program for at least six years. These records shall be kept in a safe and secure place and, upon the request of the board, will be submitted to the board within 30 calendar days from the date of the request.

280.102(3) The provider shall state on all continuing education literature: "(Provider's name) is an Iowa Board of Social Work Examiners approved provider #_____. This program is approved for _____ hours of continuing social work education."

645—280.103(154C) Review of providers and program.

280.103(1) The board may monitor and review any continuing education program already approved by the accredited provider. Upon evidence of significant variation in the program presented from the program approved, or a program that the board determines does not fit, the content areas stated above, the board may then disapprove all or any part of the approved hours granted the program.

280.103(2) The board may at any time reevaluate and approved provider. If, after reevaluation, the board finds there is basis for consideration of revocation of the approval of an approved provider, the board shall give notice by ordinary mail to that provider of a hearing on possible revocation at least 30 days prior to the hearing.

645—280.104(154C) Hearings. In the event of denial, in whole or part, of any application for approval of continuing education program or credit for continuing education activity, the provider or licensee shall have the right to request a hearing. The request must be sent within 20 days after receipt of the notification of denial. The hearing shall be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified administrative law judge designated by the board. If the hearing is conducted by an administrative law judge, the administrative law judge shall submit a transcript or tape recording of the hearing including exhibits to the board after the hearing with the recommended decision of the administrative law judge. The final decision shall be rendered by the board.

645—280.105(154C) Reporting of continuing education.

280.105(1) Each licensee is required to maintain a file of certificates of attendance for all 27 continuing education hours accrued during the biennium.

280.105(2) By December 31 of each even-numbered year, each licensee will be required to submit a licensee's report of continuing education to the board on a form provided by the board. Report of Continuing Education forms will be mailed to each licensee with the renewal notice as outlined in 280.6(2). The board will select licensees whose continuing education reports will be audited by the board. Each licensee to be audited will be required to provide copies of certificates of attendance for all reported activities. Additional documentation may be required.

280.105(3) Submission of a false report of continuing education or failure to meet continuing education requirements will cause the license to lapse and may result in formal disciplinary action.

280.105(4) Providers will continue to exist and will be required to provide each licensee with a certificate of attendance to be retained by the licensee.

280.105(5) The board's definition and examples of acceptable and unacceptable subject matter for continuing education activities required by Iowa code section 272C.2 are knowledge and content areas outlined in rule 280.102(154C).

645—280.106(154C) Request for waiver or extension. A written request for waiver or extension of time to complete continuing education requirements shall be submitted by the licensee and shall be accompanied, if appropriate, by a verifying document signed by a licensed social worker, physician or psychologist verifying the individual's disability or illness.

645—280.107 to **280.199** Reserved.

DISCIPLINARY PROCEDURES FOR SOCIAL WORKERS

645—280.200(154C) Complaint. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.201(154C) Report of malpractice claims or actions. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.202(154C) Investigation of complaints or malpractice claims. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.203(17A,154C) Alternative procedures and settlement. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.204(154C) License denial. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.205(154C) Notice of hearing. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.206(154C) Hearings open to the public. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.207(154C) Hearings. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.208(154C) Appeal. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.209(154C) Transcript. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.210(154C) Publication of decisions. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.211(272C) Methods of discipline. Rescinded IAB 6/16/99, effective 7/21/99.

645—280.212(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—13.1(272C), including civil penalties in an amount not to exceed $1000, when the board determines that the licensee is guilty of any of the following acts or offenses:

280.212(1) Fraud in procuring a license.

280.212(2) Professional incompetency.

280.212(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

280.212(4) Habitual intoxication or addiction to the use of drugs.

280.212(5) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

280.212(6) Fraud in representations as to skill or ability.

280.212(7) Use of untruthful or improbable statements in advertisements.

280.212(8) Willful or repeated violations of the provisions of Iowa Code chapter 147.

280.212(9) Violation of rules promulgated by the board including the rules of conduct set out in rule 280.213(154C).

280.212(10) Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

280.212(11) Holding oneself out as a licensed social worker when the license has been suspended or revoked.

280.212(12) Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the Iowa board of social work examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country.

280.212(13) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

280.212(14) Prohibited acts consisting of the following:

a. Permitting another person to use the license for any purpose.

b. Practice outside the scope of a license.

c. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.

d. Verbally or physically abusing clients.

e. Any sexual intimidation or sexual relationship between a social worker and a client.

280.212(15) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying client's records.

280.212(16) Failure to report a change of name or address within 30 days after it occurs.

280.212(17) Falsification of continuing education records.

280.212(18) Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

280.212(19) Failure to comply with a subpoena issued by the board.

280.212(20) Failure to report to the board any violation by another licensee of the reasons for disciplinary action as listed in this rule.

645—280.213(154C) Rules of conduct.

280.213(1) *Misrepresentations, disclosure.* A licensee shall not:

a. Knowingly make a materially false statement, or fail to disclose a relevant material fact, in a letter of reference, application, referral, report or other document.

b. Knowingly allow another person to use one's license or credentials.

c. Knowingly aid or abet a person who is misrepresenting their professional credentials or competencies.

d. Impersonate another person or organizational affiliation in one's professional practice.

e. Further the application or make a recommendation for professional licensure of another person who is known by the licensee to be unqualified in respect to character, education, experience, or other relevant attributes.

f. Fail to notify the appropriate licensing authority of any human service professional who is practicing or teaching in violation of the laws or rules governing that person's professional discipline.

g. Engage in professional activities, including advertising, involving dishonesty, fraud, deceit, or misrepresentation.

h. Advertise services in a false or misleading manner or fail to indicate in the advertisement the name, the highest relevant degree and licensure status of the provider of services.

i. Fail to distinguish, or purposely mislead the reader/listener in public announcements, addresses, letters and reports, as to whether the statements are made as a private individual or whether they are made on behalf of an employer or organization.

j. Direct solicitation of potential clients/patients for pecuniary gain in a manner or in circumstances which constitute overreacting, undue influence, misrepresentation or invasion of privacy.

k. Misrepresent professional competency by performing, or offering to perform, services clearly inconsistent with training, education, and experience.

l. Fail to advise and explain to each client/patient or potential client/patient the joint rights, responsibilities and duties involved in the professional relationship.

m. Fail to provide each client/patient with a description of what the client/patient may expect in the way of tests, consultation, reports, fees, billing, therapeutic regimen, or schedule.

n. Fail to provide each client/patient with a description of possible effects of proposed treatment when there are clear and established risks to the client/patient.

o. Fail to inform each client/patient of any financial interests that might accrue to the licensee for referral to any other person or organization, or for the use of tests, books, or apparatus.

p. Fail to inform each client/patient that the client/patient may be entitled to the same services from a public agency, if the licensee is employed by that public agency and also offers services privately.

q. Fail to inform each client/patient of the limits of confidentiality, the purposes for which the information is obtained, and how it may be used.

r. Make claims of professional superiority which cannot be substantiated by the licensee.

s. Guarantee that satisfaction or a cure will result from the performance of professional services.

t. Claim or use any secret or special method of treatment or techniques which the licensee refuses to divulge to professional colleagues.

u. Take credit for work not personally performed whether by giving inaccurate information or failing to give accurate information.

