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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
July 14, 1999, Biweekly Supplement

[Previous Supplement dated 6/30/99]

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CIVIL RIGHTS COMMISSION[161]

CHAPTER 8
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CHAPTER 8
DISCRIMINATION IN EMPLOYMENT
EMPLOYMENT SELECTION PROCEDURE
[Prior to 1/13/88, see Civil Rights 240—Chs 2, 3, 5, 6]

161—8.1(216) General provisions—employee selection procedures.

8.1(1) *"Test" defined.* For the purpose of the rules in this chapter, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The rules in this chapter apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc.

8.1(2) *"Discrimination" defined.* The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII, Civil Rights Act of 1964 and Iowa Code chapter 216 constitutes discrimination unless: The test has been validated and evidences a high degree of utility as described in subrule 8.1(3), and the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable.

8.1(3) *Evidence of validity.*

a. Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate 8.1(2). Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

b. The term "technically feasible" as used in commission rules means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

c. Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of, or significantly correlated with, important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: Provided, that no significant differences exist between units, jobs, and applicant populations.

8.1(4) *Minimum standards for validation.*

a. For the purpose of satisfying the requirements of this chapter, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street, N.W., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behavior composing the job in question. The types of knowledge, skills or behavior contemplated here do not include those which can be acquired in a brief orientation to the job.

b. Although any appropriate validation strategy may be used to develop empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market: Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of that person's subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to ensure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and are not available through normal commercial channels must be included as part of the validation evidence.

(3) The work behavior or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behavior as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to ensure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these rules, pending separate validation of the test for the minority group in question. See 8.1(8). A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

c. In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

1. The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available;

2. The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

3. The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

8.1(5) *Presentation of validity evidence.* The presentation of the results of a validation study must include graphic and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See 8.1(4)*"c,"* concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

8.1(6) *Use of other validity studies.* In cases where the validity of a test cannot be determined pursuant to 8.1(3) and 8.1(4) (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when:

a. The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and

b. There are no major differences in contextual variables or sample composition which are likely to significantly affect validity.

Any person citing evidence from other validity studies as evidence of test validity for their own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in *"a"* and *"b"* of this subrule.

8.1(7) *Assumption of validity.*

a. Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

b. Although professional supervision of testing activities may help greatly to ensure technically sound and nondiscriminatory test usage, this alone shall not be regarded as constituting satisfactory evidence of test validity.

8.1(8) *Continued use of tests.* Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue, provided: the person can cite substantial evidence of validity as described in 8.1(6); and the person has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

161—8.2(216) Employment agencies and employment services.

8.2(1) An employment service, including private employment agencies, state employment agencies, and the U.S. Training and Employment Service, as defined in Section 701(c) of Title VII, Civil Rights Act of 1964, or Iowa Code section 216.2, shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with commission rules.

8.2(2) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in commission rules. An employment service is not relieved of its obligation because the test user did not request validation or has requested the use of some lesser standard than is provided in commission rules.

8.2(3) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the rules in this chapter, before it administers the testing program or makes referral pursuant to the test results. The employment agency must furnish on request evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity. See 8.1(7). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in 8.1(6).

161—8.3(216) Disparate treatment. The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance in accordance with the rules in this chapter—cannot be imposed upon any individual or class protected by Title VII, Civil Rights Act of 1964, or Iowa Code chapter 216 where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by Title VII or Iowa Code chapter 216 who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

161—8.4(216) Retesting. Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration of candidates who have previously failed and have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested.

161—8.5(216) Other selection techniques. Selection techniques other than tests, as defined in 8.1(1), may be improperly used so as to have the effect of discriminating against minority groups. These include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of that person's unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in 8.1(3) and 8.1(4). Data suggesting the possibility of discrimination exists, for example, when there are differential rates of applicant rejection between minority and nonminority or between the sexes for the same job or group of jobs, or when there are disproportionate representations of minority and nonminority or members of one sex among present employees in different types of jobs. If the person is unable or unwilling to perform validation studies, that person has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

161—8.6(216) Affirmative action. Nothing in commission rules shall be interpreted as diminishing a person's obligation under Title VII, Civil Rights Act of 1964, Executive Order 11246 as amended by Executive Order 11375, or Iowa Code chapter 216 to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to commission rules does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by Title VII and chapter 216.

161—8.7(216) Remedial and affirmative action.

8.7(1) *Policy statement.* Employers and other persons subject to the Act, Iowa Code chapter 216, are required to maintain nondiscriminatory employment and personnel systems and therefore are obligated to comply with the statute without awaiting the action of any governmental agency. Thus, employers and other persons subject to the Act who, after a self-analysis, have concluded that there is a likelihood that they may be found in violation of the Act because of some aspect of their employment and personnel system, are required by the statute to take remedial and affirmative action to correct the situation. An employer or other person subject to the Act who has a reasonable basis for concluding that it might be held in violation of the Act and who takes remedial and affirmative action reasonably calculated to avoid that result on the basis of self-analysis does not, in the opinion of the commission, thereby violate the Act with respect to any employee or applicant for employment who is denied an employment opportunity as a result of action. In the opinion of the commission, the lawfulness of remedial and affirmative action programs is not dependent upon an admission, or a finding, or evidence sufficient to prove that the employer or other person subject to the Act taking the action has violated the Act.

8.7(2) *Type of affirmative action covered.* In the opinion of the commission, an employer or other person subject to Executive Order Number 15 who has adopted an affirmative action program pursuant to and in conformity with Executive Order and federal and state regulations does not violate the Act by reason of its adherence to its affirmative action program. Furthermore, for purposes of demonstrating to the commission that an employer or other person has reasonably concluded that it might be held in violation of the Act and that the remedial and affirmative action it has taken is reasonably calculated to avoid that result, the employer or other person may rely on an analysis which has been conducted in order to comply with Revised Order 4 or related orders issued by the Office of Federal Contract Compliance Programs under Executive Order 11246, as amended, or similar analysis required under federal, state, and local laws prohibiting employment discrimination.

8.7(3) *Use of goals and numerical remedies.* The remedial and affirmative action programs contemplated by commission rules, whether taken by private employers or governmental employers or other persons covered by the Act, include the use of race, color, creed, sex, age, religion, disability, and ethnic-conscious goals and timetables, ratios, or other numerical remedies intended to remedy the prior discrimination against, or exclusion of, protected classes or to ensure that the employer's practices presently operate in a nondiscriminatory manner. Employers or other persons subject to the Act must be attentive to the effect of their employment practices in light of past discrimination by others. *Griggs v. Duke Power,* 401 U.S. 424(1971). Numerical remedies must be reasonable under the facts and circumstances which include any discrimination to be remedied and the relevant work force. Benefits under remedial and affirmative action programs need not be restricted to identifiable victims of past discrimination by the employer or other persons subject to the Act. Specific remedial and affirmative measures may include, but are not limited to, those described in the Equal Employment Opportunity Coordinating Council's "Policy Statement on Affirmative Action Programs for State and Local Government Agencies." (41 Federal Register 38814, September 13, 1976), which reads, in relevant part:

"2. Voluntary affirmative action to assure equal employment opportunity is appropriate at any stage of the employment process. The first step in the construction of any affirmative action plan should be an analysis of the employer's work force to determine whether percentages of sex, race, or ethnic groups in individual job classifications are substantially similar to the percentages of those groups available in the work force in the relevant job market who possess the basic job related qualifications.

"When substantial disparities are found through such analysis, each element of the overall selection process should be examined to determine which elements operate to exclude persons on the basis of sex, race, or ethnic group. Such elements include, but are not limited to, recruitment, testing, ranking, certification, interview, recommendations for selection, hiring, promotion, etc. The examination of each element of the selection process should at a minimum include a determination of its validity in predicting job performance.

"3. When an employer has reason to believe that its selection procedures have the exclusionary effect described in paragraph 2 above, it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex or ethnic 'conscious,' include, but are not limited to, the following:

"The establishment of a long term goal and short range, interim goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market;

"A recruitment program designed to attract qualified members of the group in question;

"A systematic effort to organize work and redesign jobs in ways that provide opportunities for persons lacking 'journeyperson' level knowledge or skills to enter and, with appropriate training, to progress in a career field;

"Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications;

"The initiation of measures designed to assure that members of the affected group who are qualified to perform the job are included within the pool of persons from which the selecting official makes the selection;

"A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and

"The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated."

8.7(4) *Written opinions.* If during the investigation of a charge an employer or other person asserts that the action complained of was taken pursuant to a program such as those described in these rules, the investigating official shall determine whether the program conformed to the requirements stated in these rules for a program. If the investigating official so finds, the investigating official will set forth the facts on which the findings are based and will issue a "no probable cause" finding on the complaint. If the employer or other person also asserts that the action complained of was taken in good faith, in conformity with and in reliance upon commission rules, the investigating official shall determine whether the assertion is true. If the investigating official so finds, the investigating official will set forth the facts on which this finding is based and include the finding with the other findings described in this section in the "no probable cause" finding.

8.7(5) *Reliance.* The commission shall apply the foregoing principles where the challenged person's action is taken pursuant to any attempt to comply with the antidiscrimination requirements of any federal, state, or local government laws.

8.7(6) *Limitations of standards.* The specifications of remedial and affirmative action in commission rules is intended only to identify certain types of actions which an employer or other person may take consistent with the Act but does not attempt to provide standards for determining whether voluntary attempts to eliminate discrimination against minorities and women have been successful. Whether, in any given case, the employer who takes remedial and affirmative action will have done enough to remedy discrimination against those protected by the Act will be a question of fact in each case.

161—8.8 to **8.14** Reserved.

AGE DISCRIMINATION IN EMPLOYMENT

161—8.15(216) Age discrimination in employment.

8.15(1) Any person who has reached 18 years of age may not be excluded from an employment right because of an arbitrary age limitation and shall be an aggrieved party for the purposes of Iowa Code section 216.15, regardless of whether the person is excluded by reason of excessive age or insufficient age, and shall possess all the rights and remedies for discrimination provided in section 216.15.

8.15(2) No employer, employment agency, or labor organization shall set an arbitrary age limitation in relation to employment or membership except as otherwise provided by commission rules or by the Iowa Code.

8.15(3) Help wanted notices. No newspaper or other publication published within the state of Iowa shall accept, publish, print or otherwise cause to be advertised any notice of an employment opportunity from an employer, employment agency, or labor organization containing any indication of a preference, limitation, or specification based upon age, except as provided in commission rules, unless the newspaper or publication has first obtained from the employer, employment agency, or labor organization an affidavit indicating that the age requirement for an applicant is a bona fide occupational qualification.

8.15(4) Help wanted notices of advertisements shall not contain terms and phrases such as "young," "boy," "girl," "college student," "recent college graduate," "retired person," or others of a similar nature unless there is a bona fide occupational requirement for the position.

8.15(5) Job applications for and other preemployment inquiries. An employer, employment agency or labor organization may make preemployment inquiry regarding the age of an applicant, provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any preemployment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to age shall be unlawful unless based upon a bona fide occupational qualification. The burden shall be on the employer, employment agency or labor organization to demonstrate that the direct or indirect preemployment inquiry is based upon a bona fide occupational qualification.

8.15(6) Nothing in the above shall be construed to prohibit any inquiry as to whether an applicant is over 18 years of age.

8.15(7) Nothing in the above shall be construed to prohibit postemployment inquiries as to age where the inquiries serve legitimate record-keeping purposes.

8.15(8) Bona fide occupational qualifications.

a. An employer, employment agency, or labor organization may take any action otherwise prohibited under commission rules where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

b. The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

c. Age requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where requirements are necessarily related to the work which the employee must perform.

d. A bona fide occupational qualification will also be recognized where there exist special, individual occupational circumstances such as where actors are required for characterizations of individuals of a specified age, or where persons are used to advertise or promote the sale of products designed for, and directed to, certain age groups.

161—8.16(216) Bona fide apprenticeship programs. Where an age limit is placed upon entrance into an apprenticeship program, the limitation shall not be a violation of Iowa Code chapter 216 where the employer can demonstrate a legitimate economic interest in the limitation in terms of the length of the training period and the costs involved in providing the training. The age limit shall not be set any lower than reasonably necessary to enable the employer to recover the costs of training the employee and a reasonable profit.

161—8.17(216) Employment benefits.

8.17(1) An employer is not required to provide the same pension, retirement, or insurance benefits to all employees where the cost varies with the age of the individual employee. Business necessity or bona fide underwriting criteria shall be the only basis used by employers for providing different benefits to employees of different ages unless the benefits are provided under a retirement plan or benefit system not adopted as a mere subterfuge to evade the purposes of the Act.

8.17(2) The existence of a provision in a retirement plan stating a maximum eligibility age for entrance into a retirement plan shall not authorize rejecting from employment an applicant who is over the maximum eligibility age for the retirement plan.

161—8.18(216) Retirement plans and benefit systems.

8.18(1) Commission rules shall not be construed so as to prohibit an employer from retiring an employee, or to require an employer to hire back an employee following retirement, or to hire an applicant for employment whose age is the retirement age under the employer's retirement plan or benefit system, provided that the plan or system is not a mere subterfuge for the purpose of evading the provisions of the Act.

8.18(2) However, a retirement plan or benefit system shall not require the involuntary retirement of a person under the age of 70 because of that person's age, with the following exceptions:

a. Peace officers, in the divisions of highway safety and uniformed force, criminal investigation and bureau of identification, drug law enforcement, beer and liquor law enforcement, police officers, firefighters, and conservation officers, so long as their maximum age by statute is 65 years;

b. Bona fide executives and high policymaking employees who have served in that capacity for the two prior years who are entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan of the employer which equals $27,000; and

c. The involuntary retirement of a person covered by collective bargaining agreement which was entered into by a labor organization and was in effect on September 1, 1977. This exemption does not apply after termination of that agreement or January 1, 1980, whichever first occurs.

8.18(3) State employees who are members of the Iowa public employee's retirement system are not subject to mandatory retirement based on age.

161—8.19 to **8.25** Reserved.

DISABILITY DISCRIMINATION IN EMPLOYMENT

161—8.26(216) Disability discrimination in employment.

8.26(1) The term "substantially handicapped person" shall mean any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

8.26(2) The term "physical or mental impairment" means:

a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

8.26(3) The term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

8.26(4) The term "has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

8.26(5) The term "is regarded as having an impairment" means:

a. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

c. Has none of the impairments defined to be "physical or mental impairments," but is perceived as having such an impairment.

8.26(6) The term "employer" shall include any employer, as defined in Iowa Code section 216.2(5), and labor organization, or employment agency insofar as their action or inaction may adversely affect employment opportunities.

161—8.27(216) Assessment and placement.

8.27(1) If examinations or other assessments are required, they should be directed toward determining whether an applicant for a job:

a. Has the physical and mental ability to perform the duties of the position. An individual applicant would have to identify the position for which the applicant has applied.

b. Is physically and mentally qualified to do the work without adverse consequences such as creating a danger to life or health of coemployees.

c. Is professionally competent or has the necessary skills or ability to become professionally competent to perform the duties and responsibilities which are required by the job.

8.27(2) Examinations or other assessments should consider the degree to which the person has compensated for the person's limitations and the rehabilitation service that person has received.

8.27(3) Physical standards for employment should be fair, reasonable, and adapted to the actual requirements of the employment. They shall be based on complete factual information concerning working conditions, hazards, and essential physical requirements of each job. Physical standards will not be used to arbitrarily eliminate the disabled person from consideration.

8.27(4) Where preemployment tests are used, the opportunity will be provided applicants with disabilities to demonstrate pertinent knowledge, skills and abilities by testing methods adapted to their special circumstances.

8.27(5) Probationary trial periods in employment for entry-level positions which meet the criteria of business necessity may be instituted by the employer to prevent arbitrary elimination of the disabled.

8.27(6) Reasonable accommodation. An employer shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

a. Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2)* Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

*b.** In determining pursuant to the first paragraph of this subrule whether an accommodation would impose an undue hardship on the operation of an employer's program, factors to be considered include:

(1) The overall size of the employer's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the employer's operation, including the composition and structure of the employer's workforce; and

(3) The nature and cost of the accommodation needed.

*Objection to 8.27(6)"*a*"(2) and 8.27(6)"*b*" [prior to 1/13/88 numbered as 6.2(6)"*a*"(2) and 6.2(6)"*b*," respectively,] reimposed 4/20/88, republished 5/4/88; see full text of objection at end of chapter.

c. An employer may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

8.27(7) Occupational training and retraining programs, including but not limited to guidance programs, apprentice training programs, on-the-job training programs and executive training programs, shall not be conducted in a manner to discriminate against persons with physical or mental disabilities.

161—8.28(216) Disabilities arising during employment. When an individual becomes disabled, from whatever cause, during a term of employment, the employer shall make every reasonable effort to continue the individual in the same position or to retain and reassign the employee and to assist that individual's rehabilitation. No terms in this rule shall be construed to mean that the employer must erect a training and skills center.

161—8.29(216) Wages and benefits.

8.29(1) While employers may reengineer the conditions of work for the disabled person, the salary paid to the person shall be no lower than the lowest listed on the applicable wage grade schedule.

8.29(2) The wage schedule must be unrelated to the existence of physical or mental disabilities.

8.29(3) It shall be an unfair employment practice for an employer to discriminate between persons who are disabled and those who are not, with regard to fringe benefits, unless there are bona fide underwriting criteria.

8.29(4) A condition of disability shall not constitute a bona fide underwriting criteria in and of itself.

161—8.30(216) Job policies.

8.30(1) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of disability.

8.30(2) If the employer deals with a bargaining representative for the employees and there is a written agreement on conditions of employment, it shall not be inconsistent with these guidelines.