280.213(2) *Confidentiality.* A licensee shall not:

a. Reveal a confidence or a secret of any client/patient, except:

(1) As required by law;

(2) After obtaining consent of the client/patient following full disclosure of the information to be revealed and the persons to whom the information will be revealed; or

(3) If necessary, to defend the licensee or the licensee's employees or associates against an accusation of wrongful conduct made by that client/patient.

b. Use a confidence or secret of any client/patient to the client/patient's disadvantage.

c. Use a confidence or secret of any client/patient for the advantage of the licensee or a third person without obtaining the client/patient's consent, after full disclosure of the purpose.

d. Fail to obtain written, informed consent from each client/patient or the client/patient's legal representative or representatives, before electronically recording sessions with that client/patient, before permitting a third-party observation of their activities, or before releasing information to a third party concerning a client/patient.

e. When providing any client/patient with access to that client/patient's records, fail to protect the confidences of other persons that may be recorded in that record.

f. Fail to exercise due diligence in protecting the confidences and secrets of the client/patient from disclosure by fellow employees and associates, or by other persons whose services are utilized by the licensee.

g. Fail to maintain the confidences shared by colleagues in the course of professional relationships and transactions with those colleagues.

280.213(3) *Integrity, propriety, objectivity.* A licensee shall not:

a. Make sexual advances toward, or engage in physical intimacies or sexual activities with, any client/patient, or student of the licensee.

b. Continue in a professional relationship with a client/patient when the licensee has become emotionally involved with the client/patient to the extent that objectivity is no longer possible in providing the required professional services.

c. Practice in a professional relationship while intoxicated or under the influence of alcohol or drugs not prescribed by a licensed physician.

d. Practice in a professional relationship while experiencing a mental or physical impairment that adversely affects the ability of the licensee to perform professional duties in a competent and safe manner.

e. Perform professional services which have not been duly authorized by the client/patient or by the client/patient's legal representatives.

f. Exercise undue influence on any client/patient or student, including promotion of the sales of services, goods, appliances or drugs in a manner that will exploit the client/patient or student, for the financial gain or personal gratification of the licensee or of a third party.

g. Continue to provide services or order tests, treatment, or use of treatment facilities not warranted by the condition of the client/patient.

h. Fail to terminate the professional relationship when it is apparent that the service no longer serves the needs of the client/patient.

i. When termination or interruption of service to the client/patient is anticipated, fail to notify the client/patient promptly and fail to seek continuation of service in relation to the client/patient's needs and preferences.

j. Abandon or neglect a client/patient under and in need of immediate professional care, without making reasonable arrangements for continuation of that care.

k. Physically or verbally abuse client/patients or colleagues.

280.213(4) *Research.* If engaged in research, a licensee shall:

a. Consider carefully the possible consequences for human beings participating in the research.

b. Protect each participant from unwarranted physical and mental harm.

c. Ensure that the consent of the participant is voluntary and informed.

d. Treat information obtained as confidential.

e. Not knowingly report distorted, erroneous, or misleading information.

280.213(5) *Organization relationships.* A licensee shall not:

a. Directly or indirectly offer, give, solicit, receive, or agree to receive any fee or other consideration to or from a third party for the referral of the client/patient or in connection with the performance of professional services.

b. Permit any person to share in the fees for professional services, other than a partner, employee, an associate in a professional firm, or a consultant to the licensee.

c. Solicit the clients/patients of colleagues or assume professional responsibility for clients/patients of another agency or colleague without appropriate communication with that agency or colleague.

d. Abandon an agency, organization, institution, or a group practice without reasonable notice or under circumstances which seriously impair the delivery of professional care to clients/patients.

e. Fail to maintain a record for each client/patient which accurately reflects the client/patient contact with the service provider.

f. Deliberately falsify client/patient records for personal advantage.

g. Fail to submit required reports and documents in a timely fashion to the extent that the well-being of the client/patient is adversely affected.

h. Fail to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee.

i. Delegate professional responsibilities to a person when the licensee knows, or has reason to know, that the person is not qualified by training, education, experience, or classification to perform the requested duties.

280.213(6) *General.* A licensee shall not:

a. Practice without receiving supervision as needed, given the licensee's level of practice, experience, and need.

b. Perform services in an incompetent manner.

c. Practice a professional discipline without an appropriate license or after expiration of the required license.

d. Practice, condone, or facilitate any form of discrimination on the basis of sex, race, color, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference or personal characteristic, condition or status.

e. Make sexually harassing actions, comments, threats or enticements to clients/patients, colleagues or employees.

These rules are intended to implement Iowa Code sections 17A.10, 147.76 and 154C.4 and chapter 272C.

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CHAPTER 281
AGENCY PROCEDURE FOR RULE MAKING
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 282
PETITIONS FOR RULE MAKING
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 283
DECLARATORY RULINGS
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 284
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 285
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTERS 286 to 288
Reserved

CHAPTER 289
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTERS 290 to 299
Reserved

*Effective date of rules 161.212 to 161.217 delayed 70 days by the Administrative Rules Review Committee.
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SPEECH PATHOLOGY AND AUDIOLOGY

CHAPTER 300
BOARD OF SPEECH PATHOLOGY AND AUDIOLOGY EXAMINERS

[Prior to 8/24/88, see Health Department[470] Ch 155]

645—300.1(147) Definitions.

"Audiologist" means a person who engages in the application of principles, methods and procedures for measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to hearing and disorders of hearing and associated communication disorders for the purpose of nonmedically evaluating, identifying, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals, including the determination and use of appropriate amplification.

"Board" means the board of speech pathology and audiology examiners.

"Department" means the Iowa department of public health.

"Speech pathologist" means a person who engages in the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to the development and disorders of speech, fluency, voice, or language for the purposes of nonmedically evaluating, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals.

645—300.2(147) General.

300.2(1) No person shall engage in the practice of speech pathology or audiology unless the person has obtained from the department of public health a license or a temporary clinical license. Licenses issued by the board shall be for licensure by examination, except as provided by rule 300.5(147).

300.2(2) All information regarding rules, forms, time and place of meetings, minutes of meetings, records of hearing, and examination scores are available to the public between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Written information may be obtained from the Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

300.2(3) All material sent to the board for review must be submitted at least one week before a regularly scheduled meeting. Materials received after this time will be reviewed at the next regularly scheduled meeting of the board.

300.2(4) For those persons conducting hearing tests under the direct supervision of a licensed physician and surgeon or licensed osteopathic physician and surgeon functioning under Iowa Code section 147.152(1), "direct supervision" means the physician must order the hearing test performed on each individual patient and maintain control over the reading of the results. The person working under direct supervision of a physician must be able to show that the person did so at the direction of the physician and did nothing more than perform the hearing test. Direct supervision by a physician means the person conducting the hearing test does so in the usual location in which the physician performs medical services and sees patients. The physician must be readily available to respond to a request by a patient or the person conducting the hearing test.

300.2(5) Applications for license which do not meet the minimum criteria for licensure shall be retained by the board office for a maximum of two years from the date the application was received. After two years, incomplete applications shall be considered invalid and shall be destroyed. The application fee is nonrefundable.

645—300.3(147) Examination requirements. The examination which demonstrates the applicant's professional competence to the board shall be the national teacher examination in speech pathology or audiology. This examination is administered by the Educational Testing Service. The applicant should contact the nearest accredited college or university for the time and place of the examination or may contact the department for further information.