161—8.31(216) Recruitment and advertisement.

8.31(1) It shall be an unfair employment practice for any employer to print or circulate or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application preemployment inquiry regarding mental or physical disability for prospective employment which is not a bona fide occupational qualification for employment and which directly or indirectly expresses any negative limitations, specifications, or discrimination as to persons with physical or mental disabilities. The burden shall be on the employer to demonstrate that the statement, advertisement, publication or inquiry is based upon a bona fide occupational qualification. This is subject, however, to the provisions of Iowa Code section 216.6(1)*"c."*

8.31(2) It shall be an unfair employment practice to ask any question on the employment application form regarding a physical or mental disability unless the question is based upon a bona fide occupational qualification. The burden will be on the employer to demonstrate that the question is based upon a bona fide occupational qualification.

8.31(3) An employment interviewer may inquire as to a physical or mental disability provided the inquiry is made in good faith for a nondiscriminatory purpose.

161—8.32(216) Bona fide occupational qualifications.

8.32(1) It shall be lawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under these rules where mental or physical ability is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

8.32(2) The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

8.32(3) Physical or mental disability requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where the requirements are necessarily related to the work which the employee must perform.

161—8.33 to **8.45** Reserved.

SEX DISCRIMINATION IN EMPLOYMENT

161—8.46(216) General principles. References to "employer" and "employers" in these rules state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities as defined in the Act, (Iowa Code section 216.6).

161—8.47(216) Sex as a bona fide occupational qualification. The bona fide occupational qualification exception as to sex is strictly and narrowly construed. Labels—"men's jobs" and "women's jobs"—tend to unnecessarily deny employment opportunities to one sex or the other.

8.47(1) The following situations do not warrant the application of the bona fide occupational qualification exception:

a. The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general, for example, the assumption that the turnover rate among women is higher than among men;

b. The refusal to hire an individual based on stereotypical characterizations of the sexes, for example, that men are less capable of assembling intricate equipment or that women are less capable of aggressive sales work. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group;

c. The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers, except as covered specifically in 8.47(2).

8.47(2) Where it is necessary for the purpose of authenticity or genuineness, sex is a bona fide occupational qualification, e.g., an actor or actress.

161—8.48(216) Recruitment and advertising.

8.48(1) Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

8.48(2) Advertisement in newspapers and other media for employment must not express a sex preference unless sex is a bona fide occupational qualification. The placement of an advertisement in columns headed "male" or "female" will be considered an expression of a preference, limitation, specification or discrimination based on sex.

161—8.49(216) Employment agencies.

8.49(1) Iowa Code sections 216.6(1)*"a"* and *"c"* specifically state that it shall be unlawful for an employment agency to discriminate against any individual because of sex. Private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

8.49(2) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency is not in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupational qualification is without substance and the agency makes and maintains a written record available to the commission of each job order. The record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

8.49(3) It is the responsibility of employment agencies to keep informed of opinions and decisions of the commission on sex discrimination.

161—8.50(216) Preemployment inquiries as to sex. A preemployment inquiry may ask "male . . ., female . . .,"; or "Mr., Mrs., Miss" provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any preemployment inquiry which expresses directly or indirectly a limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

161—8.51(216) Job policies and practices.

8.51(1) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the employer deals with a bargaining representative for the employer's employees and there is a written agreement on conditions of employment, the agreement shall not be inconsistent with these guidelines.

8.51(2) Employees of both sexes shall have an equal opportunity to any available job that the employee is qualified to perform, unless sex is a bona fide occupational qualification.

8.51(3) No employer shall make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not violate these guidelines if the employer's contributions are the same for both sexes or if the resulting benefits are equal.

8.51(4) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; nor terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

8.51(5) The employer's policies and practices must ensure appropriate physical facilities to both sexes. The employer may not refuse to hire either sex, or deny either sex a particular job because there are no restroom or associated facilities, unless the employer is able to show that the construction of the facilities would be unreasonable for such reasons as excessive expense or lack of space.

8.51(6) An employer must not deny a female employee the right to any job that she is qualified to perform. For example, an employer's rules cannot bar a woman from a job that would require more than a certain number of hours or from working at jobs that require lifting or carrying more than designated weights.

161—8.52(216) Separate lines of progression and seniority systems.

8.52(1) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

a. A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression, and vice versa;

b. A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

8.52(2) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

161—8.53(216) Discriminatory wages.

8.53(1) The employer's wage schedules must not be related to or based on the sex of the employees.

8.53(2) The employer may not discriminatorily restrict one sex to certain job classifications. The employer must take steps to make jobs available to all qualified employees in all classifications without regard to sex.

161—8.54(216) Terms and conditions of employment.

8.54(1) It shall be an unlawful employment practice for an employer to discriminate between either sex with regard to terms and conditions of employment.

8.54(2) Difference in benefits on a sexual basis.

a. Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that these conditions discriminatorily affect the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found to be a prima facie violation of the prohibition against sex discrimination contained in the Act.

b. It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees.

c. It shall not be a defense to a charge of sex discrimination in benefits under Iowa Code chapter 216 that the cost of benefits is greater with respect to one sex than the other.

8.54(3) A health insurance program provided in whole or in part by an employer shall include coverage for pregnancy-related conditions; the plan may exclude coverage of abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

161—8.55(216) Employment policies relating to pregnancy and childbirth.

8.55(1) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is a prima facie violation of Iowa Code chapter 216, and may be justified only upon showing of business necessity.

8.55(2) Disabilities caused or contributed to by pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

8.55(3) Disabilities caused or contributed to by legal abortion and recovery are, for all job-related purposes, temporary disabilities and should be treated as such under any temporary disability or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to legal abortion on the same terms and conditions as they are applied to other temporary disabilities. The employer may elect to exclude health insurance coverage for abortion from a plan provided by the employer, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

8.55(4) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, the termination violates the Act if it has a disparate impact on employees of one sex and is not justified by a business necessity.

161—8.56(216) Cease use of sex-segregated want ads.

8.56(1) All newspapers within the state of Iowa shall cease to use sex-segregated want ads—e.g., "Male Help Wanted," "Female Help Wanted," and "Male and Female Help Wanted" or "Men—Jobs of Interest," "Women—Jobs of Interest," and "Men and Women."

8.56(2) Any newspapers failing to comply with 8.56(1) shall be deemed in violation of the Act, Iowa Code section 216.6, and legal proceedings shall henceforth be initiated against them.

8.56(3) The commission will regard any publication of sex preference for a job to be in violation of the Act and, therefore, suggests that all Iowa newspapers refrain from publishing any sex preference which an employer in its job order may want printed.

8.56(4) The commission suggests that Iowa newspapers, instead of using sex-titled, sex-segregated want ads, use neutral want ads, e.g., "Help Wanted," "Jobs of Interest," "Positions Available."

161—8.57(216) Exception to ban on sex-segregated want ads.

8.57(1) The commission recognizes that sex may, in very limited circumstances, be a bona fide occupational qualification, e.g., a woman to be a women's fashion model. Therefore, an employer seeking to place a job order or a want ad which shows sex preference, must, by affidavit, claim that the preference is based upon bona fide occupational qualification.

8.57(2) The affidavit referred to in 8.57(1) must set out the complete basis upon which the employer believes that a person of a particular sex is required for the job the employer wishes to fill. The affidavit must also clearly state that the employer truly believes the sex preference is bona fide and that the employer, and not the newspaper or publisher of the ad, is responsible for the content of the ad.

8.57(3) Any newspaper, or other publisher which prints want ads, can publish a want ad with a sex preference if, and only if, that newspaper or publisher has received from the employer the affidavit referred to in 8.57(1) and 8.57(2). The newspaper or publisher, upon receipt of such affidavit, will submit a copy to the commission.

161—8.58 to **8.64** Reserved.

EMPLOYMENT PRACTICES IN STATE GOVERNMENT

161—8.65(216) Declaration of policy.

8.65(1) Equal opportunity and affirmative action toward its achievement is the policy of all units of Iowa state government. This policy shall apply in all areas where the state funds are expended, in employment, public service, grants and financial assistance, and in state licensing and regulation. All policies, programs and activities of state government shall be periodically reviewed and revised to ensure their fidelity to this policy.

8.65(2) Affirmative action required. All appointing authorities, and state agencies in the executive branch of government, shall abide by the requirements of Governor Robert D. Ray's Executive Order Number 15 and Iowa Code chapter 216.

Each agency shall designate an equal opportunity officer to be responsible for affirmative action policies intra-agency. Each agency shall prepare an affirmative action plan for that department in accordance with the criteria set forth in 8.7(216). All plans shall be subject to the review and comment of the affirmative action director of the commission. The affirmative action director shall make every effort to achieve compliance with affirmative action requirements by informal conference, conciliation and persuasion. Where failure to comply with Executive Order Number 15 results, the commission may initiate complaints against the noncomplying agencies.

8.65(3) Employment policies of state agencies. Each appointing authority shall review the recruitment, appointment, assignment, upgrading and promotion policies and activities for state employees to correct policies that discriminate on the basis of race, color, religion, sex, age, national origin or physical or mental handicap. All appointing authorities shall hire and promote employees without discrimination. Special attention shall be given to the allocation of funds for on-the-job training, the parity of civil service classes doing similar work, and the training of supervisory personnel in equal opportunity principles and procedures. Annually each appointing authority shall review their EEO-4 reports and include in their budget presentation necessary programs, goals and objectives, to improve the equal opportunity aspects of their department's employment policies. Each appointing authority shall make an annual report to the affirmative action director of the commission on persons hired, disciplined, terminated and vacancies occurring within their department.

8.65(4) State services and facilities. Every state agency shall render service to the citizens of this state without discrimination based on race, color, religion, sex, age, national origin or physical or mental handicap. No state facility shall be used in furtherance of any discriminatory practice nor shall any state agency become a party to any agreement, arrangement, or plan which has the effect of sanctioning such patterns or practices.

8.65(5) State employment services. All state agencies which provide employment referral or placement services to public or private employers shall accept job orders, refer for employment, test, classify, counsel, and train only on a nondiscriminatory basis. They shall refuse to fill any job orders designed to exclude anyone because of race, color, religion, creed, sex, national origin, age or disability. All agencies shall report to the commission any violations by state agencies and any private employers or unions which are known to persist in restrictive hiring practices.

8.65(6) State contracts and subcontracts. Every state contract for goods or services and for public works, including construction and repair of buildings, roads, bridges, and highways, shall contain a clause prohibiting discriminatory employment practices by contractors and subcontractors based on race, color, religion, creed, national origin, sex, age or disability. The nondiscrimination clause shall include a provision requiring state contractors and subcontractors to give written notice of their commitments under this clause to any labor union with which they have bargaining or other agreements. Contractual provisions shall be fully and effectively enforced and any breach of them shall be regarded as a material breach of contract.

8.65(7) State licensing and regulatory agencies. No state department, board, commission, or agency shall grant, deny, or revoke a license on the grounds of race, color, religion, creed, national origin, sex, age or disability. License, as defined in Iowa Code section 17A.2(5), includes the whole or a part of any agency permit, certificate, approval, registration, charter or similar form of permission required by statute. Any licensee, or any applicant for a license issued by a state agency, who operates in an unlawful discriminatory manner, shall, when consistent with the legal authority and rules and regulations of the appropriate licensing or regulatory agency, be subject to disciplinary action by the appropriate agencies as provided by law, including the denial, revocation, or suspension of the license. In determining whether to apply sanctions or not, a final decision of discrimination certified to the licensing agency by the commission shall be binding upon the licensing agency.

8.65(8) State financial assistance. Race, color, religion, creed, national origin, sex, age, physical or mental disability shall not be considered as limiting factors in state-administered programs involving the distribution of funds to qualified applicants for benefits authorized by law; nor shall state agencies provide grants, loans, or other financial assistance to public agencies, private institutions or organizations which engage in discriminatory practices.

8.65(9) Reports. All state agencies in the executive branch shall report annually to the commission. Reports shall cover both internal activities and relations with the public and with other state agencies and shall contain other information as may be specifically requested by the commission in order to enable it to compile the Governor's Annual Affirmative Action Report.

8.65(10) Cooperation in investigations. All state agencies shall cooperate fully with the commission and authorized federal agencies in their investigations of allegations of discrimination.

These rules are intended to implement Iowa Code chapter 216.

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**Effective date of 8.27(6)"*a*"(2) and 8.27(6)"*b*" delayed 70 days by the Administrative Rules Review Committee at their February 11, 1988, meeting.

OBJECTION

On July 11th, 1979, the administrative rules review committee voted the following objections:

The committee objects to ARC 0192, item 7, [appearing in IAB, 4/18/79] subparagraph *6.2(6)"*a*"(2), relating to reasonable accommodation, on the grounds the provisions are beyond the authority of the commission. Subrule 6.2(6) requires that employers make "reasonable accommodation to the physical or mental handicaps of an applicant, unless it can be shown to be an "undue hardship". The above cited paragraph provides that reasonable accommodation may include:

Job restructuring, part-time or modified work schedules, acquisition or modifications of equipment or devices, the provision of readers or interpreters, and other similar actions.

It is the opinion of the committee this definition of reasonable accommodation far exceeds that which may fairly be imputed from section 601A.6(1)"*a,*" which in part declares it to be "unfair discrimination" to:

... refuse to hire ... any applicant for employment ... because of ... disability of such applicant or employee, unless based upon the nature of the occupation. If a disabled person is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis of exception to the unfair or discriminating practices prohibited by this subsection.

For the purposes of the above paragraph, section 601A.2(11) defines disability as:

... the physical or mental condition of a person which constitutes a substantial handicap, but is unrelated to such person's ability to engage in a particular occupation.

In reading these two sections together and giving effect to each, it appears that the Civil Rights Act prohibits employment discrimination on the grounds of disability only if either of the following criteria are met: (1) The handicap is not related to that particular occupation, or (2) The applicant is qualified by training or experience to perform that occupation, even if the handicap does relate to the occupation.

The General Assembly clearly has the authority to ban any or all discrimination against disabled persons, or to require employers to make the type of "reasonable accommodation" mandated by subrule *6.2(6)*"a"*(2). However, the statute does neither. Instead the criteria listed in the above paragraph are established to prohibit discrimination only against a "qualified" disabled applicant. The statute is designed to benefit the handicapped individual who has managed to overcome his or her disability. To mandate this type of reasonable accommodation would, in the case of more affluent employers, require that the handicap be ignored, and require these employers to overcome the handicap for the applicant. If employers are to make this type of reasonable accommodation the General Assembly should so provide by law, or specifically authorize the civil rights commission to make rules on the subject. To proceed otherwise implies that an administrative agency may interpret a broadly worded statute to mean whatever the agency chooses, and reduces the statute itself to a mere tool for the transferring of law making power to administrative agencies.

The committee also objects to paragraph *6.2(6)*"b"* in its entirety, on the grounds it is unreasonable. The paragraph lists the criteria to be used in determining whether an employer must make any reasonable accommodation at all. Under the provisions of paragraph 6.2(6)*"a"*(1), employers must make the job site accessible to and usable by handicapped persons. If this type of accommodation is to be mandated at all, the burden should be equally imposed upon all employers, without singling out any specific groups to be exempt from the burden imposed.

Renumbered as 8.27(6)"a"*(2) and 8.27(6)*"b"* IAC 1/13/88.
NOTE: Iowa Code chapter 601A renumbered as chapter 216 in 1993 Iowa Code.

CHAPTER 9
DISCRIMINATION IN HOUSING

161—9.1(216) Construction of chapter.

9.1(1) *Limitation of chapter.* All the rules contained herein apply only to:

a. Complaints which allege a violation of the prohibitions contained in Iowa Code section 216.8 or 216.8A;

b. Complaints which allege a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A; and the interpretation of the provisions of the Iowa Code which relate to such complaints or to unfair or discriminatory practices in the area of housing.

9.1(2) *Conflicting rules.* Where a provision of this chapter applies under the terms of subrule 9.1(1) and that provision conflicts with a rule of the commission not contained within Chapter 9, then the provision contained within Chapter 9 shall prevail.

161—9.2(216) Definitions. As used in this chapter, the following definitions shall apply:

"Party" means any complainants and respondents involved in the complaint of discrimination under investigation.

"Presiding officer for discovery" means an administrative law judge employed by the department of inspections and appeals and assigned to render decisions regarding discovery disputes arising in the course of civil rights commission investigations.

161—9.3(216) Interpretation of various housing provisions.

"Aggrieved person." As used in the Iowa civil rights Act provisions relating to discrimination in housing, the term "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice, or any person who believes that that person will be injured by a discriminatory housing practice that is about to occur.

"Discriminatory housing or real estate practice." A person who violates the prohibitions contained in Iowa Code section 216.8 or 216.8A commits an "unfair or discriminatory practice" in the area of housing or real estate. A person who commits a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A commits an "unfair or discriminatory practice" in the area of housing or real estate.

"Dwelling." As used in Iowa Code chapter 216, the term "dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

"Exceptions." The exceptions found in Iowa Code sections 216.12(2), 216.12(3), and 216.12(5) do not apply to Iowa Code section 216.8(3) relating to advertising.

"Handicap." As used in Iowa Code section 216.2(5), the term "handicap" with respect to a person means:

1. A physical or mental impairment which substantially limits one or more of such person's major life activities,
2. A record of having such an impairment, or
3. Being regarded as having such an impairment.

Such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802).

"Housing accommodation." As used in Iowa Code chapter 216, the term "housing accommodation" has the same meaning as is given the term "dwelling" in this rule.

"Housing for older persons." The exception found in Iowa Code section 216.12(4) is limited to discrimination based upon "familial status."

Iowa Code section 216.15A(10)"c." The word "continued" as used in this paragraph means "carried on or kept up without cessation." This paragraph does not refer to the adjournment or postponement of a hearing to a subsequent date or time.

Iowa Code section 216.16A(1)"a." Election to proceed in court. The election to have the charges of a complaint decided in a civil action as provided in Iowa Code section 216.16A(1) *"a"* is only available where:

1. It is alleged that there has been a violation of some portion of Iowa Code section 216.8 or 216.8A, or
2. It is alleged that there has been a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A.

Iowa Code section 216.16A(2). The phrase "mediation agreement" in Iowa Code section 216.16A(2) refers to the agreement described in Iowa Code section 216.15A(2)*"a"* to *"e."*

"Person." As used in the Iowa civil rights Act provisions relating to discrimination in housing, the term "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries. The specific inclusion of an individual or entity within this definition of "person" does not imply that that individual or entity is excluded from the definition of "person" in Iowa Code section 216.2(11).

Referral and deferral to local agencies in housing cases. If a complaint alleges either a violation of the prohibitions contained in Iowa Code section 216.8 or 216.8A or a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A, then deferral and referral of that complaint to a local commission are governed by the provisions of Iowa Code section 216.5(14) and that section takes precedence over Iowa Code section 216.19.

161—9.4(216) Interpretation of provisions affecting court actions regarding alleged discriminatory housing or real estate practices occurring after July 1, 1991.

9.4(1) *Time limitation of rule.* This rule applies only to alleged discriminatory housing or real estate practices occurring after July 1, 1991.

9.4(2) *Aggrieved person's direct action in district court.*

a. Filing of complaint not necessary. A complaint which alleges either (1) a violation of the prohibitions contained in Iowa Code section 216.8 or 216.8A, or (2) a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A need not be filed with the commission in order for an aggrieved person to seek judicial remedies for that alleged violation. An aggrieved person may file an action alleging such violations directly in district court pursuant to Iowa Code section 216.16A(2).

b. Effect of commission processing.

(1) In general. The status of commission processing of a complaint alleging a discriminatory housing or real estate practice does not affect the rights of an aggrieved party to file a civil action under Iowa Code section 216.16A(2) based on that same or any other alleged discriminatory housing or real estate practice.

(2) Exceptions. Commission processing will bar an aggrieved person from filing a civil action under Iowa Code section 216.16A(2) based on an alleged discriminatory housing or real estate practice only where either:

1. The commission has obtained a mediation agreement with the consent of that aggrieved person regarding that alleged discriminatory housing or real estate practice, or
2. The commission has begun a contested case hearing on the record regarding that same alleged discriminatory housing or real estate practice.

c. Notification of commission. If a person has filed a complaint alleging a discriminatory housing or real estate practice with the commission and that person subsequently commences a civil action under Iowa Code section 216.16A(2) based on that same alleged discriminatory housing or real estate practice, the aggrieved person is encouraged to immediately notify the Iowa civil rights commission of the filing of the civil action.

d. Remedies. In an action filed directly in district court pursuant to Iowa Code section 216.16A(2), the court may, upon a finding of discrimination, order any of the remedies provided for in Iowa Code section 216.17A(6).

9.4(3) *Election to proceed in district court.*

a. In general. An aggrieved person on whose behalf a complaint was filed, a complainant, or a respondent may, pursuant to Iowa Code section 216.16A(1), elect to have the allegations asserted in the complaint decided in a civil action in district court. An election is made by filing a written notice of election with the commission. The date of filing of an election is the date the election is received by the commission at its offices in Des Moines. If such an election is made, the commission shall authorize and, within 30 days of the election, the attorney general shall file a civil action in district court on behalf of the aggrieved person. Failure to file within the 30-day period shall not, by itself, prejudice the rights of any of the parties.

b. Limitation. An election made under the previous paragraph must be made within 20 days of the receipt by the electing person of the determination of probable cause. The date of election is the date that the written notice of elections is filed with the commission.

c. Probable cause determination a prerequisite. No person may make an election pursuant to Iowa Code section 216.16A(1) until the commission has found probable cause regarding the complaint which is the subject of the election.

d. Notice required. An election to proceed in district court made under Iowa Code section 216.16A(1) is effective only if the electing person gives notice of the election to the commission and all other complainants and respondents to whom the election relates. Such notice shall be in writing, shall be delivered at the time the election is made, and may be made by regular mail.

e. Intervention. Once the commission commences an action in district court pursuant to Iowa Code section 216.17A(1) an aggrieved person may intervene in the action.

9.4(4) *Right-to-sue letter inapplicable.* A complainant need not, and should not, request a right-to-sue letter in order to file a civil action under Iowa Code section 216.16A(2) or to make an election as provided in Iowa Code section 216.16A(1).

9.4(5) *Appointment of attorney by court.* Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may:

a. Appoint an attorney for the person, or

b. Authorize the commencement or continuation of a civil action under Iowa Code section 216.16A(2) without the payment of fees, costs, or security if, in the opinion of the court, the person is financially unable to bear the costs of such action.

161—9.5(216) Commission procedures regarding complaints based on alleged unfair or discriminatory practices occurring after July 1, 1991.

9.5(1) *Time limitation of rule.* This rule applies only to alleged discriminatory housing or real estate practices occurring after July 1, 1991.

9.5(2) *Time limit for administrative complaint.* A complaint which alleges a discriminatory housing or real estate practice is governed by the 180-day time limit provided in Iowa Code section 216.15(12).

9.5(3) *Processing of complaint.*

a. Service. Upon the filing of a complaint:

(1) The commission shall, not later than ten days after such filing or the identification of an additional respondent under 9.5(3)*"d,"* serve on the respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of respondents under the applicable sections of Iowa Code chapter 216, together with a copy of the original complaint; and

(2) Each respondent may file, not later than ten days after receipt of notice from the commission, an answer to the complaint.

(3) The commission shall, not later than ten days after the filing of a complaint, serve the complainant a notice acknowledging receipt of the complaint and advising the complainant of the time limits and choice of forums provided under Iowa Code chapter 216.

b. Timely investigation. The commission will begin the investigation within 30 days of filing. If the commission is unable to complete the investigation within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

c. Amendments. Complaints and answers shall be under oath or affirmation and may be reasonably and fairly amended at any time.

d. Additional respondents.

(1) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under 9.5(3)*"a,"* to such person from the commission.

(2) Such notice, in addition to meeting the requirements of 9.5(3)*"a,"* shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as respondent.

e. Closure within one year. Within one year of the date of receipt of a complaint alleging a discriminatory housing or real estate practice, the commission shall take final administrative action with respect to that complaint unless it is impracticable to do so. If the commission is unable to make final disposition of the case within the one-year period, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

9.5(4) *Probable cause determination.*

a. Final investigative report. After the completion of the commission's investigation, the investigator shall prepare a final investigative report. This final investigative report shall include:

(1) The names and dates of contacts with witnesses except that the report will not disclose the names of any witnesses who request anonymity. The commission, however, may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action conducted pursuant to the Iowa civil rights Act;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

b. Determination procedure. If, after the completion of investigation, a mediation agreement under Iowa Code section 216.15A(2)*"a"* to *"e"* has not been executed by the complainant and the respondent and approved by the commission, the commission shall conduct a review of the factual circumstances revealed as part of the investigation.

(1) If the commission determines that, based on the totality of the factual circumstances known at the time of the commission's review, no probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall: issue a short and plain written statement of the facts upon which the no probable cause determination was based; dismiss the complaint; notify the aggrieved person(s) and the respondent(s) of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal.

Respondent(s) may request that no public disclosure be made. Notwithstanding such request, the fact of dismissal, including the names of the parties, shall be public information available on request.

The commission's determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by complainant and respondent(s) and otherwise disclosed during the investigation.

(2) If the commission believes that probable cause may exist to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall forward the matter to the executive director or designee for consideration. In all such cases the executive director or designee shall determine, with advice from the office of the attorney general, whether, based on the totality of the factual circumstances known at the time of the decision, probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by complainant and respondent and otherwise disclosed during the investigation.

c. Determination of probable cause. A determination of probable cause shall be followed by the issuance of a probable cause order. A probable cause order:

(1) Shall consist of a short and plain written statement of the facts upon which the commission has found probable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) Shall be based on the final investigative report; and

(3) Need not be limited to facts or grounds that are alleged in the complaint. If the probable cause order is based on grounds that are alleged in the complaint, the commission will not issue the probable cause order with regard to those grounds unless the record of the investigation demonstrates that the respondent has been given an opportunity to respond to the allegation.

d. Timely determination. The commission shall make the probable cause determination within 100 days after the filing of the complaint unless it is impracticable to do so. If the commission is unable to make the determination within this 100-day period, the commission will notify the aggrieved person and the respondent by certified mail or personal service of the reasons for the delay.

e. Effect of probable cause determination. A finding of probable cause regarding a complaint alleging a discriminatory housing or real estate practice commences the running of the period during which an aggrieved person on whose behalf a complaint was filed, a complainant, or a respondent may, pursuant to Iowa Code section 216.16(1), elect to have the charges asserted in the complaint decided in a civil action in district court. If an election is made, the commission shall authorize the attorney general to file a civil action on behalf of the aggrieved person seeking relief. If no election is made, then the commission must schedule a hearing on the charges in the complaint.

f. Effect of no probable cause determination. A finding of "no probable cause" regarding a complaint alleging a discriminatory housing or real estate practice results in prompt dismissal of the complaint. If the finding is not reconsidered, the commission may take no further action to process that complaint except as may be necessary to carry out the commission's administrative functions.

g. Standard. The standard to determine whether a complaint alleging a discriminatory housing or real estate practice is supported by probable cause shall include consideration of whether the facts are sufficient to warrant initiation of litigation against the respondent.

9.5(5) *Hearing.*

a. Conduct. A contested case hearing regarding a complaint alleging a discriminatory housing or real estate practice is conducted on the same terms and in the same manner as any other contested case hearing conducted by the commission.

b. Hearing time frames.

(1) Trial date. The administrative law judge shall commence the hearing regarding a complaint alleging a discriminatory housing or real estate practice no later than 120 days following the issuance of the finding of probable cause, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the probable cause order, the administrative law judge shall notify the executive director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing, of the reasons for not doing so.

(2) Decision date. The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing regarding a complaint alleging a discriminatory housing or real estate practice unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within this period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the executive director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing, of the reasons for not doing so.

9.5(6) *Access to file information in housing cases.*

a. Nothing that is said or done in the course of mediation of a complaint of housing or real estate discrimination may be made public or used as evidence in a subsequent administrative hearing under subrule 9.5(5) or in civil actions under Iowa Code chapter 216, without the written consent of the persons concerned.

b. Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in paragraph 9.5(6)*"a"* the commission will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following completion of the investigation, the commission shall notify the aggrieved person and the respondent that the final investigative report is complete and will be provided upon request.

c. Where the commission has made a finding of no probable cause regarding a complaint alleging a discriminatory housing or real estate practice, the aggrieved person and the respondent may obtain information derived from the investigation and the final investigative report. Provided, however, that the phrase "information derived from the investigation" as used in this rule and in Iowa Code section 216.15A(2)*"f"* shall not include the contents of statements by witnesses other than the complainant or respondent.

d. Prior to a finding of either probable cause or no probable cause regarding a complaint alleging a discriminatory housing or real estate practice no access may be had to the information contained within the commission investigatory file except that:

(1) Any witness may request a copy of the witness's own statement made to the commission as part of the commission's investigation of the complaint,

(2) Any person may request copies of any information that that person sent to the commission in the course of processing the complaint,

(3) Any person may request copies of any information that the commission had previously sent to that person in the course of processing the complaint.

161—9.6(216) Discovery methods in cases of alleged discrimination in housing.

9.6(1) When investigating a complaint of alleged discriminatory housing or real estate practices, the commission may, in addition to any other method of investigation authorized by law, obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

9.6(2) The rules providing for discovery and inspection in this chapter shall be liberally construed and shall be enforced to provide the commission with access to all relevant facts. Discovery shall be conducted in good faith, and responses to discovery requests, however made, shall fairly address and meet the substance of the request.

9.6(3) A rule in this chapter requiring a matter to be under oath may be satisfied by an unsworn written statement in substantially the following form: "I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

"

_____ _____

Date Signature

161—9.7(216) Scope of discovery. Unless otherwise limited by order of the presiding officer for discovery in accordance with these rules, the scope of discovery is as follows:

9.7(1) *In general.* The commission may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending investigation, whether it relates to the claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at a trial or contested case hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

9.7(2) *Supplementation of responses.* A party who has responded to a commission request for discovery is under a duty to supplement or amend the response to include information thereafter acquired as follows:

a. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) Any matter that bears materially upon a claim or defense asserted by any party.

b. A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(1) The party knows that the response was incorrect when made; or

(2) The party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

161—9.8(216) Protective orders.

9.8(1) Upon motion by a party or by the person from whom discovery is sought or by any person who may be affected thereby, and for good cause shown, the presiding officer for discovery:

a. May make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the commission;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the presiding officer for discovery;

(6) That a deposition after being sealed be opened only by order of a court, a commission contested case presiding officer, or the presiding officer for discovery;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer for discovery.

b. Shall limit the frequency of use of the methods described in subrule 9.6(1) if the presiding officer for discovery determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The commission has had ample opportunity by discovery in the action to obtain the information sought; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the objecting party's resources, and the importance of the issues at stake in the investigation.

9.8(2) If the motion for a protective order is denied in whole or in part, the presiding officer for discovery may, on such terms and conditions as are just, order that any party or other person provide or permit discovery.

9.8(3) Award of expenses of motion. If the motion is granted, the presiding officer for discovery shall, after opportunity for hearing, require the commission, if it opposed the motion, to pay to the party or other person making the motion the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the presiding officer for discovery finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the presiding officer for discovery shall, after opportunity for hearing, require the party or deponent who made the motion or the party or attorney advising such a motion or both of them to pay to the commission the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the presiding officer for discovery finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the presiding officer for discovery may apportion in a just manner the reasonable expenses incurred in relation to the motion.

161—9.9(216) Interrogatories.

9.9(1) *Availability; procedures for use.* The commission may serve written interrogatories to be answered by a party or, if the party from whom the information is sought is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

Each interrogatory shall be followed by a reasonable space for insertion of the answer. An interrogatory which does not comply with this requirement shall be subject to objection. The interrogatories must be accompanied by a written notice informing the person to whom the interrogatories are directed that a response is mandatory and that sanctions can be levied for a failure to respond.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.

A party answering interrogatories must answer in the space provided or must set out each interrogatory immediately preceding the answer to it. A failure to comply with this rule shall be deemed a failure to answer and shall be subject to sanctions as provided in rule 9.16(216). Answers are to be signed by the person making them. Objections, if any, shall be served within 30 days after the interrogatories are served. The commission may move for an order under subrule 9.16(1) with respect to any objection to or other failure to answer an interrogatory.

The commission shall not serve more than 30 interrogatories on any party under the authority of this rule except upon agreement by the person from whom information is sought or leave of the presiding officer for discovery granted upon a showing of good cause. A motion for leave to serve more than 30 interrogatories must be in writing and shall set forth the proposed interrogatories and the reasons establishing good cause for their use.

Notwithstanding the provisions of this subrule the commission may, without limitation on the number of questions, solicit information from the parties in the form of a written questionnaire. The response to these questions, however, cannot be compelled under rule 9.16(216).

9.9(2) *Scope.* An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer for discovery may order that such an interrogatory need not be answered until a later time.

9.9(3) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the commission as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the commission reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the commission to locate and identify as readily as can the party served, the records from which the answer may be ascertained.

161—9.10(216) Requests for admission.

9.10(1) *Availability; procedures for requests.* The commission may serve upon any party a written request for the admission, for purposes of all proceedings relating to the pending complaint only, of the truth of any matters within the scope of rule 9.7(216) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

Each matter of which an admission is requested shall be separately set forth.

The commission shall not serve more than 30 requests for admission on any party except upon agreement of the party from whom admissions are sought or leave of the presiding officer for discovery granted upon a showing of good cause. A motion for leave of the presiding officer for discovery to serve more than 30 requests for admission must be in writing and shall set forth the proposed requests and the reasons establishing good cause for their use.

9.10(2) *Time for and content of responses.* The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the presiding officer for discovery may on motion allow, the party to whom the request is directed serves upon the commission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the party's answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of subrule 9.16(3), deny the matter or set forth reasons why the party cannot admit or deny it.

9.10(3) *Determining sufficiency of responses.* The commission may move to determine the sufficiency of the answers or objections. Unless the presiding officer for discovery determines that an objection is justified, the presiding officer for discovery shall order that an answer be served. If the presiding officer for discovery determines that an answer does not comply with the requirements of this rule, the presiding officer for discovery may order either that the matter be admitted or that an amended answer be served. The presiding officer for discovery may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to completion of the investigation. The provisions of paragraph 9.16(1)*"d"* apply to the award of expenses incurred in relation to the motion.

161—9.11(216) Effect of admission. Any matter admitted under rule 9.10(216) is conclusively established in all proceedings relating to the pending complaint unless the court or contested case administrative law judge on motion permits withdrawal or amendment of the admission. The court or contested case administrative law judge may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the commission or the party opposing the motion fails to satisfy the court or contested case administrative law judge that withdrawal or amendment will prejudice the commission in maintaining the commission's action on the merits.

161—9.12(216) Production of documents and things and entry upon land for inspection and other purposes. The commission may serve on any party a request:

9.12(1) To produce and permit the commission, or someone acting on the commission's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, translated, if necessary, by the party upon whom the request is served through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of rule 9.7(216) and which are in the possession, custody or control of the party upon whom the request is served; or

9.12(2) Except as otherwise provided by statute, to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of rule 9.7(216).