300.3(1) The applicant has full responsibility for making arrangements to take the national teacher examination in speech pathology or audiology and for bearing all expenses associated with taking the examination. The applicant also has the responsibility for having the examination scores sent directly to the board from the Educational Testing Service.

300.3(2) The board shall determine the qualifying scores for both the speech pathology and audiology examinations.

300.3(3) The examination required in this rule may, at the discretion of the board, be waived for any of the following persons:

a. Individuals licensed by examination in other states.

b. Holders of certificates of clinical competence as of January 1, 1977.

645—300.4(147) Licensure requirements.

300.4(1) *Licensure.* The applicant shall submit the following to the board:

a. An official application form provided by the department.

b. Official transcripts showing proof of possession of a master's degree or its equivalent.

c. Official verification of completion of not less than 300 hours of supervised clinical training in an accredited college or university.

d. Verification of not less than nine months of full-time clinical experience, or equivalent, under the supervision of a licensed speech pathologist or audiologist, as appropriate, following the receipt of the master's degree. Such verification must be signed by the licensed supervisor.

e. Results of the National Teacher Examination as described in this rule.

f. American Speech-Language Hearing Association (ASHA) certificate of clinical competence eliminates the need for *"b"* to *"e"* above.

g. A nonrefundable application fee in the form of a check or money order made payable to the Iowa Department of Public Health.

300.4(2) *Temporary clinical license.* A person who wishes to practice speech pathology or audiology in Iowa under the supervision of an Iowa licensed speech pathologist or audiologist for the purpose of obtaining clinical experience as a prerequisite for licensure shall apply to the board for a temporary clinical license prior to obtaining clinical experience. A temporary clinical license shall be issued only upon evidence that the applicant will be supervised by a person licensed in Iowa as a speech pathologist or audiologist, as appropriate. The temporary clinical license is valid for one year and may be renewed once at the discretion of the board. The board shall revoke any temporary clinical license at any time it shall determine either that the work done by the temporary clinical licensee or the supervision being given the temporary clinical licensee does not conform to reasonable standards. To fulfill requirements for a temporary clinical license, the applicant must submit the following to the board.

a. An official application form provided by the department.

b. Official transcripts showing proof of possession of a master's degree or its equivalent.

c. Official verification of completion of not less than 300 hours of supervised clinical training in an accredited college or university.

d. A plan of action to complete at least nine months of full-time clinical experience, or equivalent, under the supervision of an Iowa licensed speech pathologist or audiologist, as appropriate. At the completion of the nine months, a supervised clinical experience report on a board-approved form is required within 30 days. Verification shall be signed by the licensed supervisor.

(1) If the plan is not initiated, the board shall be notified in writing within 30 days of the anticipated start date.

(2) Any change made to the plan must be submitted to the board in writing for approval within 30 days of the change.

(3) If the plan is discontinued, the supervised clinical experience report should be completed and submitted to the board within 30 days of discontinuing the plan.

300.4(3) *Temporary permit.* A nonresident may apply to the board for a temporary permit to practice speech pathology or audiology for a period not to exceed three months by submitting documents to support the need for such a permit and documents to show that the applicant has substantially the same qualifications as required for a license. The application for temporary permit must be received by the board at least 30 days prior to the date the applicant intends to begin practice.

645—300.5(147) Licensure by interstate endorsement.

300.5(1) An out-of-state applicant seeking a license to practice speech pathology or audiology in Iowa is required to complete the same application as that required in subrule 300.4(1) except that the board may waive the examination requirement if the applicant has a license which was obtained by examination and if, in the opinion of the board, the examination and the examination score were essentially the same as for Iowa.

300.5(2) An out-of-state applicant shall, in addition, submit certification of all licenses obtained in another state. The certification shall include the license number, date issued, expiration date and whether any disciplinary action has been taken. If a license or certificate has ever been revoked or suspended, the applicant shall furnish a sworn statement detailing the circumstances.

645—300.6(147) License renewal.

300.6(1) The biennial license renewal period for a license to practice as a speech pathologist or audiologist shall extend from January 1 of each even-numbered year until December 31 of the next odd-numbered year. Continuing education requirements shall be completed within the same renewal period for each license holder.

An application and a continuing education report form for renewal of license to practice as a speech pathologist or audiologist shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

300.6(2) Beginning January 1, 2000, the continuing education requirements will coincide with the renewal compliance period. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing education report form with the renewal fee as specified in rule 300.7(147). Individuals who were issued their initial licenses within six months of the start of the next renewal period will not be required to renew their licenses until the next renewal two years later. The new licensee is exempt from meeting the continuing education requirements for the continuing education biennium in which the license is originally issued. Individuals will be required to report 30 hours of continuing education for the first renewal and every renewal thereafter.

300.6(3) Late renewal. If the renewal fees are received by the board within 30 days after the renewal expiration date, a penalty fee is charged. If renewal fees are received more than 30 days after the renewal expiration date, the license is lapsed. An application for reinstatement must be filed with the board with the reinstatement fee, the renewal fee and the penalty fee as outlined in rule 300.7(147). Individuals who submit the renewal application and complete documentation of continuing education hours after the end of the compliance period shall be required to pay a penalty fee and shall be subject to an audit of their continuing education report.

300.6(4) Speech pathologists and audiologists who have not fulfilled the requirements for license renewal or an exemption in the required time frame will have a lapsed license and shall not engage in the practice of speech pathology or audiology.

645—300.7(147) Licensure fees. All fees are nonrefundable.

300.7(1) The application fee for a license to practice speech pathology or audiology is $105, the application fee for a temporary clinical license is $65, and the application fee for a temporary permit is $25.

300.7(2) The renewal fee of a license to practice speech pathology or audiology for a biennial period is $80. The annual renewal fee for a temporary clinical license is $40.

300.7(3) The penalty fee for failure to renew a license within 30 days following its expiration is $40.

300.7(4) The reinstatement fee for a lapsed license or to reinstate a license under certificate of exemption status is $25.

300.7(5) The fee for certification of Iowa license is $10.

300.7(6) The fee for license replacement is $10.

300.7(7) The penalty fee for failure to obtain the required continuing education within the compliance period is $25.

300.7(8) The penalty fee for failure to notify the board office of an address change within 30 days is $15. If the penalty is not paid by the time of license renewal, the license may not be renewed.

300.7(9) Licensees who submit their continuing education report form after the deadline shall be assessed a $25 late fee and their reports will be audited.

300.7(10) Fee for a returned check is $15.

645—300.8(272C) Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa, but who wishes to retain a license, may be granted a waiver of compliance with continuing education requirements. The licensee shall apply to the board on a form provided by the board. The application shall contain a statement that the licensee will not engage in the practice of speech pathology or audiology in Iowa without first complying with all regulations governing reinstatement after exemption.

645—300.9(272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations shall, prior to engaging in the practice of speech pathology or audiology in the state of Iowa, satisfy the following requirements for reinstatement:

300.9(1) Submit written application for reinstatement on a form provided by the board.

300.9(2) Furnish, in addition to the application, evidence of one of the following:

a. The full-time practice of speech pathology or audiology in another state of the United States or District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of hours of accredited continuing education computed by multiplying 15 by the number of years a waiver of compliance shall have been in effect for such applicant, including the biennium during which the request for inactive status was requested if the continuing education requirement for that biennium had not yet been satisfied to a maximum of 75 hours; or

c. Successful completion of the licensing examination (the National Teacher Examination (NTE) for Speech Pathology or Audiology) conducted within one year immediately prior to the submission of such application for reinstatement. A passing score of 600 or greater is required.