161—9.13(216) Procedures for documents and inspections. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. The presiding officer for discovery may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

The commission may move for an order under rule 9.16(216) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

161—9.14(216) Physical and mental examination of persons. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the presiding officer for discovery may order the party to submit to a physical or mental examination by a health care practitioner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion of the commission for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

161—9.15(216) Report of health care practitioner.

9.15(1) If requested by the party against whom an order is made under rule 9.14(216) or the person examined, the commission shall deliver a copy of the examiner's detailed written report setting out the findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, if requested by the commission, the party against whom the order is made shall deliver a like report of any examination of the same condition, previously or thereafter made, unless the party shows an inability to obtain a report of examination of a nonparty. The presiding officer for discovery on motion may order a party or the commission to deliver a report on such terms as are just. If an examiner fails or refuses to make a report, a court or administrative law judge hearing a case based on the complaint at issue may exclude the examiner's testimony.

9.15(2) By requesting and obtaining a report of the examination so ordered, the party examined waives any privilege the party may have in that action or any other proceeding involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

9.15(3) This rule applies to examination made by agreement, unless the agreement expressly provides otherwise.

161—9.16(216) Consequences of failure to make discovery.

9.16(1) *Motion for order compelling discovery.* The commission, upon reasonable notice to the party from whom discovery was sought and all persons affected thereby, may move for an order compelling discovery as follows:

a. Appropriate officer. A motion to compel discovery shall be made to the presiding officer for discovery.

b. Motion. If a deponent fails to answer a question propounded or submitted under rule 9.17(216), or a corporation or other entity fails to make a designation under subrule 9.18(5), or a party fails to answer an interrogatory submitted under rule 9.9(216), or if a party, in response to a request for inspection submitted under rule 9.12(216), fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the commission may move for an order compelling an answer, a designation, or an inspection in accordance with the request. When taking a deposition on oral examination, the commission may complete or adjourn the examination before moving for an order.

Any order granting a motion made under this rule shall include a statement that a failure to comply with the order may result in the imposition of sanctions pursuant to rule 9.16(216).

In ruling on such motion, the presiding officer for discovery may make such protective order as the presiding officer for discovery would have been empowered to make on a motion pursuant to subrule 9.8(1).

c. Evasive or incomplete answer. For purposes of this subrule an evasive or incomplete answer is to be treated as a failure to answer.

d. Award of expenses of motion. If the motion is granted, the presiding officer for discovery shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the commission the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the presiding officer for discovery finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the presiding officer for discovery shall, after opportunity for hearing, require the commission to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the presiding officer for discovery finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the presiding officer for discovery may apportion in a just manner the reasonable expenses incurred in relation to the motion.

e. Notice to party. If the motion is granted, the presiding officer for discovery shall mail or cause to have mailed a copy of the order to counsel and to the party or parties whose conduct, individually or by counsel, necessitated the motion.

9.16(2) *Failure to comply with order.*

a. Sanctions by court in district where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the presiding officer for discovery, the office of the attorney general may petition for enforcement of that order in the judicial district in which the deposition is being taken. Failure by the deponent to obey an order of enforcement from the district court may be considered a contempt of that court.

b. Sanctions by the presiding officer for discovery. If a party or an officer, director, or managing agent of a party or a person designated under subrule 9.18(5) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under 9.16(1) or under rule 9.14(216), the presiding officer for discovery may make such orders in regard to the failure as are just, and among others, the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of any action or proceeding relating to the subject matter of the investigation in accordance with the claim of the party opposing the position of the disobedient party;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence in any action or proceeding relating to the subject matter of the investigation;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(4) In lieu of any of the foregoing orders or in addition thereto, the presiding officer for discovery shall require the disobedient party or the attorney advising such party or both to pay the reasonable expenses, including attorneys' fees, caused by the failure, unless the presiding officer for discovery finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

c. Enforcement petition. In addition to any of the alternatives of paragraph *"b"* above, the office of the attorney general may petition for enforcement of the order compelling discovery in the appropriate judicial district. Failure by a party to obey an order of enforcement from the district court may be considered a contempt of that court.

9.16(3) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 9.10(216), and if the commission thereafter proves the genuineness of the document or the truth of the matter, the commission may move for an order requiring the party to pay the reasonable expenses incurred in making that proof, including reasonable attorneys' fees. The presiding officer for discovery shall make the order unless the presiding officer for discovery finds that:

a. The request was held objectionable pursuant to rule 9.10(216),

b. The admission sought was of no substantial importance,

c. The party failing to admit had reasonable ground to believe that the party might prevail on the matter, or

d. There was other good reason for the failure to admit.

9.16(4) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.* If a party or an officer, director, or managing agent of a party or a person designated under subrule 9.18(5) to testify on behalf of a party fails to appear before the officer who is to take the person's deposition, after being served with a proper notice; or to serve answers or objections to interrogatories submitted under rule 9.9(216), after proper service of the interrogatories; or to serve a written response to a request for inspection submitted under rule 9.12(216), after proper service of the request, the presiding officer for discovery on motion of the commission may make such orders in regard to the failure as are just, and among others it may take any action authorized under 9.16(2)*"b"*(1) to (4).

The failure to act described in this subrule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 9.8(216).

9.16(5) *Motions relating to discovery.* No motion relating to depositions or discovery shall be filed or considered by the presiding officer for discovery unless the motion alleges that the movant has made a good-faith but unsuccessful attempt to resolve the issues raised by the motion with counsel for the party or entity whom the motion concerns without intervention of the presiding officer for discovery.

161—9.17(216) Depositions upon oral examination.

9.17(1) *When depositions may be taken.* The commission may take a deposition in an investigation of a complaint of housing discrimination at any time during the pendency of that investigation.

9.17(2) *Recording.* The administrative law judge charged with the duty of determining probable cause under Iowa Code subsection 216.15(3) may order that the testimony at such an investigative deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording the deposition, and may include other provisions to ensure that the recorded testimony will be accurate and trustworthy. If the order is made, the party from whom discovery is sought or the deponent may nevertheless arrange to have a stenographic transcription made at that party's or deponent's own expense. An order of the administrative law judge is not required to record testimony by nonstenographic means if the deposition is also to be recorded stenographically.

9.17(3) *Place of deposition.*

a. Oral depositions may be taken only within this state.

b. If the deponent is a party or the officer, partner or managing agent of a party which is not a natural person, the deponent shall be required to submit to examination in Polk County, unless otherwise ordered by the presiding officer for discovery.

9.17(4) *Failure to attend; expenses.* If the commission official fails to attend and proceed with a noticed deposition and the party from whom discovery is sought attends in person or by attorney pursuant to the notice, the presiding officer for discovery may order the commission to pay to such party the reasonable expenses incurred by the party and the other party's attorney in attending, including reasonable attorneys' fees.

9.17(5) *Depositions by telephone.* Any deposition permitted by these rules may be taken by telephonic means.

When the commission intends to take the deposition of any person upon oral examination by telephonic means, the commission shall give reasonable notice thereof in writing to any party who is to be deposed and to any other deponent. Such notice shall contain all other information required by subrule 9.18(1) and shall state that the telephone conference will be arranged and paid for by the commission. No part of the expense for telephone service shall be taxed as costs.

If the commission desires to present exhibits to the witness during the deposition, copies shall be sent to the deponent and any party who is to be deposed, prior to the taking of the deposition.

Nothing in this rule shall prohibit a party from whom the discovery is sought or counsel for that party or for the deponent from being in the presence of the deponent when the deposition is taken.

161—9.18(216) Notice for oral deposition.

9.18(1) Whenever the commission desires to take the deposition of any person upon oral examination, the commission shall give reasonable notice in writing to the deponent and any party who is to be deposed. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs.

9.18(2) If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

9.18(3) The notice to a party deponent may be accompanied by a request made in compliance with rules 9.12(216) and 9.13(216) for the production of documents and tangible things at the taking of deposition. The procedure of rule 9.13(216) shall apply to the request.

9.18(4) No subpoena is necessary to require the appearance of a party for a deposition. Service on the party or the party's attorney of record of notice of the taking of a deposition of the party or of an officer, partner or managing agent of any party who is not a natural person, as provided in 9.18(1), is sufficient to require the appearance of a deponent for the deposition.

9.18(5) A notice or subpoena may name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the witness will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subrule does not preclude taking a deposition by any other procedure authorized in these rules.

161—9.19(216) Conduct of oral deposition.

9.19(1) *Examination; recording examination; administering the oath; objections.* Examination of witnesses by the commission may proceed as permitted at the hearing. The commission investigator or other officer before whom the deposition is to be taken shall put the witness under oath and shall personally, or by someone acting under the investigator or officer's direction and in the investigator or officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subrule 9.17(2). All objections made at the time of the examination to the qualifications of the investigator or other officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the investigator or officer upon the deposition. Evidence objected to shall be taken subject to the objections.

9.19(2) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of the party being deposed or other deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer for discovery may order the commission to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in rule 9.8(216). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer for discovery. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

If the motion is granted, the presiding officer for discovery shall, after opportunity for hearing, require the commission to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the presiding officer for discovery finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the presiding officer for discovery shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the commission the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the presiding officer for discovery finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the presiding officer for discovery may apportion in a just manner the reasonable expenses incurred in relation to the motion.

161—9.20(216) Reading and signing depositions.

9.20(1) *Where reading or signing not required.* No oral deposition reported and transcribed by an official court reporter or certified shorthand reporter of Iowa need be submitted to, read or signed by the deponent.

9.20(2) *Submission to witness; changes; signing.* In other cases, if and when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the witness is ill or dead or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission, the investigator or officer shall sign it and state on the record the fact of the waiver or of the illness, death, or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor. The deposition may then be used as fully as though signed unless on a motion to suppress the tribunal hearing the motion holds that the reason given for the refusal to sign requires rejection of the deposition in whole or in part.

161—9.21(216) Certification and return; copies.

9.21(1) When the deposition is transcribed, the investigator or other officer shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. Documents and things produced for inspection during the deposition shall, upon the request of the investigator, be marked for identification and annexed to the deposition, except that:

a. The person producing the materials may substitute copies to be marked for identification, if the investigator is provided fair opportunity to verify the copies by comparison with the originals;

b. If the person producing the materials requests their return, the investigator shall mark, copy, and, at some time prior to the completion of the investigation, return them to the person producing them. The materials may then be used in the same manner as if annexed to the deposition.

9.21(2) Upon payment of reasonable charges therefor, the commission shall furnish a copy of the deposition to the party who was deposed or to the deponent.

161—9.22(216) Before whom taken. The officer taking the deposition shall not be a party, a person financially interested in the action, an attorney or employee of any party, an employee of any such attorney, or any person related within the fourth degree of consanguinity or affinity to a party, a party's attorney, or an employee of either of any party.

161—9.23(216) Deposition subpoena.

9.23(1) The commission may issue subpoenas for persons named in and described in a notice to take depositions under rule 9.18(216). Subpoenas may also be issued as provided by statute or by rule 161—3.14(216).

9.23(2) No resident of Iowa shall be subpoenaed to attend a deposition out of the county where the deponent resides, or is employed, or transacts business in person.

161—9.24(216) Costs of taking deposition. Costs of taking and proceeding to procure a deposition shall be paid by the commission.

161—9.25(216) Irregularities and objections.

9.25(1) *Notice.* All objections to any notice of taking any depositions are waived unless promptly served in writing upon the commission.

9.25(2) *Officer.* Objection to the commission investigator or other officer's qualification to take a deposition is waived unless made before such taking begins, or as soon thereafter as objector knows it or could discover it with reasonable diligence.

9.25(3) *Taking depositions.* Errors or irregularities occurring during an oral deposition as to any conduct or manner of taking it, or the oath, or the form of any question or answer, and any other errors which might thereupon have been cured, obviated or removed, are waived unless seasonably objected to during the deposition.

161—9.26(216) Service of discovery. Service of documents pertaining to discovery procedures described in this chapter, other than subpoenas, may be accomplished by the same means as in rule 161—4.6(17A).

161—9.27(216) Appeals. Appeals from an imposition of sanctions by the presiding officer for discovery under rule 9.16(216) are filed and processed in the same manner as appeals under rule 161—4.23(17A). Appeals from other decisions rendered by the presiding officer for discovery are filed and processed in the same manner as appeals under rule 161—4.25(17A).

161—9.28(216) Representation of commission. At all discovery hearings, motions, and appeals, including those proceedings before the presiding officer for discovery, the commission may be represented by a member of the attorney general's office.

These rules are intended to implement Iowa Code sections 216.5(13), 216.8 and 216.8A.

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CHAPTER 10
DISCRIMINATION IN PUBLIC ACCOMMODATIONS

[Prior to 1/13/88, see Civil Rights 240—Ch 7]

161—10.1(216) Statement of purpose. The commission's purpose in adopting these rules is to provide guidelines on what actions or activities may produce a discriminatory impact in public accommodations.

161—10.2(216) Discrimination prohibited. No person shall be discriminated against on the basis of race, creed, color, sex, national origin, religion or disability by any public accommodation by:

10.2(1) Providing any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to other members of the general public, except to reasonably accommodate a member of the protected classes who otherwise might be totally precluded from receiving a benefit, access to, or participation in a program.

10.2(2) Subjecting any individual to segregation or separate treatment in any matter related to that individual's receipt of any disposition, service, financial aid, or benefit provided to other members of the general public.

10.2(3) Restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit provided to other members of the general public.

10.2(4) Treating an individual differently from others in determining whether that individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit available to other members of the general public.

10.2(5) Denying an individual an opportunity to participate in a program through the provision of service or otherwise afford that individual an opportunity to do so which is different from that afforded to other members of the general public.

These rules are intended to implement Iowa Code chapter 216.

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PREFERRED PROVIDER ARRANGEMENTS

191—27.1(514F) Purpose. The purpose of this chapter is to encourage health care cost containment while preserving quality of care by allowing health care insurers to enter into preferred provider arrangements and by establishing minimum standards for preferred arrangements and the health benefit plans associated with those arrangements.

191—27.2(514F) Definitions. As used in this chapter, unless the context otherwise requires:

"Commissioner" means the commissioner of insurance.

"Covered person" means a person on whose behalf the health care insurer is obligated to pay for or provide health care services.

"Covered services" means health care services which the health care insurer is obligated to pay for or provide under the health benefit plan.

"Emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish such services and are needed to evaluate or stabilize an emergency medical condition. The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect that absence of immediate medical attention to result in one of the following:

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

"Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the covered services and benefit levels available.

"Health care insurer" means a third-party payer of health benefits including, but not limited to, a person providing a policy or contract providing for third-party payment or prepayment of health or medical expenses, including the following:

1. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.
2. An individual or group hospital or medical service contract issued pursuant to Iowa Code chapter 509, 514 or 514A.
3. An individual or group health maintenance organization contract regulated under Iowa Code chapter 514B.
4. An individual or group Medicare supplement policy.
5. A fraternal benefit society.

"Health care provider" or *"provider"* means a provider of health care services as defined in rule 191—34.2(514).

"Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes, but is not limited to, hospital, medical, surgical, dental, vision, and pharmaceutical services or products.

"Preferred provider" means a health care provider or group of providers who have contracted to provide specified covered services.

"Preferred provider arrangement" means a contract between or on behalf of the health care insurer and a preferred provider which complies with all the requirements of this chapter.

191—27.3(514F) Preferred provider arrangements. Notwithstanding any provisions of law to the contrary, any health care insurer may enter into a preferred provider arrangement.

27.3(1) A preferred provider arrangement shall at minimum:

a. Establish the amount and manner of payment to the preferred provider. The amount and manner of payment may include capitation payments for preferred providers.

b. Include mechanisms which are designed to minimize the cost of the health benefit plan. These mechanisms may include among others:

(1) The review or control of utilization of health care costs.

(2) A procedure for determining whether health care services rendered are medically necessary.

c. Ensure reasonable access to covered services available under the preferred provider arrangement.

27.3(2) A preferred provider arrangement shall not unfairly deny health benefits for medically necessary covered services.

27.3(3) If an entity enters into a contract providing covered services with a health care provider, but is not engaged in activities which would require it to be licensed as a health care insurer, such entity shall file with the commissioner information describing its activities and a description of the contract or agreement it has entered into with the health care providers. An employer which contracts with health care providers for the exclusive benefit of that employer's employees and employees' dependents is exempt from this requirement. This exemption does not apply to any producer, agent, or administrator acting on behalf of one or more employers.

27.3(4) Rescinded IAB 7/14/99, effective 7/1/99.

191—27.4(514F) Health benefit plans.

27.4(1) A health care insurer may issue a health benefit plan which provides for incentives for covered persons to use the health care services of a preferred provider. The policies or subscriber agreements shall contain at least all of the following provisions:

a. A provision that if a covered person receives emergency services specified in the preferred provider arrangement and cannot reasonably reach a preferred provider, emergency services rendered during the course of the emergency will be reimbursed as though the covered person had been treated by a preferred provider, subject to any restriction which may govern payment by a preferred provider for emergency services.

b. A provision which clearly identifies the differentials in benefit levels for health care services of preferred providers and benefit levels for health care services of nonpreferred providers.

27.4(2) If a health benefit plan provides differences in benefit levels payable to preferred providers compared to other providers, such differences shall not unfairly deny payment for covered services and shall be no greater than necessary to provide a reasonable incentive for covered persons to use the preferred provider.

191—27.5(514F) Preferred provider participation requirements.

27.5(1) A health care insurer may place reasonable limits on the number or classes of preferred providers which satisfy the standards set forth by the health care insurer, provided that there is no discrimination against providers on the basis of religion, race, color, national origin, age, sex or marital status.