300.9(3) Pay the current biennial license renewal fee and reinstatement fee.

645—300.10(272C) Reinstatement of lapsed license.

300.10(1) A license to practice speech pathology and audiology shall be considered lapsed if not renewed within 30 days of the renewal date and if no certificate of exemption has been granted.

300.10(2) Those persons who have failed to renew a license to practice and have not previously received a certificate of exemption shall pay the past due renewal fees, reinstatement and penalty fees to a maximum of $350. In addition, those persons shall complete all past due continuing education by multiplying 15 by the number of years the license shall have been lapsed to a maximum of 90 hours. Application shall be made on a form provided by the board.

645—300.11(147) Organization of board of speech pathology and audiology examiners.

300.11(1) *Chair.*

a. Shall be selected by the members of the board.

b. Shall preside at all meetings of the board and conduct the meeting following Robert's Rules of Order.

c. Shall appoint committees as is deemed necessary to study issues.

300.11(2) *Vice-chair.*

a. Shall be selected by the members of the board.

b. Shall act in capacity of chair in the absence of that officer.

300.11(3) *Secretary.*

a. Shall be selected by the members of the board.

b. Shall act in capacity of chair in the absence of officers representing the chair and vice-chair.

c. Shall keep an accurate and complete record of all transactions of the board.

300.11(4) *Quorum.* Four members of the seven-member board shall represent a quorum. Business shall not be conducted in the absence of a quorum.

These rules are intended to implement Iowa Code chapters 147 and 272C.

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CHAPTER 301
SPEECH PATHOLOGY AND AUDIOLOGY CONTINUING EDUCATION AND DISCIPLINARY PROCEDURES

[Prior to 9/9/87, Health Department[470], Ch 156]

645—301.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply.

"Accredited sponsor" means a person or an organization sponsoring continuing education activities which has been approved by the board.

"Approved program or activity" means a continuing education program or activity meeting the standards set forth in these rules which has received approval by the board pursuant to these rules.

"Board" means the board of examiners for speech pathology and audiology.

"Hour" of continuing education means a clock-hour spent after August 31, 1978, by a licensee in actual attendance at and completion of an approved continuing education activity.

"Licensee" means any person licensed to practice speech pathology or audiology or both in the state of Iowa.

"One Continuing Education Unit (CEU)" is equivalent to ten clock hours of approved continuing education.

"Verification of attendance" means:

1. A certificate of attendance provided by a sponsor which contains the date of program, program title and presenter, program site, number of clock hours attended, name of sponsor (and sponsor number if board accredited), and name of the licensee; or
2. A certificate of attendance form provided by the board with all information completed; or
3. A transcript indicating successful completion of academic courses in appropriate subject matter. One semester hour of coursework is equivalent to 15 hours of continuing education and 1 quarter hour of coursework is equivalent to 10 hours of continuing education; or
4. A personal letter to the licensee with the information as specified in 301.1"1" signed by a program official; or
5. A board-issued certificate of attendance for national and international conventions and independent study.

645—301.2(272C) Continuing education requirements.

301.2(1) Each person licensed to practice speech pathology or audiology in this state shall complete during each continuing education compliance period a minimum of 30 hours of approved continuing education directly related to the clinical practice of speech pathology or audiology. A licensee can elect to successfully complete the Educational Testing Service National Teacher Examination in speech pathology or audiology as appropriate during the compliance period. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent biennial license renewal period. A person holding licensure in both speech pathology and audiology must meet the requirements for each profession.

301.2(2) Beginning January 1, 2000, the continuing education compliance period shall be each biennium beginning January 1 of each even-numbered year until December 31 of the next odd-numbered year.

301.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which meets the requirements herein and is approved by the board pursuant to rule 645—301.3(272C).

301.2(4) Carryover credit of continuing education hours into the next continuing education period will not be permitted.

301.2(5) The new licensee is exempt from meeting the continuing education requirements for the continuing education biennium in which the license is originally issued. The new license holder will be required to obtain 30 hours of continuing education for each subsequent license renewal.

301.2(6) It is the responsibility of each licensee to finance the cost of continuing education.

645—301.3(272C) Standards for accreditation of sponsors and approval of continuing education activities.

301.3(1) An organization, institution, agency or individual shall be qualified for approval as a sponsor of continuing education activities if the board determines that:

a. The sponsor presents organized programs of learning; and

b. The sponsor presents subject matters which integrally relate to the practice of speech pathology or audiology or both; and

c. The sponsor's program activities contribute to the professional competency of the licensee; and

d. The sponsor's program presenters are individuals who have education, training or experience by reason of which said individuals may be considered qualified to present the subject matter of the programs.

301.3(2) A continuing education activity shall be qualified for approval if the board determines that the activity being presented:

a. Is an organized program of learning; and

b. Pertains to subject matters which integrally relate to the practice of speech pathology or audiology or both; which is described as:

1. Basic communication processes—information (beyond the basic certification requirements) applicable to the normal development and use of speech, language, and hearing, i.e., anatomic and physiologic bases for the normal development and use of speech, language, and hearing; physical bases and processes of the production and perception of speech, language, and hearing; linguistic and psycholinguistic variables related to normal development and use of speech, language, and hearing; and technological, biomedical, engineering, and instrumentation information which would enable expansion of knowledge in the basic communication processes. Any computer course used for continuing education must involve the actual application to the communicatively impaired population.

2. Professional areas—information pertaining to disorders of speech, language, and hearing, i.e., various types of disorders of communication, their manifestations, classification and causes; evaluation skills, including procedures, techniques, and instrumentation for assessment; and management procedures and principles in habilitation and rehabilitation of communication disorders. The board shall accept dysphasia courses provided by qualified instructors.

3. Related areas—study pertaining to the understanding of human behavior, both normal and abnormal, as well as services available from related professions which apply to the contemporary practice of speech-language pathology/audiology, e.g., theories of learning and behavior; services available from related professions that also deal with persons who have disorders of communications; information from these professions about the sensory, physical, emotional, social or intellectual states of child or adult; and other areas such as general principles of program management, professional ethics, clinical supervision, counseling and interviewing.

4. Nonacceptable subject matter—marketing, personal development, time management, child abuse, human relations, collective bargaining, tours. While being desirable these subjects are not applicable to the licensees' skill, knowledge, and competence as expressed in Iowa Code section 272C.2, paragraph *"g."* Therefore, such courses will receive no credit toward the minimum 30 hours required for license renewal.

c. Contributes to the professional competency of the licensee; and

d. Is conducted by individuals who have education, training, or experience by reason of which said individuals may be considered qualified to present the subject matter of the program.

301.3(3) Poster sessions may be approved as independent study pursuant to subrule 301.4(3).

645—301.4(272C) Procedures for accreditation of sponsors and review of continuing education activities.

301.4(1) *Accreditation of sponsors.*

a. An institution, organization, agency or individual desiring to be designated as an accredited sponsor of continuing education activities shall apply on a form provided by the board. If approved by the board, such institution, organization, agency or individual shall be designated as an accredited sponsor of continuing education activities, and the activities of such an approved sponsor which are relevant to speech pathology and audiology shall be deemed automatically approved for continuing education credit.

b. All accredited sponsors shall issue a certificate of attendance to each licensee who attends a continuing education activity. The certificate shall include sponsor name and number; date of program; name of participant; total number of clock hours excluding introductions, breaks, meals, etc.; program title and presenter; program site; and whether the program is approved for speech pathology, audiology, or both.

c. All accredited sponsors shall keep on file for three years, on a form approved by the board, a list of attendees, license number, number of continuing education clock hours, and a program description and objectives.

d. The board may at any time reevaluate an accredited sponsor. If after such reevaluation the board finds there is a basis for consideration of revocation of the accreditation of a sponsor, the board shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least 30 days prior to the hearing.

301.4(2) *Review of programs.* The board may monitor and review any continuing education program already approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

301.4(3) *Independent study.* The independent study plan must be submitted and approved prior to beginning the study. The projected date of completion must be recorded on the board-provided application form. An independent study report must be filed within 30 days after the projected date of completion. One 30-day extension may be granted upon the condition that such a request in writing is received within 30 days of the projected date of completion. A reminder will not be sent by the board.

Program presenters will not receive continuing education credit for programs presented. Presenters may request independent study credit for preparation.

The maximum independent study which can be accrued during any biennium is six hours of the required 30 hours.

301.4(4) Rescinded, effective 9/1/87.

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

645—301.5(272C) Reporting continuing education credits.

301.5(1) A report of continuing education activities shall be submitted on a board-approved form with the application for renewal by the end of the biennial license renewal period. The information included on the form shall include the title of continuing education activity, date(s), sponsor of activity, sponsor number (if board approved), and continuing education hours earned; or the date and location the licensee successfully completed the National Teacher Examination in speech pathology or audiology, as appropriate. A licensee who takes the licensing examination in lieu of earning continuing education credits shall have the results of the examination sent to the board by the agency administering the examination. The licensee's signature upon this form shall be regarded as verification that the licensee did attend and participate in the activities listed on the form. All continuing education activities submitted must be completed in the continuing education compliance period for which the license was issued as specified in 301.2(2) or a late fee will be assessed as outlined in 645—subrule 300.7(7).

301.5(2) Failure to receive renewal application shall not relieve the licensee of the responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

301.5(3) Audit of continuing education reports.

a. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

b. The licensee shall make available to the board for auditing purposes a verification of attendance for all reported activities that includes the following information:

(1) Date, place, course title, schedule, presenter(s).

(2) Number of contact hours for program attended.

(3) Official signature of sponsor indicating successful completion of course.

(4) For activities not provided by an accredited sponsor, the licensee shall submit a description of the program content indicating that the content is integrally related to the practice of speech pathology or audiology and contributes directly to the provision of speech pathology or audiology services to the public.

c. For auditing purposes the licensee must retain the above information for three years after the biennium has ended.

d. Submission of a false report of continuing education or failure to meet continuing education requirements will cause the license to lapse and may result in formal disciplinary action.

e. All renewal license applications that are submitted late (after the end of the compliance period) shall be subject to audit of continuing education report.

f. Any licensee against whom a complaint is filed may be subject to an audit of continuing education.

645—301.6(272C) Disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application is made on forms provided by the board and signed by the licensee and appropriately licensed health care professional and the waiver is acceptable to the board. Waivers of the minimum education requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—301.7(272C) Hearings. In the event of denial, in whole or part, of credit for a continuing education activity, the licensee shall have the right to request a hearing. The request must be sent within 20 days after receipt of the notification of denial. The hearing shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified hearing officer designated by the board. If the hearing is conducted by a hearing officer, the hearing officer shall submit a transcript or tape recording of the hearing including exhibits to the board after the hearing with the proposed decision of the hearing officer. The final decision of the hearing shall be rendered by the board.

645—301.8(272C) Exemptions for inactive practitioners. Rescinded IAB 6/16/99, effective 7/21/99.

645—301.9(272C) Reinstatement of inactive practitioners. Rescinded IAB 6/16/99, effective 7/21/99.

645—301.10(272C) Reinstatement of lapsed license. Rescinded IAB 6/16/99, effective 7/21/99.

645—301.11 to **301.99** Reserved.

645—301.100(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

301.100(1) *"Board"* means the board of speech pathology and audiology examiners.

301.100(2) *"Licensee"* means any person licensed to practice as a speech pathologist or audiologist or both in the state of Iowa.

645—301.101(272C) Complaint. A complaint of a licensee's professional misconduct shall be made in writing by any person to the Board of Speech Pathology and Audiology Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319. The complaint shall include complainant's address and telephone number, be signed and dated by the complainant or person acting on behalf of the complainant, shall identify the licensee, and shall give the address and any other information about the licensee which the complainant may have concerning the matter. The board of speech pathology and audiology examiners may by motion choose to investigate a complaint against a licensee.

645—301.102(272C) Report of malpractice claims or actions. Each licensee shall submit a copy of any judgment or settlement in a malpractice claim or action to the board within 30 days after the occurrence at the address given in rule 645—301.101(272C).

645—301.103(272C) Investigations.

301.103(1) *Investigation of complaints or malpractice claims.* The board of speech pathology and audiology examiners shall assign an investigation of a complaint or malpractice claim to a member of the board who will be known as the investigating board member or may request the special investigator from the department of inspections and appeals assigned to professional licensure to do the investigation. The investigating board member or special investigator may request information from any peer review committee which may be established to assist the board. The investigating board member or special investigator may consult with an assistant attorney general concerning the investigation on evidence produced from the investigation. The investigating board member or the special investigator shall report to the board. The board shall make a written determination whether there is probable cause for a disciplinary hearing. If an investigating board member is appointed, this member shall not take part in the decision of the board, but may appear as a witness.

301.103(2) *Investigative interviews.*

a. In the course of conducting or directing an investigation, the board may request the licensee to attend an informal investigatory interview before the board. The licensee is not required to attend the investigatory interview.

b. Because an investigatory interview constitutes a part of the board's investigation of a potential disciplinary case, statements that are made and facts which are discussed at the investigatory interview may be considered by the board in the event the matter proceeds to a contested case hearing and those statements and facts are independently introduced into evidence.

c. The licensee may be, but is not required to be, represented by an attorney at the informal discussion. The attorney may advise the licensee and may participate in general discussion and may, upon leave of the board, make statements on behalf of the licensee, but is not entitled to make procedural motions or objections or engage in argumentative advocacy on behalf of the licensee.

d. The investigative interview shall be held in closed session pursuant to Iowa Code section 21.5(1).

e. The licensee or the board may seek an informal stipulation or settlement of the case at any time during the investigation, including during or after an investigative interview. The chairperson or the chairperson's designee may negotiate on behalf of the board. All informal settlements are subject to approval of a majority of the full board. If approved, the informal settlement becomes the final disposition of the matter and is a public record. No board member is disqualified from participating in the adjudication of any resulting contested case by virtue of reviewing the investigative material or having participated in negotiation discussions. If the parties agree to an informal settlement during the investigative process, a statement of charges shall be filed simultaneously with the settlement document. In the event a settlement is not reached under this rule, the poststatement of charges settlement procedures set forth in rule 301.110(272C) may still be utilized.

645—301.104(272C) Alternative procedure. A disciplinary hearing before the licensing board is an alternative to the procedure provided in Iowa Code sections 147.58 to 147.71.

645—301.105(272C) License denial. Any request for a hearing before the board concerning the denial of a license shall be submitted by the applicant in writing to the board at the address in rule 301.101(272C) by certified mail, return receipt requested, within 30 days of mailing of a notice of denial of license.