27.5(2) Notwithstanding any other provision of this chapter, a health care insurer may issue policies or subscriber agreements which provide benefits for health care services only if the services have been rendered by a preferred provider, provided the program has met all standards imposed by the commissioner for availability and adequacy of covered services.

27.5(3) A health care insurer shall file with the commissioner for the commissioner's prior review a prototype of any preferred provider arrangement and of the health care plan's policy, contract, or subscriber agreement associated with the arrangement, together with any changes in the prototype. Use of the prototypical preferred provider arrangement and health care plan's policy, contract, or subscriber agreement is conditioned upon approval of these documents by the commissioner.

191—27.6(514F) General requirements. A health care insurer subject to this chapter shall be subject to and is required to comply with all other applicable laws and rules and regulations of this state.

191—27.7(514F) Civil penalties. Civil penalties for violation of this chapter shall be imposed in the amount, and pursuant to the procedure, set forth in Iowa Code sections 507B.6, 507B.7, and 507B.8.

191—27.8(514F) Health care insurer requirements.

27.8(1) A health care insurer shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the health care insurer's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the health care insurer or a person contracting with the health care insurer.

27.8(2) A health care insurer shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the health care insurer that, in the opinion of the provider, jeopardizes patient health or welfare.

These rules are intended to implement Iowa Code section 514F.3 and 1999 Iowa Acts, Senate File 276.

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(5) Payment of service fees applicable to plan design, payment of claims, materials explaining plan benefits, actuarial assistance, legal assistance, and accounting assistance.

(6) Other expenses directly related to the operation of the plan.

g. Aggregate excess loss coverage shall be obtained which will limit a public body's total claim liability for each year to not more than 125 percent of the level of claims liability as projected by an independent actuary or insurance company. A public body shall fund this potential additional liability of 25 percent by either allocating necessary funds from the operating fund of the general fund or by setting up an additional reserve in the operating fund. Specific excess loss coverage may also be obtained if a public body wishes to limit its total annual liability on claims for any one claimant.

35.20(3) Plan shortfalls. If the resources of any self-funded plan subject to this rule are not adequate to fully cover all claims under that plan, then the public body sponsoring that plan shall make up the shortfall from other resources.

35.20(4) Confidentiality. Information held by the plan administrator of a self-funded plan shall be kept confidential. An employee or agent of the plan administrator shall not use or disclose any information to any person, except to the extent necessary to administer claims or as otherwise authorized by law.

35.20(5) An accident and health self-funded plan subject to these rules shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of a self-funded plan's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the self-funded plan or a person contracting with the self-funded plan.

The self-funded plan shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the self-funded plan that, in the opinion of the provider, jeopardizes patient health or welfare.

35.20(6) Benefits shall be available by the accident and health self-funded plan for inpatient and outpatient emergency services. Since self-funded plans may not contract with every emergency care provider in an area, self-funded plans shall make every effort to inform members of participating providers.

The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, 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 individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;
2. Serious impairment to bodily function; or
3. Serious dysfunction of any bodily organ or part.

Reimbursement to a provider of "emergency services" shall not be denied by any health maintenance organization without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that a noncontracted provider performed services. If reimbursement for emergency services is denied, the enrollee may file a complaint with the self-funded plan. Upon denial of reimbursement for emergency services, the self-funded plan shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

35.20(7) A life and health self-funded plan subject to this rule shall allow a member direct access to an obstetrician or gynecologist for routine and preventive health care services. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

191—35.21(509) Review of certificates issued under group policies.

35.21(1) *Nondiscretionary groups.* A certificate of coverage delivered in this state under a group life or accident and health insurance policy issued to a group substantially as described in Iowa Code section 509.1, subsections (1) to (7), shall not be reviewed by the commissioner if the policy is issued outside of this state.

35.21(2) *Discretionary groups.* A certificate of coverage delivered in this state under a group life or accident and health insurance policy issued to a group not substantially as described in Iowa Code section 509.1, subsections (1) to (7), shall not be reviewed by the commissioner if the policy is issued outside of this state and if the policy is issued or offered in a state which has reviewed and approved the policy under a statute substantially similar to Iowa Code section 509.1(8).

These rules are intended to implement Iowa Code sections 509.1, 509.6, and 509A.14.

LARGE GROUP HEALTH INSURANCE COVERAGE

191—35.22(509) Purpose. This division of Chapter 35 implements the requirements of Pub.L. 104-191, the Health Insurance Portability and Accountability Act of 1996 and Iowa Code section 509.3 for large group health insurance coverage.

191—35.23(509) Definitions.

"Affiliation period" means a period of time that must expire before health insurance coverage provided by an HMO becomes effective, and during which the HMO is not required to provide benefits.

"Beneficiary" has the meaning given the term under Section 3(8) of the Employee Retirement Income Security Act of 1974 (ERISA), which states, "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit" under the plan.

"Bona fide association" means, with respect to group health insurance coverage offered in Iowa, an association that meets the following conditions:

1. Has been actively in existence for at least five years.
2. Has been formed and maintained in good faith for purposes other than obtaining insurance.
3. Does not condition membership in the association on any health status-related factor relating to an individual including an employee of an employer or a dependent of any employee.
4. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage through a member.
5. Does not make health insurance coverage offered through the association available other than in connection with a member of the association.

"Carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, or any other entity providing a plan of health insurance, health benefits or health services.

"COBRA" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"Commissioner" means the commissioner of insurance.

"Continuation coverage" means coverage under a COBRA continuation provision or a similar state program. Coverage provided by a plan that is subject to a COBRA continuation provision or similar state program, but that does not satisfy all the requirements of that provision or program, will be deemed to be continuation coverage if it allows an individual to elect to continue coverage for a period of at least 18 months. Continuation coverage does not include coverage under a conversion policy required to be offered to an individual upon exhaustion of continuation coverage, nor does it include continuation coverage under the Federal Employees Health Benefits Program.

"Creditable coverage" means health benefits or coverage provided to an individual under any of the following:

1. A group health plan.
2. Health insurance coverage.
3. Part A or Part B Medicare pursuant to Title XVIII of the federal Social Security Act.
4. Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under Section 1928 of that Act.
5. 10 U.S.C. ch. 55.
6. A health or medical care program provided through the Indian Health Service or a tribal organization.
7. A state health benefits risk pool.
8. A health plan offered under 5 U.S.C. ch. 89.
9. A public health plan as defined under federal regulations.
10. A health benefit plan under Section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e).
11. An organized delivery system licensed by the director of public health.
12. A short-term limited durational policy.

"Director" means the director of public health appointed pursuant to Iowa Code section 135.2.

"Division" means the division of insurance.

"Eligible employee" means an individual who is eligible to enroll in group health insurance coverage offered to a group health plan maintained by an employer, in accordance with the terms of the group health plan.

"Employee" means any individual employed by an employer.

"Enrollment date" means the first day of coverage or, if there is a waiting period, the first day of the waiting period.

d. The plan administrator's name, address and telephone number;

e. A telephone number to call for further information if different from above;

f. Either a statement that the person has at least 18 months' creditable coverage without a significant break of coverage or the date any waiting period and creditable coverage began;

g. The date creditable coverage ended or an indication that the coverage is in force.

35.28(4) Family information. Information for families may be combined on one certificate. Any differences in creditable coverages shall be clearly delineated.

35.28(5) Dependent coverage transition rule. A group health plan, carrier, or ODS that does not maintain dependent data is deemed to have satisfied the requirement to issue dependent certificates by naming the employee and specifying that the coverage on the certificate is for dependent coverage.

35.28(6) Delivering certificates. The certificate shall be given to the individual, plan, carrier, or ODS requesting the certificate. The certificates may be sent by first-class mail. When a dependent's last-known address differs from the employee's last-known address, a separate certificate shall be provided to the dependent at the dependent's last-known address. Separate certificates may be mailed together to the same location.

35.28(7) A group health plan, carrier, or ODS shall establish a procedure for individuals to request and receive certificates.

35.28(8) A certificate is not required to be furnished until the group health plan, carrier, or ODS knows or should have known that dependent's coverage terminated.

35.28(9) Demonstrating creditable coverage. An individual has the right to demonstrate creditable coverage, waiting periods, and affiliation periods when the accuracy of the certificate is contested or a certificate is unavailable. A group health plan, carrier, or ODS shall consider information obtained by it or presented on behalf of an individual to determine whether the individual has creditable coverage.

191—35.29(509) Notification requirements.

35.29(1) A group health plan, carrier, or ODS shall provide written notice to the employee and dependents that includes the following:

a. The existence of any preexisting condition exclusions.

b. A determination that the group health plan, carrier, or ODS intends to impose a preexisting condition exclusion and:

(1) The basis for the decision to do so;

(2) The length of time to which the exclusion will apply;

(3) The right of the employee or dependent to appeal a decision to impose a preexisting condition exclusion;

(4) The right of the person to demonstrate creditable coverage including the right of the person to request a certificate from a prior group health plan, carrier, or ODS and a statement that the current group health plan, carrier, or ODS will assist in obtaining the certificate.

c. That the group health plan, carrier, or ODS will use the alternative method of counting creditable coverage.

d. Special enrollment rights when an employee declines coverage for the employee or dependents.

35.29(2) A group health plan, carrier, or ODS shall provide written notice to the employee and dependents of a modification of a prior creditable coverage decision when the group health plan, carrier, or ODS subsequently determines either no or less creditable coverage existed provided that the group health plan, carrier, or ODS acts according to its initial determination until the final determination is made.

191—35.30(509) Mental health benefits.

35.30(1) A carrier or organized delivery system offering mental health benefits shall not set annual or lifetime dollar limits on mental health benefits that are lower than limits for medical and surgical benefits. Health insurance coverage that does not impose an annual or lifetime dollar limit on medical and surgical benefits shall not impose a dollar limit on mental health benefits.

35.30(2) This rule does not apply to benefits for substance abuse or chemical dependency. This rule does not apply to health insurance coverage if costs increase 1 percent or more due to the application of these requirements. The calculation and notification requirements of the 1 percent exemption shall be performed pursuant to 45 CFR Part 146.136.

35.30(3) This rule applies to health insurance coverage for plan years beginning on or after January 1, 1998, and will cease to apply to benefits for services furnished on or after September 30, 2001.

191—35.31(509) Disclosure requirements. All carriers and ODSs shall include in contracts and evidence of coverage forms a statement disclosing the existence of any prescription drug formularies. Upon request, all carriers and ODSs offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All carriers and ODSs shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

191—35.32(514C) Treatment options.

35.32(1) A carrier shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the carrier's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the carrier or a person contracting with the carrier.

35.32(2) A carrier shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the carrier that, in the opinion of the provider, jeopardizes patient health or welfare.

191—35.33(514C) Emergency services. Benefits shall be available by the carrier for inpatient and outpatient emergency services. Since carriers may not contract with every emergency care provider in an area, carriers shall make every effort to inform members of participating providers.

35.33(1) The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

35.33(2) The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, 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:

a. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;

b. Serious impairment to bodily function; or

c. Serious dysfunction of any bodily organ or part.

35.33(3) Reimbursement to a provider of "emergency services" shall not be denied by any carrier without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the carrier. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

191—35.34(514C) Provider access. A carrier subject to this chapter shall allow an enrollee direct access to an obstetrician or gynecologist for routine and preventive health care services. The carrier shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

These rules are intended to implement Iowa Code chapters 509 and 514C and 1999 Iowa Acts, Senate File 276.

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*See IAB Insurance Division

CHAPTER 40
HEALTH MAINTENANCE ORGANIZATIONS
(Health and Insurance—Joint Rules)

Appeared as Ch 12, July 1974 Supplement
[Prior to 10/22/86, Insurance Department [510]]

PREAMBLE

The following rules developed by the division of insurance govern the organization and regulation of health maintenance organizations pursuant to the authority set forth in Iowa Code chapter 514B.

191—40.1(514B) Definitions.

"Act" when used in these rules shall mean Iowa Code chapter 514B.

"Complaint" means a written communication expressing a grievance concerning a health maintenance organization.

"Dental care" means care by licensed dentists or by appropriate auxiliary dental personnel working under the supervision of a dentist. It includes the necessary diagnostic, treatment, and preventive services required to maintain proper oral health.

"Governing body" means the persons in which the ultimate responsibility and authority for the conduct of the HMO is vested.

"HMO" means health maintenance organization and shall be abbreviated as HMO in these rules.

"Inpatient hospital care" means inpatient hospital care provided through a licensed hospital on a 24-hour basis.

"Outpatient medical services" means outpatient medical services provided within or outside of a hospital. This shall include, but not be limited to, laboratory and diagnostic X-ray with emphasis directed toward primary care.

"Physician care" means care by a licensed physician or by paramedical or other ancillary health personnel under the direction of the licensed physician. It shall be of sufficient type and amount to adequately provide for the contracted services including emergency care, inpatient hospital care, and outpatient medical services.

191—40.2(514B) Application. An application on forms provided by the insurance division accompanied by a filing fee of $100 payable to State Treasurer, State of Iowa, shall be completed by an officer or authorized representative of the health maintenance organization. The application with copies in duplicate shall be verified and shall be accompanied by the information found in Iowa Code section 514B.3(1 to 14). An application shall not be deemed to be filed until all information necessary to properly process said application has been received by the commissioner. See 40.11(514B).

An amendment to the application form shall be filed in the same manner as the application and approved by the commissioner before the change proposed by the amendment is effective.

191—40.3(514B) Inspection of evidence of coverage. An enrollee may, if evidence of coverage is not satisfactory for any reason, return evidence of coverage within ten days of receipt of same and receive full refund of the deposit paid, if any. This right shall not act as a cure for misleading or deceptive advertising or marketing methods, nor may it be exercised if the enrollee utilizes the services of the HMO within the ten-day period.

191—40.4(514B) Governing body and enrollee representation. An HMO shall have a basic written organizational document setting forth its scheme of organization and establishing a governing body appropriate to its form of organization. The governing body shall be responsible for matters of policy and operation.

The HMO shall develop bylaws or guidelines which describe the scope of the health care services the HMO renders to enrollees either directly by its medical staff or dental staff, if dental care is provided, or through arrangements with others outside of the organization. Initial bylaws, guidelines, and revisions thereto shall be submitted to the commissioner of insurance for review and approval.

The bylaws, guidelines, or similar document shall provide for "reasonable representation" on the governing body by enrollees. "Reasonable representation" as used in Iowa Code section 514B.7 shall require not less than 30 percent of the governing board members be enrollees who are not providers or are not associated with a provider. Enrollees shall have the opportunity to nominate said enrollee representatives.

The HMO may provide upon its initial formation that all representatives on the governing board shall be selected by the organizers of the HMO. Such members shall serve until the first annual meeting or election. If there are no enrollee representatives on the initial governing board, they shall be elected at the first annual meeting or election.

The nomination procedures for enrollee representatives should provide for the following to assure an adequate opportunity for participation by enrollees:

40.4(1) An opportunity for adult enrollees to nominate candidates for the governing body.

40.4(2) Notice to all adult enrollees of the nomination and election procedures.

The HMO shall be deemed to have complied with these requirements if it provides notice in its regular newsletter to enrollees of the opportunity to and the procedures for nomination of enrollee representatives.

Nomination procedures may be waived by the commissioner for a period of up to three years from the HMO's commencement of delivery of services to enrollees.

For purposes of this rule, an HMO operated directly by a corporation or corporations subject to Iowa Code chapter 514 and rule 191—34.7(514) shall be deemed to be in compliance with this rule if it is or they are in compliance with Iowa Code section 514.4 and rule 191—34.7(514).

This rule is intended to implement Iowa Code section 514B.7.

191—40.5(514B) Quality of care. Each HMO shall:

40.5(1) Provide primary care physicians' services commensurate with the need of the enrollees, but at a level of not less than that established in the community.

40.5(2) Advise the insurance division annually pursuant to Iowa Code section 514B.12 of the ratio of full-time equivalent physicians, paramedical and ancillary health personnel to enrollees and fee-for-service patients. Changes in the physician ratios shall be immediately reported together with action taken to correct any deficiencies in the ratios.

40.5(3) Provide assurance that all physicians, paramedical and ancillary health personnel engaged in the provisions of health services to enrollees and fee-for-service patients are currently licensed or certified by the appropriate state agency where they are located to practice their respective profession. These personnel shall be no less qualified in their respective profession than the current level of qualification, which is maintained in their community.

191—40.11(514B) Application for certificate of authority. The application for certificate of authority shall be in the following form:

HEALTH MAINTENANCE ORGANIZATION
APPLICATION FOR CERTIFICATE OF AUTHORITY

_____
(Name of Health Maintenance Organization)

Organized as _____
under the laws of the state of _____, hereby makes application to the commissioner of insurance for a certificate of authority to establish and operate a health maintenance organization in compliance with Iowa Code chapter 514B.

Attached hereto and hereby made a part of this application are exhibits bearing numbers corresponding to the following:

1. A copy of the basic organizational document, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all of its amendments.

2. A copy of the bylaws, rules or similar document, regulating the conduct of the internal affairs of the applicant.

3. A list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers if a corporation and the partners or members if a partnership or association.

3.1 A list of the names and addresses of each owner of 5 percent or more of the health maintenance organization.

4. A copy of any contract made or to be made between any providers and the applicant.

4.1 A copy of any contract made or to be made between the applicant and any person listed in item (3).

4.2 A copy of any contract made or to be made between the applicant and any person for management services.

5. A statement generally describing the health maintenance organization including, but not limited to, a description of its facilities and personnel.

6. A copy of the form of evidence of coverage.

7. A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations.

8. Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement is attached.

8.1 A copy of any contract made or to be made between the applicant and its reinsurer.

8.2 A copy of any contract made or to be made between the applicant and any person for cash or asset management services.