645—301.106(272C) Notice of hearing. If there is a finding of probable cause for a disciplinary hearing by the investigating board member or by the department, the department shall prepare the notice of hearing and transmit the notice of hearing to the respondent by certified mail, return receipt requested, at least ten days before the date of the hearing.

645—301.107(272C) Hearings open to the public. A hearing of a licensing board concerning a licensee or an applicant shall be open to the public unless the licensee or applicant or the applicant's attorney requests in writing that the hearing be closed to the public.

645—301.108(272C) Hearings. The board adopts the rules of the Iowa department of public health found in 645—Chapter 173 as the procedure for hearings before the board. The board may authorize an administrative hearing officer to conduct the hearings, administer oaths, issue subpoenas, and prepare written findings of fact and conclusions of law at the direction of the board. If a majority of the board does not hear the disciplinary proceeding, a recording or a transcript of the proceedings shall be made available to the members of the board who did not hear the proceeding.

645—301.109(272C) Appeal. Any appeal to the district court from disciplinary action of the board or denial of license shall be taken within 30 days from the issuance of the decision by the board. It is not necessary to request a rehearing before the board to appeal to the district court.

645—301.110(272C) Informal settlement.

301.110(1) *Parties.*

a. A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case proceeding. Neither party is obligated to utilize this procedure to settle the case. Negotiation of an informal settlement may be initiated by the board, the assistant attorney general representing the public interest, or the respondent. Initiation by the respondent shall be directly with the assistant attorney general representing the public interest.

b. The chairperson or the chairperson's designee has authority to negotiate on behalf of the board.

301.110(2) *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, and the assistant attorney general is thereafter authorized to discuss informal settlement with the board's designee until that consent is affirmatively withdrawn.

301.110(3) *Negotiation deadline.* Negotiations for a proposed settlement shall be completed at least seven days prior to the hearing date. However, in instances where additional time will clearly lead to a satisfactory settlement prior to the hearing date, the board chairperson may grant additional time.

301.110(4) *Board approval.* The full board shall not be involved in negotiation until a final, written settlement executed by the respondent is submitted to the full board for approval. All informal settlements are subject to approval of a majority of the full board. If approved, the informal settlement becomes the final disposition of the matter and is a public record. If the board fails to approve an informal settlement, it shall be of no force or effect to either party.

301.110(5) *Participation of board member.* The chairperson or a board member who is designated to act in negotiation of an informal settlement may review investigative material in the course of conducting the negotiation. The negotiating board member is not disqualified from participating in the adjudication of the contested case by virtue of reviewing the investigative material or having participated in negotiation discussions.

645—301.111(272C) Publication of decisions. Final decisions of the board relating to disciplinary proceedings shall be transmitted to the appropriate professional association, the news media and employer.

645—301.112(272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revoke a license.
2. Suspend a license until further order of the board or a specified period.
3. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.
4. Place a license on probation.
5. Require additional education or training.
6. Require reexamination.
7. Impose civil penalties not to exceed $1,000.
8. Issue a citation or warning.
9. Impose other sanctions allowed by law as may be appropriate.

301.112(1) The board may impose any of these disciplinary sanctions when the board determines that the licensee is guilty of the following acts or offenses:

a. Fraud in procuring a license.

b. Professional incompetency.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs.

e. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

f. Fraud in representations as to skill or ability.

g. Use of untruthful or improbable statements in advertisements.

h. Willful or repeated violations of the provisions of Iowa Code chapter 147.

301.112(2) Violation of the rules promulgated by the board.

301.112(3) Violation of the following code of ethics:

a. Claims of expected clinical results shall be based upon sound evidence and shall accurately convey the probability and degree of expected improvement.

b. Persons served professionally or the files of such persons will be used for teaching or research purposes only after obtaining informed consent from those persons or from the legal guardians of such persons.

c. Information of a personal or professional nature obtained from persons served professionally will be released only to individuals authorized by the persons receiving professional service or to those individuals to whom release is required by law.

d. Relationships between professionals and between a professional and a client shall be based on high personal regard and mutual respect without concern for race, religious preference, sex, or age.

e. Referral of clients for additional services or evaluation and recommendation of sources for purchasing appliances shall be without any consideration for financial or material gain to the licensee making the referral or recommendation for purchase.

f. Licensees who dispense products to persons served professionally shall observe the following standards:

1. Products associated with professional practice must be dispensed to the person served as a part of a program of comprehensive habilitative care.
2. Fees established for professional services must be independent of whether a product is dispensed.
3. Persons served must be provided freedom of choice for the source of services and products.

4. Price information about professional services rendered and products dispensed must be disclosed by providing to or posting for persons served a complete schedule of fees and charges in advance of rendering services, which schedule differentiates between fees for professional services and charges for products dispensed.

g. Failure to comply with Food and Drug Administration rules 21 CFR §801.420 (April 1, 1981) "Hearing aid devices; professional and patient labeling" and 21 CFR §801.421 (April 1, 1981) "Hearing aid devices, conditions for sale."

301.112(4) Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

301.112(5) Practicing the profession while the license is suspended.

301.112(6) Suspension or revocation of license by another state.

301.112(7) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

301.112(8) Prohibited acts consisting of the following:

a. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

b. Permitting another person to use the licensee's license for any purpose.

c. Practice outside the scope of a license.

d. Verbally or physically abusing clients.

301.112(9) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying clients' records.

d. Billing for services which were not rendered, or charging fees which are inconsistent with any prior agreements reached with the clients.

301.112(10) Failure to report a change of name or address within 30 days after it occurs.

301.112(11) Submission of a false report of continuing education or failure to submit the annual report of continuing education.

301.112(12) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

301.112(13) Failure to comply with a subpoena issued by the board.

This rule is intended to implement Iowa Code sections 272C.3 and 272C.4.

645—301.113(272C) Peer review committees.

301.113(1) Each peer review committee for the profession may register with the board of examiners within 30 days after formation.

301.113(2) Each peer review committee shall report in writing within 30 days of the action, any disciplinary action taken against a licensee by the peer review committee.

301.113(3) The board may appoint a peer review committee consisting of not more than five persons who are licensed to practice speech pathology and a peer review committee consisting of not more than five persons who are licensed to practice audiology to advise the board in standards of practice and other matters relating to specific complaints as requested by the board. The members of the peer review committees shall serve at the pleasure of the board. The peer review committees shall observe the requirements of confidentiality provided in Iowa Code chapter 272C.

These rules are intended to implement Iowa Code sections 272C.2, 272C.4, 272C.5, 272C.6, 17A.10 and 17A.17.

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325.10(9) *Petition to promulgate, amend, or repeal a rule.*

a. An interested person or other legal entity may petition the board requesting the promulgation, amendment or repeal of a rule.

b. The petition shall be in writing, signed by or on behalf of the petitioner and shall contain a detailed statement of:

(1) The rule that the petitioner is requesting the board to promulgate, amend or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in full with the matter proposed to be deleted enclosed in brackets and proposed additions shown by underlining or boldface.

(2) Facts in sufficient detail to show the reasons for the proposed action.