9. A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of operating results anticipated, and a statement as to the sources of funding.

10. A power of attorney executed by the applicant, if not domiciled in this state, appointing the commissioner, his successors in office and deputies as the true and lawful attorney of the applicant for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served.

11. A statement reasonably describing the geographic area to be served and assessing in detail the economic feasibility of the HMO's projected operation.

12. A description of the complaint procedures to be utilized as required under Iowa Code section 514B.14.

13. A description of the procedures and programs to be implemented to meet the requirements for quality of health care as determined by the commissioner of insurance in consideration, when deemed appropriate, with the director of public health, under Iowa Code section 514B.4.

14. A description of the mechanism by which enrollees shall be allowed to participate in matters of policy and operation as required by Iowa Code section 514B.7.

14.1 A copy of the notice to be given to enrollees of the procedure for nomination and election of members of the governing body.

15. A schedule of the liability and workmen's compensation insurance to be maintained in force by the health maintenance organization.

15.1 Copies of the forms of policies or contracts to be offered to terminated enrollees as provided in 40.10(2).

VERIFICATION

The undersigned deposes and says that deponent has duly executed the attached application dated _____, 19 _____, for and on behalf of _____;
(Name of Applicant)
that deponent is the _____ of such company,
(Title of Officer)
and that deponent is authorized to execute and file such instrument. Deponent further says that deponent is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

Subscribed and sworn to before me by _____ on this _____ day of _____, 19 _____.

_____
(Notary Public)

191—40.12(514B) Net worth.

40.12(1) An HMO shall not be authorized to transact business with a net worth less than $1 million.

40.12(2) No HMO incorporated by or organized under the laws of any other state or government shall transact business in this state unless it possesses the net worth required of an HMO organized by the laws of this state and is authorized to do business in this state.

40.12(3) As deemed necessary by the division, each health maintenance organization that is a subsidiary of another person shall file with the division, in a form satisfactory to it, a guarantee of the HMO's obligations issued by the ultimate controlling parent or such other person satisfactory to the division.

40.12(4) Each health maintenance organization shall, at the time of application, pay to the division a one-time, nonrefundable fee of $10,000 to be used by the division to create a special fund solely for the payment of administrative expenses in connection with the solvency of an HMO.

191—40.13(514B) Fidelity bond. A health maintenance organization shall maintain in force a fidelity bond on employees and officers in an amount not less than $100,000 or such other sum as may be prescribed by the commissioner. All such bonds shall be written with at least a one-year discovery period and if written with less than a three-year discovery period shall contain a provision that no cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of cancellation or termination has been filed with the commissioner unless an earlier date of cancellation or termination is approved by the commissioner.

This rule is intended to implement Iowa Code section 514B.5(1).

191—40.14(514B) Annual report. A health maintenance organization shall annually, on or before the first day of March, file with the commissioner of insurance a report verified by at least two of its principal officers and covering the preceding calendar year.

The report shall be on the form designated by the National Association of Insurance Commissioners (NAIC) as the report form for health maintenance organizations. The report shall be completed using "statutory accounting practices" (SAP), and shall include any other information required under law or rule.

The commissioner of insurance may request additional reports and information from a health maintenance organization as often as is deemed necessary to enable the commissioner to carry out the duties of Iowa Code chapter 514B.

This rule is intended to implement Iowa Code section 514B.12.

191—40.15(514B) Cash or asset management agreements. If an HMO utilizes a cash or asset management arrangement with its parent, affiliate, or any other person, the arrangement shall be written and subject to prior approval by the commissioner. Cash or asset management agreements shall meet the following minimum requirements:

40.15(1) Cash receipts shall be under the direct control of the HMO that generated the receipts. If the system is under the control of the HMO's parent or affiliate, then receipts shall be transferred to the HMO within five working days.

40.15(2) Securities purchased shall be in the name of the HMO generating the funds for the security purchase.

40.15(3) An HMO's investments shall not be pooled with other entities' investments unless there is an agreement which vests an undivided interest in the pooled arrangement to the HMO. Such an agreement shall be subject to prior approval by the commissioner.

40.15(4) An HMO's cash or investments shall not be commingled with the cash or investments of any other person.

40.15(5) Investments made on behalf of an HMO shall be subject to the limitations imposed by Iowa Code sections 511.8 and 514B.15.

40.15(6) The agreement shall provide for prompt notice and verification of investments, establish responsibility for brokerage and other fees and provide for periodic reports on earnings and expenses.

40.15(7) A parent, affiliate, person, and employees thereof providing cash or asset management services shall be bonded and responsible for any physical loss of investments.

191—40.16(514B) Deductibles and coinsurance charges. Deductible and coinsurance charges for health care services for each enrollee shall not exceed 200 percent of the total annual premium payable on behalf of the enrollee.

191—40.17(514B) Reinsurance. Reinsurance contracts and stop-loss agreements entered into by an HMO shall be subject to prior approval and shall meet the following minimum requirements:

40.17(1) Reinsurance contracts and stop-loss agreements shall provide that the commissioner of insurance be given notice of termination by certified mail at least 30 days prior to the effective date of termination of the reinsurance contract or stop-loss agreement.

40.17(2) Retention levels shall be reasonable in light of the HMO's financial condition and potential liabilities.

191—40.18(514B) Provider contracts. An HMO's arrangements for health care services shall be by written contract. Initial provider contracts shall be subject to prior approval. Thereafter, any provider contract deviating from previously submitted or approved contracts shall be submitted to the division within 30 days of execution for informational purposes. In all instances, all provider contracts shall include the following provision:

(Provider), or its assignee or subcontractor, hereby agrees that in no event, including, but not limited to nonpayment by the HMO, HMO insolvency or breach of this agreement, shall (Provider), or its assignee or subcontractor, bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against subscriber/enrollee or persons other than the HMO acting on their behalf for services provided pursuant to this Agreement. This provision shall not prohibit collection of supplemental charges or copayments on HMO's behalf made in accordance with terms of (applicable Agreement) between HMO and subscriber/enrollee.

(Provider), or its assignee or subcontractor, further agrees that (1) this provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the HMO subscriber/enrollee and that (2) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between (Provider) and subscriber/enrollee or persons acting on their behalf.

191—40.19(514B) Producers' duties. In order to qualify for solicitation, enrollment, or delivery of a certificate of membership or policy in a health maintenance organization, a producer must comply with the licensing rules set forth in 191—Chapter 10 of the Iowa Administrative Code and in particular submit to an examination to determine the applicant's competence to sell accident and health insurance as described in rule 191—10.7(522), classification 6.

191—40.20(514B) Emergency services. Benefits shall be available by the HMO for inpatient and outpatient emergency services. A physician and sufficient other licensed and ancillary personnel shall be readily available at all times to render such services. Since HMOs may not contract with every emergency care provider in an area, HMOs shall make every effort to inform members of participating providers.

40.20(1) The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish such services and are needed to evaluate or stabilize an emergency medical condition.

40.20(2) The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect that absence of immediate medical attention to result in one of the following:

a. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child, in serious jeopardy;

b. Serious impairment to bodily function; or

c. Serious dysfunction of any bodily organ or part.

191—40.21(514B) Reimbursement. Reimbursement to a provider of "emergency services," as defined in 191—40.1(514B), shall not be denied by any health maintenance organization without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the HMO as outlined in rule 40.9(514B). Upon denial of reimbursement for emergency services, the HMO shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

191—40.22(514B) Health maintenance organization requirements.

40.22(1) A health maintenance organization shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the health maintenance organization's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the health maintenance organization or a person contracting with the health maintenance organization.

40.22(2) A health maintenance organization shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the health maintenance organization that, in the opinion of the provider, jeopardizes patient health or welfare.

191—40.23(514B) Disclosure requirements. All HMOs shall include in contracts and evidence of coverage forms a statement disclosing the existence of any prescription drug formularies. Upon request, an HMO offering a plan that includes a prescription drug formulary shall inform enrollees of the plan, and prospective enrollees of the plan during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All HMOs shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

191—40.24(514B) Provider access. A health maintenance organization shall allow an enrollee direct access to an obstetrician or gynecologist for routine and preventive health care services. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

These rules are intended to implement Iowa Code chapter 514B and 1999 Iowa Acts, Senate File 276.

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21. For sterilization or reversal of sterilizations, or both;

22. For dental work or treatment except for removal of malignant tumors and cysts or accidental injury (eating and chewing mishaps are not accidental injuries for the purposes of this policy) to natural teeth, if the accident occurs while the person is insured and the treatment is received within 12 months after the accident;

23. For treatment of weak, strained or flat feet, including orthopedic shoes or other supportive devices, or for cutting, removal or treatment of corns, callouses or nails, other than with corrective surgery, or for metabolic or peripheral vascular disease;

24. For eyeglasses or contact lenses and the visual examination for prescribing or fitting eyeglasses or contact lenses (except for aphasic patients and soft lenses or sclera shells intended for use in the treatment of disease or injury);

25. For radial keratotomy, myopic keratomileusis and any surgery which involves corneal tissue for the purpose of altering, modifying or correcting myopia, hyperopia or stigmatic error;

26. For hearing aids and supplies, tinnitus maskers, or examinations for the prescription or fitting of hearing aids;

27. For any treatment leading to or in connection with transsexualism, sex changes or modifications, including but not limited to surgery or the treatment of sexual dysfunction not related to organic disease;

28. For any treatment or regimen, medical or surgical, for the purpose of reducing or controlling the insured's weight or for the treatment of obesity;

29. For conditions related to autistic disease of childhood, hyperkinetic syndromes, learning disabilities, behavioral problems, or for inpatient confinement for environmental change;

30. For services and supplies for and related to fertility testing, treatment of infertility and conception by artificial means, including but not limited to: artificial insemination, in vitro fertilization, ovum or embryo placement or transfer, gamete intra-fallopian tube transfer, or cryogenic or other preservation techniques used in such or similar procedures;

31. For travel whether or not recommended by a physician;

32. For complications or side effects arising from services, procedures, or treatments excluded by this policy;

33. For maternity care of dependent children except for complications of pregnancy which is covered as any other illness;

34. For services to the extent that those services are covered by Medicare;

35. For or related to organ transplants (unless a benefit is specifically provided and then only to the limits provided);

36. For or related to the transplantation of animal or artificial organs or tissues;

37. For the care or treatment of any injury that is intentionally self-inflicted, while sane or insane;

38. For the care or treatment of any injury incurred during the commission of, or an attempt to commit, a felony or any injury or sickness incurred while engaging in an illegal act or occupation or participation in a riot;

39. For lifestyle improvements including smoking cessation, nutrition counseling or physical fitness programs;

40. For the purchase of wigs or cranial prosthesis;

41. For weekend admission charges, except for emergencies and nonscheduled maternity admissions;

42. For orthomolecular therapy including nutrients, vitamins and food supplements;

43. For speech therapy, except to restore speech abilities which were lost due to sickness or injury.

71.14(9) All carriers shall provide benefits in the standard health benefit plan for the cost associated with equipment, supplies, and education for the treatment of diabetes pursuant to Iowa Code section 514C.14.

191—71.15(513B) Methods of counting creditable coverage.

71.15(1) For purposes of reducing any preexisting condition exclusion period, a group health plan, a carrier, or ODS offering group health insurance coverage shall determine the amount of an individual's creditable coverage by using the standard method described in subrule 71.15(2), except that the plan, carrier, or ODS may use the alternative method under subrule 71.15(3) with respect to any or all of the categories of benefits described under paragraph 71.15(3)*"b."*

71.15(2) Under the standard method, a group health plan, a health insurance carrier, and an ODS offering group health insurance coverage shall determine the amount of creditable coverage without regard to the specific benefits included in the coverage.

a. For purposes of reducing the preexisting condition exclusion period, a group health plan, a health insurance carrier, or ODS offering group health insurance coverage shall determine the amount of creditable coverage by counting all the days that the individual has under one or more types of creditable coverage. If on a particular day, an individual has creditable coverage from more than one source, all the creditable coverage on that day is counted as one day. Further, any days in a waiting period for a plan or policy are not creditable coverage under the plan or policy.

b. Days of creditable coverage that occur before a significant break in coverage are not required to be counted.

c. Notwithstanding any other provision of paragraph 71.15(2)*"b,"* for purposes of reducing a preexisting condition exclusion period, a group health plan, a health insurance carrier, and an ODS offering group health insurance coverage may determine the amount of creditable coverage in any other manner that is at least as favorable to the individual as the method set forth in paragraph 71.15(2)*"b."*

71.17(2) A group health plan, carrier, or ODS shall provide written notice to the employee and dependents of the modification of a prior creditable coverage decision when the group health plan, carrier, or ODS subsequently determines either no or less creditable coverage existed provided that the group health plan, carrier, or ODS acts according to its initial determination until the final determination is made.

191—71.18(513B) Special enrollments.

71.18(1) A carrier or organized delivery system shall permit individuals to enroll for coverage under terms of a health benefit plan, without regard to other enrollment dates permitted under the group health plan, if an eligible employee requests enrollment or, if the group health plan makes coverage available to dependents, on behalf of dependent who is eligible but not enrolled under the group health plan, during the special enrollment period, which shall be 30 days following an event described in subrules 71.18(2) and 71.18(3) with respect to the individual for whom enrollment is requested. A carrier or organized delivery system may impose enrollment requirements that are otherwise applicable under terms of the group health plan to individuals requesting immediate enrollment.

71.18(2) An individual, who previously had other coverage for medical care and for whom an eligible employee declined coverage under the group health plan, may be enrolled during a special enrollment period if the individual has lost the other coverage for medical care and:

a. If required by the group health plan, the eligible employee stated in writing when declining the coverage, after being given a notice of the requirement form, and the consequences of failure to submit a written statement that coverage was declined because the individual had coverage for medical care under another group health plan or otherwise; and

b. When enrollment was declined for the individual:

(1) The individual had coverage other than under a COBRA continuation provision and the coverage has been exhausted; or

(2) The individual had coverage other than under a COBRA continuation provision and the coverage has been terminated due to loss of eligibility for the coverage, including loss of coverage as a result of legal separation, divorce, death, termination of employment, reduction in the number of hours of employment and any loss of eligibility after a period that is measured by reference to any of the foregoing, or termination of employer contributions toward the other coverage.

c. For purposes of this subparagraph 71.18(2)*"b"*(2):

(1) Loss of eligibility for the coverages does not include loss of eligibility due to the eligible employee's or dependent's failure to make timely premium payments or termination of coverage for cause such as making a fraudulent claim or intentional misrepresentation of material fact in connection with the group health plan; and

(2) Employer contributions include contributions by any current or former employer of the individual or another person that was contributing to coverage for the individual.

(3) Exhaustion of COBRA continuation coverage means that an individual's COBRA continuation coverage ceases for any reason other than either failure of the individual to pay premiums on a timely basis, or for cause, such as making a fraudulent claim or an intentional misrepresentation of a material fact in connection with the plan. An individual is considered to have exhausted COBRA continuation coverage if the coverage ceases.

71.18(3) If the eligible employee has previously declined enrollment under the group health plan but acquires a dependent through marriage, birth, adoption or placement for adoption, the eligible employee or dependent may be enrolled during the special enrollment period with respect to the individual.

71.18(4) Enrollment of the eligible employee or dependent is effective not later than the first day of the calendar month or, for a newborn or adopted child, on the date of birth, adoption, or placement for adoption.

191—71.19(513B) Disclosure requirements. All carriers and ODSs shall include in contracts and evidence of coverage forms a statement disclosing the existence of any drug formularies. Upon request, a carrier or ODS offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All carriers and ODSs shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

191—71.20(514C) Treatment options.

71.20(1) A carrier shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the carrier's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the carrier or a person contracting with the carrier.

71.20(2) A carrier shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the carrier that, in the opinion of the provider, jeopardizes patient health or welfare.

191—71.21(514C) Emergency services. Benefits shall be available by the carrier for inpatient and outpatient emergency services. A physician and sufficient other licensed and ancillary personnel shall be readily available at all times to render such services. Since carriers may not contract with every emergency care provider in an area, carriers shall make every effort to inform members of participating providers.

71.21(1) The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

71.21(2) The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, 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:

a. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;

b. Serious impairment to bodily function; or

c. Serious dysfunction of any bodily organ or part.

71.21(3) Reimbursement to a provider of "emergency services" shall not be denied by any carrier or ODS without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

191—71.22(514C) Provider access. A carrier shall allow an enrollee direct access to an obstetrician or gynecologist for routine and preventive health care services. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

These rules are intended to implement Iowa Code chapters 513B and 514C and 1999 Iowa Acts, Senate File 276.

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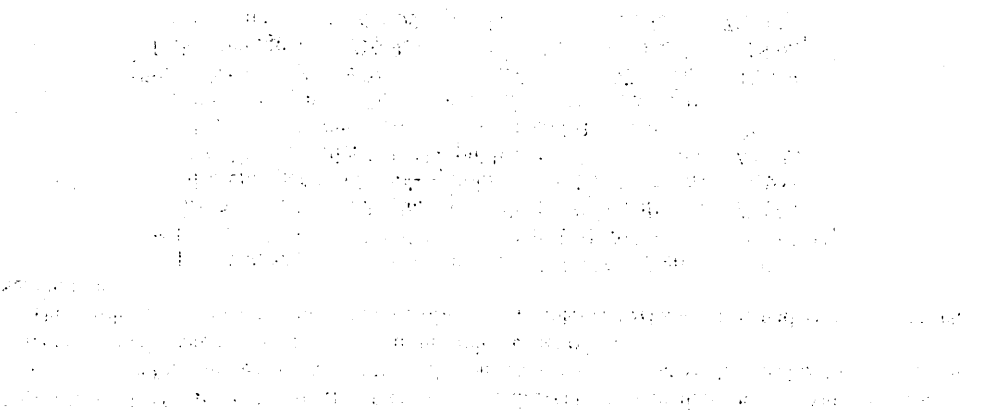

d. A carrier or ODS required to make a filing under 75.5(1)*"b"* shall also make an informational filing with the commissioner of each state in which there are individual health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under 75.5(1)*"b"* and shall include at least the information specified in 75.5(1)*"c"*(1) for the individual health benefit plans in that state.

e. A carrier or ODS shall not transfer or assume the entire insurance obligation or risk of a health benefit plan covering an individual in this state unless it complies with the following provisions:

(1) The carrier or ODS has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in 75.5(1)*"c"* for the health benefit plans covering individuals in this state.