(3) All propositions of law to be asserted by petitioner.

c. The petition shall be in typewritten or printed form, captioned BEFORE THE IOWA BOARD OF PHYSICIAN ASSISTANT EXAMINERS and shall be deemed filed when received by the board offices.

d. Upon receipt of the petition, the board staff shall:

(1) Within 20 days mail a copy of the petition to any parties named therein. The petition shall be deemed served on the date of mailing to the last known address of the party being served.

(2) Advise petitioner that petitioner has 30 days within which to submit written views.

At the board chairperson's direction, the board staff may schedule oral presentation of petitioner's view.

e. The review group shall review and approve or disapprove the proposed rules prior to the board's final decision to deny the petition or to initiate rule-making proceedings.

f. The petitioner will be notified, within 60 days after the date of submission of the petition, of the board's decision to deny the petition or to initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

325.10(10) *Declaratory rulings.* Upon petition filed by any individual, partnership, corporation, association, governmental subdivision, private or public organization or state agency, the board may issue a declaratory ruling as to the applicability of statutes and rules, policy statements, decisions and orders under its jurisdiction.

a. A petition for a declaratory ruling shall be typewritten or printed and at the top of the first page shall appear in capitals the words: PETITION FOR DECLARATORY RULING BEFORE THE BOARD OF PHYSICIAN ASSISTANT EXAMINERS.

b. The petition shall include the name and official title, if any, address and telephone number of each petitioner. If the request is at the request of an entity mentioned in this subrule, it shall name the entity.

c. The body of the petition shall contain:

(1) A detailed statement of facts upon which petitioner requests the board to issue its declaratory ruling.

(2) The statute, rule, policy statement, decision or order for which a ruling is sought.

(3) The exact words, passages, sentences or paragraphs which are the subject of inquiry.

(4) The specific questions presented for declaratory ruling.

(5) A consecutive numbering of each multiple issue presented for declaratory ruling.

d. The petition shall be filed either by serving it personally at the board office or by mailing it to the Board of Physician Assistant Examiners, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075.

e. The board chairperson shall acknowledge receipt of petitions or at the direction of the board return petitions not in substantial conformity with the above rules.

f. The board may decline to issue a declaratory ruling for any of the following reasons:

(1) A lack of jurisdiction.

(2) A lack of clarity of the issue presented.

(3) The issue or issues presented are pending resolution by a court of Iowa or by the attorney general.

(4) The issues presented have been resolved by a change in circumstances or by other reasons.

(5) The issues are under investigation for the purpose of formal adjudication.

(6) The petition does not comply with the requirements imposed by 325.10(10)*"c."*

(7) When a ruling would necessarily determine the legal rights of other parties not represented in the proceeding.

g. In the event the board declines to make a ruling, the board chairperson shall notify the petitioners of this fact and the reasons for the refusal.

h. When the petition is in proper form and has not been declined, the board shall issue a ruling disposing of the petition within a reasonable time after its filing.

i. Rulings shall be mailed to petitioners and to other parties at the discretion of the board chairperson. Rulings shall be indexed and available for public inspection.

This rule is intended to implement Iowa Code section 17A.9.

645—325.11(148C,272C) Grounds for discipline.

325.11(1) Methods of discipline. Rescinded IAB 6/16/99, effective 7/21/99.

325.11(2) Discretion of board. Rescinded IAB 6/16/99, effective 7/21/99.

325.11(3) Grounds for disciplinary action. The board may impose any of the discipline set forth in rule 645—13.1(272C) when the board determines the licensee is guilty of the following:

a. The use of presigned prescriptions, or the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a physical handicap, to make a written signature or mark, however, may substitute in lieu of a signature, a rubber stamp which is adopted by the handicapped person for all purposes requiring a signature and which is affixed by the handicapped person or affixed by another person upon the request of the handicapped person and in their presence.

b. Fraud in procuring registration or licensure to practice as a physician assistant.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a professional or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

d. Failure to possess and exercise that degree of skill, learning, and care expected of a reasonably prudent physician assistant acting in the same or similar circumstances.

e. The excessive use of alcohol, drugs, narcotics, chemicals, or other substances which may impair a physician assistant's ability to practice the profession with reasonable skill and safety.

f. Conviction of a felony related to the profession or the conviction of a felony that would affect the ability to practice within this profession. A copy of the record of conviction or pleas of guilty shall be clear and convincing evidence.

g. Willful or repeated violations of the provisions of these rules and Iowa Code chapter 148C.

h. Failure to report a licensure, registration or certification revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country.

i. Inability to practice as a physician assistant with a reasonable degree of skill and safety due to a mental or physical impairment or substance abuse.

j. Willful or repeated violation of a lawful rule or regulation promulgated by the board.

k. Violating a lawful order of the board previously entered by the board in a disciplinary hearing.

l. Being adjudged mentally incompetent by a court of competent jurisdiction.

m. Making suggestive, lewd, lascivious or improper remarks or sexual advances to a patient.

n. Knowingly submitting a false report of continuing education.

o. Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

p. Failure to file a report concerning acts or omissions committed by another physician assistant. No licensee shall be required to report information which is deemed to be confidential communication as the result of a physician-patient relationship or which is prohibited by state or federal statute. The report shall include the name and address of the licensee and the date, time and place of the incident.

q. Willful or repeated gross malpractice.

r. Willful or gross negligence.

s. Obtaining any fee by fraud or misrepresentation.

t. The performance of medical functions without approved supervision except in cases requiring performance of evaluation and treatment procedures essential to providing an appropriate response to emergency situations.

u. Knowingly or willingly performing a medical function or task prohibited by the board or for which the assistant is not qualified by training to perform.

v. Violating a statute or law of the state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law related to the practice of a physician assistant.

w. Habitual intoxication or addiction to drugs.

x. Failure to comply with the recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures issued by the Centers for Disease Control of the United States Department of Health and Human Services, or with the recommendations of the expert review panel established pursuant to Iowa Code section 139C.2(3), and applicable hospital protocols established pursuant to Iowa Code section 139C.2(1).

325.11(4) The board may refuse to grant licensure to practice as a physician assistant for any of the grounds set out in subrule 325.11(3).

This rule is intended to implement Iowa Code sections 148C.5A and 148C.6A.

645—325.12(272C) Peer review committee. Rescinded IAB 6/16/99, effective 7/21/99.

645—325.13(148C) Disciplinary procedure. Rescinded IAB 6/16/99, effective 7/21/99.

645—325.14(148C) Disciplinary hearing fees and costs. Rescinded IAB 6/16/99, effective 7/21/99.

645—325.15(148C) Physician assistant trainee.

325.15(1) Any person who is enrolled as a trainee (student) in an approved program shall comply with the rules set forth in this chapter. A trainee (student) is exempted from licensure requirements.

325.15(2) Notwithstanding any other provisions of these rules, a trainee (student) may perform medical services when they are rendered within the scope of an approved program.

645—325.16(148C) Application for program approval.

325.16(1) Application for program approval for the education and training of physician assistants shall be made on forms supplied by the board and shall be signed by the medical director or the program director.

325.16(2) Application forms submitted to the board shall be completed in every detail. Every supporting document required by the application form shall be submitted with each application.

325.16(3) A fee of $50 shall be submitted with the application for program approval.

This rule is intended to implement Iowa Code chapter 148C.

645—325.17(148C) Essential requirements of an approved program. An educational program for the instruction of a physician assistant shall meet the essential requirements and criteria as established by the Committee on Allied Health Education and Accreditation or its successor, the Council on Accreditation of Allied Health Educational Programs, or its successor agency. Any educational program for the instruction of a physician assistant which is not currently accredited by the Council on Accreditation of Allied Health Educational Programs, or its successor agency, does not meet the definition of an approved program.

645—325.18(148C) Prohibition. No physician assistant shall be permitted to prescribe lenses, prisms or contact lenses for the aid, relief or correction of human vision. No physician assistant shall be permitted to measure the visual power and visual efficiency of the human eye, as distinguished from routine visual screening, except in the personal presence of a supervising physician at the place where these services are rendered.

645—325.19(148C) Continuing education.

325.19(1) Continuing education means the education which is obtained by a physician assistant in order to maintain, improve, or expand skills and knowledge obtained prior to initial certification or to develop new and relevant skills and knowledge.

325.19(2) Category I continuing education.

a. A Category I continuing education activity shall be qualified for approval if it constitutes an organized program of learning which contributes directly to the professional competency of the physician assistant; it pertains to subject matter which integrally relates to the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy; and it is conducted by individuals who have special education, training and experience by reason of which they should be considered experts concerning the subject matter of the program.

b. Category I continuing education means continuing education that has been approved by the American Academy of Physician Assistants, American Academy of Family Physicians, American Osteopathic Association, or those organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME), which includes the American Medical Association. The program's publicity will specify the accrediting organization(s) and the number of approved Category I hours.

325.19(3) Category II continuing education.

a. Category II continuing education means continuing education which is acquired on an hour-for-hour basis of time spent participating in professional or medical educational activities that have not been approved for a specific number of Category I hours.

b. Category II continuing education is approved for Category II credit by the American Academy of Physician Assistants.

325.19(4) Continuing education requirements.

a. A person licensed as a physician assistant shall complete a minimum of 100 hours of approved continuing education every two years. Of these 100 hours, a minimum of 40 hours shall be earned in Category I, and the remaining 60 hours may be obtained in Category II or a combination of Categories I and II.

b. The continuing education compliance year shall extend from July 1 to June 30, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the physician assistant's license renewal.

c. If satisfactory completion of 100 hours of continuing education is not reported by the date for license renewal, the board shall notify the physician assistant of the deficiency. The physician assistant may request an extension for satisfactory completion of the required hours if just cause is determined by the board.

d. In lieu of the continuing education requirements, the board shall accept a current certificate of continuing education from the American Academy of Physician Assistants or the National Commission on the Certification of Physician Assistants and will consider approval of other programs as they are developed.

e. It is the responsibility of physician assistants to finance their costs of continuing education.

325.19(5) Hearing. In the event of denial, in whole or part of credit, for continuing education activity, the physician assistant shall have the right, within ten days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within 45 days after receipt of the request for hearing. The hearing shall be conducted by the board. The hearing shall be conducted in substantial compliance with the hearing procedure in subrule 325.13(22) and Iowa Code chapters 17A and 272C. The decision of the board shall be final.

325.19(6) Reporting continuing education.

a. The physician assistant shall submit with the license renewal every two years evidence of compliance with the continuing education requirements. This evidence may be a current certificate from the National Commission on the Certification of Physician Assistants which requires 100 hours of continuing education to maintain, documentation of 100 hours of continuing education from the American Academy of Physician Assistants, or a report signed by the physician assistant which lists the continuing education hours completed in the preceding two years.

b. The board relies upon the integrity of physician assistants in certifying their compliance with the continuing education requirements. Each licensed physician assistant shall keep evidence of attendance at approved continuing education programs for three years. The board may audit this information on a random basis and the physician assistant shall produce the documentation of continuing education activities at the request of the board.

325.19(7) Reinstatement. A physician assistant who applies for reinstatement of license by the board after allowing the license to lapse shall satisfy the following requirements:

a. Furnish evidence of completion of a total number of hours of accredited continuing education computed by multiplying 50 by the number of years since the physician assistant license was valid, of which at least 40 percent of the hours completed shall be in Category I, or

b. Successfully complete the requirements of the National Commission on the Certification of Physician Assistants for recertification, conducted within one year immediately prior to the submission of application for licensure.

325.19(8) Exemptions for continuing education requirements.

a. A physician assistant shall be deemed to have complied with the continuing education requirements in the following instances:

(1) During periods served honorably on active duty in the military services,

(2) During periods of residency in another state or district having a continuing education requirement for the profession and where the physician assistant had met all requirements of that state or district,

(3) For periods that the physician assistant is a government employee working in the profession and assigned to duty outside of the United States, or

(4) For other periods of active employment and absence from the state approved by the board.

b. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill them or make the required reports. No waiver or extension of time shall be granted unless written request to the board for this extension is made by the physician assistant. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the physician assistant shall reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived.

These rules are intended to implement Iowa Code chapters 148C and 272C and Iowa Code section 147.107.

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CHAPTER 326
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 327
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTERS 328 to 349
Reserved

NOTE: History prior to IAB 7/12/89 transferred from 653—Chapter 20, IAB 11/14/90.
*Effective date of 11/14/84 delayed 70 days by the Administrative Rules Review Committee. Delay lifted by Committee on 1/9/85.
**Effective date of 325.7(3)"*a*" and 325.7(4)"*a*"(1), (3) delayed 70 days by the Administrative Rules Review Committee at its meeting held August 16, 1995.

24.26(11) The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

24.26(12) When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

24.26(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

†***24.26(14)** The individual left employment due to workplace or domestic violence perpetrated against the individual at, around or in connection with the work. The individual must make all reasonable efforts to continue in the employment and be forced to quit in order to protect the individual's own safety.

***24.26(15)** Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

24.26(16) The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

24.26(17) Reserved.

24.26(18) Reserved.

24.26(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

*Effective date of 3/17/99 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.
†Objection imposed by the Administrative Rules Review Committee at its meeting held May 12, 1999. See text of Objection at end of chapter.

24.26(20) The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

24.26(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

24.26(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

24.26(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

24.26(24) Reserved.

24.26(25) Temporary active military duty. A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service, shall be entitled to a leave of absence during the period of such duty. The employer shall restore such person to the position held prior to such leave of absence, or employ such person in a similar position; provided, that such person shall give evidence to the employer of satisfactory completion of such training or duty, and further provided that such person is still qualified to perform the duties of such position.

24.26(26) Reserved.

24.26(27) Refusal to exercise bumping privilege. An individual who has left employment in lieu of exercising the right to bump or oust a fellow employee with less seniority shall be eligible for benefits.

24.26(28) The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account shall immediately become chargeable for the benefits paid which are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification shall be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.19(38).

871—24.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)*"g."*

OBJECTION

At its meeting held May 12, 1999, the Administrative Rules Review Committee voted to object to 871—subrule 24.26(14) on the grounds this subrule is beyond the statutory authority of the department. Committee members feel that the underlying statute, Iowa Code section 96.6(1), sets out nine specific circumstances where a voluntary quit still entitles the applicant to unemployment benefits—and those nine circumstances are exclusive. The basic doctrine in such cases states the express mention of one thing in a statute implies the exclusion of those things not mentioned. Bennett v. Iowa Dept. of Natural Resources, 573 N.W.2d 25 (Iowa 1997). Since none of these paragraphs relate to domestic violence, the committee concludes that such an exception to the "voluntary quit" provisions cannot be added by administrative rule.

ACCOUNTANCY, ACCOUNTANTS (cont'd)
Corporations/partnerships