(2) If the assumption of a block of business would result in the assuming carrier or ODS being out of compliance with the limitations related to premium rates contained in Iowa Code section 513C.5, the assuming carrier shall make a filing with the commissioner pursuant to section 513C.5 seeking suspension of the application of section 513C.5.

(3) An assuming carrier or ODS seeking suspension of the application of Iowa Code section 513C.5 shall not complete the assumption of health benefit plans covering individuals unless the commissioner grants the suspension requested pursuant to 75.5(1)*"e"*(2).

(4) Unless a different period is approved by the commissioner, a suspension of the application of Iowa Code section 513C.5 shall, with respect to an assumed block of business, be for no more than 15 months and, with respect to each individual, last only until the anniversary date of such individual's coverage. With respect to an individual this period may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within 3 months of the date of assumption of the block of business.

75.5(2) Except as provided in subrule 75.5(1), a carrier or ODS shall not cede or assume the entire insurance obligation or risk for a health benefit plan, other than reinsurance, unless the carrier cedes to the assuming carrier the entire block of business that includes such health benefit plan, unless otherwise approved by the commissioner.

75.5(3) The commissioner may approve a longer period of transition upon application of a carrier or ODS. The application shall be made within 60 days after the date of assumption of the block of business and shall clearly state the justification for a longer transition period.

75.5(4) Nothing in this rule or in Iowa Code chapter 513C is intended to:

a. Reduce or diminish any legal or contractual obligation or requirements, including any obligation provided in Iowa Code chapters 521 and 521B, of the ceding or assuming carrier or ODS related to the transaction;

b. Authorize a carrier or ODS that is not admitted to transact the business of insurance in this state to offer health benefit plans in this state; or

c. Reduce or diminish the protections related to an assumption reinsurance transaction provided in Iowa Code chapters 521 and 521B or otherwise provided by law.

191—75.6(513C) Restrictions relating to premium rates.

75.6(1) As provided by Iowa Code section 513C.5, each carrier must limit differences in premium due to such factors as experience and duration to the composite effect of 20 percent, 30 percent, and 30 percent. Allocation of cost differences due to experience and duration among the categories outlined in Iowa Code section 513C.5 may be determined by each carrier.

75.6(2) Nothing in this rule shall require rates be filed absent any other statutory requirements.

191—75.7(513C) Availability of coverage.

75.7(1) Except as provided in Iowa Code section 513C.7, the choice between the basic and standard health benefit plans may not be limited, restricted or conditioned upon the risk characteristics of the individuals or their dependents.

75.7(2) Insurers shall not require eligible family members to accept a basic or standard health benefit plan covering all family members. Those family members who qualify for an underwritten plan may be issued separate coverage from those who do not qualify for the underwritten plan but are eligible for guaranteed issue of the basic or standard plan.

75.7(3) Qualifying previous coverage for a newborn shall be the greater of the period or periods of qualifying previous coverage established by either of the newborn's parents prior to the date of birth.

75.7(4) Benefits paid under a basic or standard health benefit plan shall not duplicate benefits paid under any other health insurance coverage. Other coverage means benefits paid for hospital, surgical or other medical care or expenses for a covered person by any of the following:

a. Insurance plan or policy; or
b. Health benefit plan; or
c. Welfare plan; or
d. Prepayment plan; or
e. Hospital service corporation plan or policy; or
f. Medicare;

whether provided on an individual, family, or group basis or through an employer, union or association. If such other coverage is on a provision of service basis, the amount of benefits will be the amount that the services provided would have cost without such other coverage.

191—75.8(513C) Disclosure of information.

75.8(1) General rules. In connection with the offering for sale of a health benefit plan to individuals, each carrier and ODS shall make a reasonable disclosure, as part of its solicitation and sales materials, of the following:

a. The extent to which premium rates for a specified individual are established or adjusted in part based upon the actual or expected variation in claims costs or the actual or expected variation in health conditions of the individual and the individual's dependents, if any.

b. The provisions of such plan concerning the carrier's and ODS's ability to change premium rates and the factors, other than claim experience, which affect changes in premium rates.

c. The provisions of such plan relating to the renewability of policies and contracts.

d. The provisions of such plan relating to the effect of any preexisting condition provision. The expression "preexisting conditions" shall not be used unless appropriately defined in the policy or contract.

e. The availability, upon request, of descriptive information about the benefits and premiums available under individual health benefit plans offered by the carrier and ODS for which the individual is qualified. For purposes of Iowa Code section 513C.7, carriers and ODSs will be permitted to exclude from disclosure of plans those plans within the following categories:

(1) Plans distributed through a separate marketing channel.
(2) Plans offered through a membership association.
(3) Plans offered through a trust in which membership is otherwise limited.
(4) Other plans as reviewed and approved by the commissioner or director.

75.8(2) Information shall be provided under this rule in a manner determined to be understandable by the average individual and shall be accurate and sufficiently comprehensive to reasonably inform individuals of their rights and obligations under the plan.

Nothing in this rule supersedes the requirements for outlines of coverage for individual health insurance policies under IAC 191—36.7(514D).

191—75.9(513C) Standards to ensure fair marketing.

75.9(1) A carrier or ODS shall make available at least one basic and one standard health benefit plan to eligible individuals in this state.

75.9(2) The written information described in this subrule may be provided directly to the individual or delivered through an authorized producer:

a. A carrier or ODS shall not apply more stringent requirements related to the application process for the basic and standard health benefit plans than applied for other health benefit plans offered by the carrier or ODS.

b. A carrier or ODS shall supply a price quote for basic or standard plans to an eligible individual upon request.

c. If a carrier or ODS denies coverage under a health benefit plan to an individual on the basis of a risk characteristic, the denial shall be in writing and state with specificity the reasons for the denial subject to any restrictions related to confidentiality of medical information. The denial shall be accompanied by a written explanation of the availability of the basic and standard health benefit plans from the carrier or ODS and may be combined with the notification requirements of Iowa Code chapter 514E. The explanation shall include the following information about the basic and standard benefit plans:

(1) A general description of the benefits and policy provisions contained in each plan;

(2) A price quote for each plan; and

(3) Information describing eligibility and how an eligible individual may enroll in such plans.

75.9(3) The carrier or ODS shall not require an individual to join or contribute to any association or group as a condition of being accepted for coverage except, if membership in an association or other group is a requirement for accepting an individual into a particular health benefit plan, a carrier or ODS may apply such requirement.

75.9(4) A carrier or ODS may not require as a condition to the offer or sale of a health benefit plan to an individual that the individual purchase or qualify for any other insurance product or service.

75.9(5) Carriers and ODSs offering individual or group health benefit plans in this state shall be responsible for determining whether the plans are subject to the requirements of Iowa Code chapter 513C.

191—75.10(513C) Basic health benefit plan and standard health benefit plan policy forms.

75.10(1) The form and level of coverage of the basic health benefit plan and the standard health benefit plan are contained in the rules and table.

75.10(2) Termination of pregnancy is to be covered when performed for therapeutic reasons. Elective termination of pregnancy is not to be covered in either the basic or standard plan.

75.10(3) A provision shall be made in the basic health benefit plan and the standard health benefit plan covering diagnosis and treatment of human ailments for payment or reimbursement for necessary diagnosis and treatment provided by a chiropractor licensed under Iowa Code chapter 151, if the diagnosis or treatment is provided within the scope of the chiropractor's license.

75.10(4) Oral contraceptives are to be covered in both policy forms. Coverage for alternative forms of contraception is to be reviewed based on medical necessity.

75.10(5) The division of insurance and the department of health have available "safe harbor" policy forms for the basic and standard health benefit plans required pursuant to Iowa Code chapter 513C.

Iowa Individual Products

Hospital Services	MANDATED INDEMNITY/ODS				MANDATED HMO	
			PPO			
	BASIC	STANDARD	In	Out	BASIC	STANDARD
Inpatient Outpatient	60%	80%	80%	60%	60% $400/admit	80% $200/admit
Prostheses	60%	80%	80%	60%	60%	80%
DME—including medical supplies	60%	80%	80%	60%	60%	80%
Ambulance—Emergency	60%	80%	80%	60%	60%	80%
Hospice	60%	80%	80%	60%	60%	80%
Home Health and Physician House Calls	60%	80%	80%	60%	60%	80%

Alcoholism Substance Abuse	MANDATED INDEMNITY/ODS				MANDATED HMO	
			PPO			
	BASIC	STANDARD	In	Out	BASIC	STANDARD
Inpatient	—	80%(1)	80%(1)	60%(1)	—	80%
Outpatient	—	80%(1) ($50 max. eligible fee)	80%(1)	60%(1)	—	80% ($50 max. eligible fee)

Mental Health	MANDATED INDEMNITY/ODS				MANDATED HMO	
			PPO			
	BASIC	STANDARD	In	Out	BASIC	STANDARD
Inpatient	—	80%(1)	80%(1)	60%(1)	—	80%
Outpatient	—	80%(1) ($50 max. eligible fee)	80%(1) ($50 max. eligible fee)	60%(1) ($50 max. eligible fee)	—	80% ($50 max. eligible fee)

(1)$50,000 Lifetime Max.

20. For screening examinations including X-ray examinations made without film;
21. For sterilization or reversal of sterilizations, or both;
22. For dental work or treatment except for removal of malignant tumors and cysts or accidental injury (eating and chewing mishaps are not accidental injuries for the purposes of this policy) to natural teeth, if the accident occurs while the person is insured and the treatment is received within 12 months after the accident;
23. For treatment of weak, strained or flat feet, including orthopedic shoes or other supportive devices, or for cutting, removal or treatment of corns, calluses or nails, other than with corrective surgery, or for metabolic or peripheral vascular disease;
24. For eyeglasses or contact lenses and the visual examination for prescribing or fitting eyeglasses or contact lenses (except for aphasic patients and soft lenses or sclera shells intended for use in the treatment of disease or injury);
25. For radial keratotomy, myopic keratomileusis and any surgery which involves corneal tissue for the purpose of altering, modifying or correcting myopia, hyperopia or stigmatic error;
26. For hearing aids and supplies, tinnitus maskers, or examinations for the prescription or fitting of hearing aids;
27. For any treatment leading to or in connection with transsexualism, sex changes or modifications, including but not limited to surgery or the treatment of sexual dysfunction not related to organic disease;
28. For any treatment or regimen, medical or surgical, for the purpose of reducing or controlling the insured's weight or for the treatment of obesity;
29. For conditions related to autistic disease of childhood, hyperkinetic syndromes, learning disabilities, behavioral problems, or for inpatient confinement for environmental change;
30. For services and supplies for and related to fertility testing, treatment of infertility and conception by artificial means, including but not limited to: artificial insemination, in vitro fertilization, ovum or embryo placement or transfer, gamete intrafallopian tube transfer, or cryogenic or other preservation techniques used in such or similar procedures;
31. For travel whether or not recommended by a physician;
32. For complications or side effects arising from services, procedures, or treatments excluded by this policy;
33. For maternity care except for complications of pregnancy which is covered as any other illness;
34. For services to the extent that those services are covered by Medicare;
35. For or related to organ transplants (unless a benefit is specifically provided and then only to the limits provided);
36. For or related to the transplantation of animal or artificial organs or tissues;
37. For the care or treatment of any injury that is intentionally self-inflicted, while sane or insane;
38. For the care or treatment of any injury incurred during the commission of, or an attempt to commit, a felony or any injury or sickness incurred while engaging in an illegal act or occupation or participation in a riot;
39. For lifestyle improvements including smoking cessation, nutrition counseling or physical fitness programs;
40. For the purchase of wigs or cranial prosthesis;
41. For weekend admission charges, except for emergencies;
42. For orthomolecular therapy including nutrients, vitamins and food supplements;
43. For speech therapy, except to restore speech abilities which were lost due to sickness or injury.

191—75.11(513C) Maternity benefit rider. Every individual insurance carrier and ODS shall offer an optional maternity benefit rider for the basic and standard health benefit plans providing benefits, as any other illness, for a pregnancy and delivery without complications with a 12-month waiting period. Credit toward meeting the waiting period shall be given for prior coverage of a pregnancy without complications provided there was no more than a 63-day break in coverage. A maternity rider offered under this rule shall only be offered when the basic or standard plan is initially purchased. Premiums for the rider shall be calculated based upon generally accepted actuarial principles and shall not be subject to the premium restrictions in Iowa Code subsection 513C.10(6). The earned premiums and paid losses associated with the rider shall not be considered by the Iowa Individual Health Benefit Reinsurance Association for purposes of Iowa Code section 513C.10.

191—75.12(513C) Disclosure requirements. All carriers and ODSs shall include in contracts and evidence of coverage forms a statement disclosing the existence of any drug formularies. Upon request, a carrier or ODS offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All carriers and ODSs shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

191—75.13(514C) Treatment options.

75.13(1) A carrier shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the carrier's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the carrier or a person contracting with the carrier.

75.13(2) A carrier shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the carrier that, in the opinion of the provider, jeopardizes patient health or welfare.

191—75.14(514C) Emergency services. Benefits shall be available by the carrier for inpatient and outpatient emergency services. A physician and sufficient other licensed and ancillary personnel shall be readily available at all times to render such services. Since carriers may not contract with every emergency care provider in an area, carriers shall make every effort to inform members of participating providers.

75.14(1) The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

75.14(2) The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, 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:

a. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;

b. Serious impairment to bodily function; or

c. Serious dysfunction of any bodily organ or part.

75.14(3) Reimbursement to a provider of "emergency services" shall not be denied by any carrier without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the carrier. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and provider that they may register a complaint with the commissioner of insurance.

191—75.15(514C) Provider access. A carrier shall allow an enrollee direct access to an obstetrician or gynecologist for routine and preventive health care services. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

191—75.16(514C) Diabetic coverage. All carriers shall provide benefits in the standard health benefit plan for the cost associated with equipment, supplies, and education for the treatment of diabetes pursuant to Iowa Code section 514C.14.

These rules are intended to implement Iowa Code chapters 513C and 514C and 1997 Iowa Acts, House File 701; 1995 Iowa Acts, chapter 204, section 14; 1996 Iowa Acts, chapter 1219, section 52; and 1999 Iowa Acts, Senate File 276.

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

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

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CHAPTER 17
HIGH TECHNOLOGY APPRENTICESHIP PROGRAM

261—17.1(76GA,HF512) Purpose. The program is a work-based learning concept designed to help develop Iowa's skilled work force and serve as one part of a broader effort to improve the transition from school to work. Because the development of a skilled work force is a critical element of Iowa's overall economic development efforts, the department of economic development board shall determine how annual funds are allocated for these programs. The program will support multistate coordination to accomplish these goals. High technology skills are emphasized to help ensure that individuals are adequately prepared for the high skilled jobs today and in the future. Apprenticeship programs ensure a level of uniformity to the training that individuals receive, which provides an indirect protective measure to the public who utilizes the structures, products, and services that apprentices and graduates build, make, and provide.

261—17.2(76GA,HF512) Definitions. For purposes of this chapter, the following definitions apply:

"Apprenticeship program," "apprenticeship sponsor," "apprenticeable occupation," and *"apprentice"* are as defined in Iowa Code section 260C.44.

"Currently existing program" means a program that existed during the 1994 fiscal year as identified by the department of education.

"High technology" means skills that are clearly identified and recognized throughout the industry as technologically up-to-date for the particular occupation.

"IDED" means the Iowa department of economic development.

261—17.3(76GA,HF512) Fund distribution process. Funds will be made available to the community colleges with existing high technology apprenticeship programs based on contact hours as provided to IDED by the Iowa department of education, division of community colleges.

261—17.4(76GA,HF512) Monitoring. IDED may perform any review or field inspections it deems necessary to ensure compliance with the program purpose.

17.4(1) Noncompliance. When problems are noted, IDED shall have the authority to require that corrective action will be taken. If a recipient of program funds fails to respond to a notice of noncompliance, IDED shall have the authority to require remedial action as provided in subrule 17.4(2).

17.4(2) Remedies for noncompliance. At any time before project closeout, IDED has the authority to determine that a program operator is not in compliance with the requirements of this program. In the event of a determination of noncompliance, IDED has the authority to take the following remedial actions:

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

b. Condition a future grant.

c. Direct the program operator to stop the incurring costs with said funds.

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

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

f. Elect not to provide future high skilled apprenticeship program funds to the recipient until appropriate actions are taken to ensure compliance.

17.4(3) Reasons for finding of noncompliance include, but are not limited to, the following: The program does not comply with applicable state or federal rules or regulations, or the program operator's use of program funds for activities is not approved by the Federal Bureau of Apprenticeship and Training.

These rules are intended to implement 1995 Iowa Acts, House File 512, section 1(6)*"c."*

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CHAPTER 18
WORK FORCE INVESTMENT PROGRAM

Transferred to 345—Ch 13, IAB 7/17/96, effective 7/1/96, pursuant to 1996 Iowa Acts, Senate File 2409.

CHAPTER 19
IOWA JOB TRAINING PARTNERSHIP PROGRAM

Transferred to 345—Ch 14, IAB 7/17/96, effective 7/1/96, pursuant to 1996 Iowa Acts, Senate File 2409.

CHAPTER 20
ACE PIAP PROGRAM

261—20.1(78GA,HF772,SF465) Purpose. The purpose of the ACE PIAP program is to provide capital funds for accelerated career education programs. Funding for the program is from the physical infrastructure assistance fund. The goal of the program is to provide an enhanced skilled workforce in Iowa.

261—20.2(78GA,HF772,SF465) Definitions.

"Accelerated career education program" or *"ACE"* means the program established pursuant to 1999 Iowa Acts, Senate File 465, section 3.

"Agreement" means a program agreement referred to in 1999 Iowa Acts, Senate File 465, section 3, between an employer and a community college.

"Community college" means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

"Employee" means a person employed in a program job.

"Employer" means a business or consortium of businesses engaged in interstate or intrastate commerce for the purposes of manufacturing, processing or assembling products, construction, conducting research and development, or providing services in interstate or intrastate commerce, but excluding retail services.

"Highly skilled job" means a job with a broadly based, high-performance skill profile including advanced computation and communication skills, technology skills and workplace behavior skills, and for which an applied technical education is required.

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

"IDED board" means the Iowa economic development board authorized under Iowa Code section 15.103.

"Participant" means an individual who is enrolled in an accelerated career education program at a community college.

"Participant position" means the individual student enrollment position available in an accelerated career education program.

"PIAP" means the physical infrastructure assistance program established in Iowa Code section 15E.175.

"Program capital cost" means classroom and laboratory renovation, new classroom and laboratory construction, site acquisition or preparation.

"Program job" means a highly skilled job available from an employer pursuant to a program agreement.

"Program job position" means a job position which is planned or available for an employee by the employer pursuant to a program agreement.

"Program operating costs" means all necessary and incidental costs of providing program services.

"Program services" means services that include all of the following provided they are pursuant to a program agreement: program needs assessment and development, job task analysis, curriculum development and revision, instruction, instructional materials and supplies, computer software and upgrades, instructional support, administrative and student services, related school to career training programs, skill or career interest assessment services and testing and contracted services.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development and equipment installation. Vertical infrastructure does not include equipment, routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

261—20.3(78GA,HF772,SF465) Eligibility.

20.3(1) *Eligible programs.* All programs must demonstrate increased capacity to enroll additional students. To be eligible, a program must be either:

a. A credit career, vocational, or technical education program resulting in the conferring of a certificate, diploma, associate of science degree, or associate of applied science degree; or

b. A credit equivalent career, vocational, or technical educational program consisting of not less than 540 contact hours of classroom and laboratory instruction and resulting in the conferring of a certificate or other recognized, competency-based credential.

20.3(2) *Threshold requirements.* To be considered for funding, the following threshold requirements shall be met:

a. There must be documentation of pledged program positions paying at least 200 percent of the poverty level for a family of two. The wage for the pledged job will be at the time that any training or probationary period has been completed. If the wage designated is after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.

b. Documentation must be provided to demonstrate that the program meets the definition of an eligible program as detailed in subrule 20.3(1).

c. An applicant must demonstrate that the project builds capacity of the community college to train additional students for available jobs.

d. Documentation must be supplied to establish a 20 percent employer cash or in-kind match for program operating funds.

e. An applicant shall describe how the project enhances geographic diversity of project offerings across the state.

f. The community college must document that other private or public sources of funds are maximized prior to ACE capital cost funding.

g. ACE program capital cost projects must enhance the geographic diversity of state investment in Iowa. The IDED board will continuously review projects to ensure that there is statewide impact. The IDED board will prioritize projects to ensure geographic diversity.

20.3(3) *Vertical infrastructure.* Funds shall be used only for ACE program capital costs for projects that meet the definition of vertical infrastructure.

261—20.4(78GA,HF772,SF465) Funding allocation.

20.4(1) *Base allocation.*

a. For fiscal year 1999-2000, $3 million shall be allocated equally among the community colleges in the state. If a community college fails to obligate or encumber any of its allocation by April 1 of the fiscal year, the funds for that community college will revert back to the state level to be awarded to other community colleges on a competitive basis as described in subrule 20.4(2).

b. Community colleges shall submit an application, with an accompanying program agreement, to access the allocated funds. The application and program agreement shall document that all ACE eligibility requirements as detailed in rule 20.3(78GA,HF772,SF465) have been met.

c. All applications and program agreements for allocated funds that meet the ACE eligibility requirements will be forwarded to the IDED board for recommended funding.

20.4(2) *Competitive awards.* ACE program capital funds that are not allocated to a community college will be made competitively available to community colleges for ACE program capital costs.

20.4(3) *Evaluation criteria for competitive awards.* Applications and accompanying program agreements meeting all ACE eligibility requirements will be prioritized and rated using the following point criteria:

a. The degree to which the applicant adequately demonstrates a lack of existing public or private infrastructure for development of the partnership. There must be a demonstration that the project will build capacity in order for the project to be considered. Capacity will be measured in terms of jobs that are pledged, students that are interested in the program area and the capacity that is built at the community college to undertake the programming. Up to 33 points will be awarded.

b. Demonstration that the jobs resulting from the partnership would include wages, benefits and other attributes that would improve the quality of employment within the region. Projects where the average wage for the pledged jobs exceeds the regional or county average wage, whichever is lower for the location where the training is to be provided, will be awarded points based upon the percentage that the average wage of the pledged jobs exceeds the applicable average wage. Up to 33 points will be awarded.

c. Evidence of local, public or private contributions that meet the requirements of 1999 Iowa Acts, Senate File 465. Projects will be rated based upon the percentage of match that is pledged to the ACE program capital cost for the project. Up to 34 points will be awarded.

Applications that do not receive at least 66 out of 100 will not be forwarded to the IDED board for review. Projects will be competing against each other for IDED board approval, and the number of points that a project receives will be considered in the award process.

261—20.5(78GA,HF772,SF465) Application procedures.

20.5(1) *Preapplication.* A preapplication process will be available to provide applicants with feedback as the project is developed. A preapplication can be made prior to employer sign off or community college board of director approval. Preapplications for projects that will cross community college boundaries, or for projects that involve employers from multiple community college areas, must have sign off from all college areas involved. A successful preapplication review will result in funds being set aside for the project from the competitive funds pool for 60 days, pending the receipt of a final application. Subsequent to the voluntary preapplication process, an application with an accompanying program agreement will be required to request funding from ACE PIAP funds.

20.5(2) *Final application.* Applicants shall submit a final application to IDED to request program funds.

20.5(3) *Staff review and recommendation.* A committee of IDED staff will review and rate applications based upon the rating criteria. Based upon this review, a decision will be made regarding submittal of the application to the IDED board for action.

20.5(4) *IDED board action.* The IDED board will review ACE program capital cost projects meeting the requirements prescribed in these rules. A program agreement, which is approved by the community college board of directors, must be attached to the final application. Approval or denial of applications that are submitted that are complete and in final form shall be made no later than 60 days following receipt of the application by the department. Subsequent to board approval, an award letter will be sent. The award letter will be followed by a contract. After a signed contract is in place, funding for a project may be requested.

261—20.6(78GA,HF772,SF465) Program agreements.

20.6(1) Program agreements will be developed by an employer, a community college and any employee of an employer representing a program job. Any community college that has an employer from its merged area involved in an ACE project must enter into the agreement. If a bargaining unit is in place with the employer pledging the jobs, a representative of the bargaining unit shall take part in the development of the program agreement. All participating parties must sign the program agreement. The agreement must include employer certification of contributions that are made toward the program costs.

20.6(2) A program agreement shall include, at a minimum, the following terms: match provided by the employer; tuition, student fees, or special charges fixed by the community college board of directors; guarantee of employer payments; type and amount of funding sources that will be used to pay for program costs; description of program services and implementation schedule; the term of the agreement, not to exceed five years; the employer's agreement to interview graduates for full-time positions and provide hiring preference, for employers with more than four sponsored participants; certification that a job offer will be made to at least 25 percent of those participants that complete the program; an agreement by the employer to provide a wage level of no less than 200 percent of the federal poverty guideline for a family of two; a provision that the employer does not have to fulfill the job offer requirement if the employer experiences an economic downturn; a provision that the participants will agree to interview with the employer following completion of the program; and default procedures.

261—20.7(78GA,HF772,SF465) Monitoring. IDED will monitor ACE PIAP projects to ensure compliance with all program requirements.

261—20.8(78GA,HF772,SF465) Customer tracking system. Participants in the ACE program shall be included in the customer tracking system implemented by IWD. In order to achieve this, social security numbers on all ACE program trainees will be required.

261—20.9(78GA,HF772,SF465) Program costs recalculation. Program costs shall be calculated or recalculated on an annual basis based on the required program services for a specific number of participants. Agreement updates reflecting this recalculation must be submitted to IDED annually to review compliance with program parameters.

These rules are intended to implement 1999 Iowa Acts, House File 772 and Senate File 465.

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CHAPTER 24
EMERGENCY SHELTER GRANTS PROGRAM

261—24.1(PL100-628) Purpose. The program is designed to help improve the quality of services to the homeless, to make available needed services, to help meet the costs of operating essential social services to homeless individuals so that these persons have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance homeless persons need to improve their situations.

261—24.2(PL100-628) Definitions.

"Applicant" means a provider of homeless services applying for funds through the ESGP program.

"ESG" or *"ESGP"* means the emergency shelter grants program.

"Grantee" means a qualifying city government, county government, or nonprofit organization receiving funds under this chapter.

"Homeless" or *"homeless individual"* means:

1. An individual who lacks a fixed, regular, and adequate nighttime residence; and
2. An individual who has a primary nighttime residence that is:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
- An institution that provides a temporary residence for individuals intended to be institutionalized; or
- A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

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

"IDED" means the Iowa department of economic development.

"Major rehabilitation" means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

"Nonprofit recipient" means any private nonprofit organization providing assistance to the homeless to which a unit of general local government distributes ESGP funds. For purposes of this chapter, a nonprofit recipient is a subgrantee.

"Obligated" means that the grantee has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. Grant amounts awarded by IDED by a written agreement or letter of award requiring payment from the grant amounts are obligated.

"Private nonprofit organization" means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board, and
3. Practices nondiscrimination in the provision of services to clients.

"Rehabilitation" means labor, materials, tools, and other costs of improving buildings including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings.

"Renovation" means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

"Value of the building" means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee.

261—24.3(PL100-628) Eligible applicants. City governments, county governments, and private nonprofit organizations are eligible applicants under the emergency shelter grants program.

261—24.4(PL100-628) Eligible activities. Eligible activities are based on guidelines established by the Stewart B. McKinney Homeless Assistance Amendment Act of 1988 and further defined in 24 Code of Federal Regulations Part 576 (June 1, 1999). Activities assisted by this program may include only the following:

1. Rehabilitation, renovation, or conversion of buildings for use as providers of services for the homeless.
2. Provision of essential services if the service is a new service or a quantifiable increase in the level of service. No more than 30 percent of the IDED annual grant amount may be used for this purpose.
3. Payment of normal operating expenses that include staff salaries, maintenance, insurance, utilities, furnishings, and all other documented normal operating expenses.
4. Payment for eligible activities that assist in prevention of homelessness. Grants may be made for homeless prevention as long as the total amount of such grants does not exceed 30 percent of the total emergency shelter grants program allocation. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent for a family to acquire its own apartment; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.
5. Administrative costs. A grantee may use a portion of a grant received for administrative purposes as determined by IDED. The maximum allowed for these administrative costs shall be 5 percent of the state ESGP allocation. IDED reserves the authority for distribution of administrative funds.

261—24.5(PL100-628) Ineligible activities. The general rule is that any activity that is not authorized under the provision of P.L. 100-628 is ineligible to be carried out with emergency shelter grants program funds. The following are items specially listed as ineligible in 24 Code of Federal Regulations Part 576 (June 1, 1999).

1. Acquisition of an emergency shelter for the homeless;
2. Renting commercial, transient accommodations for the homeless;
3. Rehabilitation services, such as preparation of work specification, loan processing, or inspections;
4. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities.

261—24.6(PL100-628) Application procedures. The Iowa department of economic development will request applications from eligible applicants as often as the state expects funding from the U.S. Department of Housing and Urban Development (HUD). Applicants will be given at least 30 days in which to reply to the state's request. The Iowa department of economic development will make funding decisions in conjunction with the time frame established by HUD. The application must be submitted on forms prescribed by IDED and must, at a minimum, include the amount of funds requested, the need for the funds, documentation of other available funding sources, source of required local match, and estimated number of persons to be served by the applicant (daily average).

261—24.7(PL100-628) Application review process. Applications will be reviewed by a panel of the staff of the Iowa department of economic development and coordinated with representatives of other homeless assistance programs. Applications will be reviewed to determine eligibility based on the following criteria:

1. The identified community need for the funds, including the number of clients served, the unmet need in the community, geographic area of service, and common factors leading to the need for the service.
2. The comprehensiveness and flexibility of the program, including how the applicant strives to meet the total and special needs of its clients and how homeless assistance is integrated with other programs.
3. The accessibility of the applicant's services to its clients, including how well the applicant promotes its services within the community, any barriers to service, and any network with other service providers in the area.
4. How well the applicant deals with cultural diversity within its community.
5. Any partnerships or collaborations between the applicant and other programs within the organization or with other organizations performing similar or complementary services.
6. The unique role of the applicant within the area of service, including any innovative parts of the organization's project that would make it stand out.
7. A description of specific outcome measures for short- or long-term objectives for clients.
8. The experience of the applicant in administering an ESGP contract.
9. How well the applicant maximizes or leverages resources.

If an application contains an activity determined to be ineligible under the ESG program within the request for funds, the ineligible activity will be deleted from the application or referred to another funding source, if applicable.

Staff reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application. Staff may also review applications with the department of human rights, department of human services, or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources. Based on the review process, IDED may revise the overall funding request by activity or funding level and recommend a final funding figure to the director of IDED for approval. A city or county government may be determined, at the discretion of IDED, to administer a contract for multiple applicants within a prescribed geographic area. IDED reserves the right to negotiate all aspects of a funding request prior to final approval.

261—24.8(PL100-628) Matching requirement. Each recipient of emergency shelter grants program funds must match the grant amount with an equal amount. This may come from the grantee, or through nonprofit recipients whose contracts are being administered by a local city or county government. In calculating the amount of matching funds, the following may be included: the value of any donated material or building, the value of any lease on a building, any salary paid to staff of the grantee or to any state recipient in carrying out the emergency shelter program; and the time and services contributed by volunteers at the rate of $5 per hour. For purposes of this rule, IDED will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish fair market value.

The state may grant an exemption of matching funds up to a maximum of $100,000 of the state allocation received from HUD for the recipients least capable of providing such matching amounts. The recipient must document its need to participate in this exemption from matching requirements.

261—24.9(PL100-628) Grant awards. Grants will be awarded to individual applicants. IDED may award a grant to a city or county government on behalf of multiple applicants, at the discretion of IDED and with the approval of those applicants affected and the local governmental unit. If a city or county is designated as the grantee of an award, that city or county will be responsible for coordination of requests for funds by eligible private nonprofit recipients within its jurisdiction by consolidating them into one contract. IDED reserves the right to negotiate the amount of the grant award, the scale of the project, and alternative methods in completing the project.

261—24.10(PL100-628) Restrictions placed on grantees.

24.10(1) *Use as provider of homeless services.* Any building for which emergency shelter grants program funds are used must be maintained as a provider of homeless services for not less than a three-year period, or for not less than a ten-year period if the grant amounts are used for major rehabilitation or conversion of the building. All other operating and maintenance costs have a one-year requirement. In calculating the applicable time period, the three- and ten-year periods are determined as follows:

a. In the case of a building that was not operated as a provider of services for the homeless before receipt of grant funds, on the date of initial occupancy as a provider of services to the homeless.

b. In the case of a building that was operated as a provider of services to the homeless before the receipt of grant funds, on the date that grant funds are first obligated to the homeless service provider.

24.10(2) *Building standards.* Any building for which emergency shelter grants program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must meet the local government standard of being safe and in sanitary condition.

24.10(3) *Assistance to the homeless.* Homeless individuals must be given assistance in obtaining:

a. Appropriate supportive services including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

b. Other federal, state, local, and private assistance available to them.

24.10(4) *Participation by homeless individuals and families.*

a. Recipients of ESGP funds must certify that they involve, through employment, volunteer services, or otherwise, homeless individuals and families, to the maximum extent practicable, in construction, renovating, maintaining, and operating assisted facilities.

b. Local government recipients or qualified subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policy-making entity. The Secretary of HUD may grant a waiver to the recipient if the recipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

24.10(5) *Termination of assistance.* Recipients or qualified subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. The formal process must include a hearing process recognizing the rights of individuals.

261—24.11(PL100-628) Compliance with applicable federal and state laws and regulations. All grantees shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Amendment Act of 1988 and its implementing regulations. Use of ESGP funds must comply with the following additional requirements.

24.11(1) *Nondiscrimination and equal opportunity.* All grantees must comply with the following:

a. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d) and its implementing regulations at 24 CFR Part 1 (June 1, 1999).

b. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07).

d. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act.

24.11(2) *Auditing.* Auditing requirements are as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

261—24.12(PL100-628) Administration.

24.12(1) *Contracts.* Upon selection of an application for funding, IDED will issue a contract. The contract shall be between IDED and the designated grantee as determined by IDED. If a local city or county government is designated as the grantee, the private nonprofit providers covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including these rules. These rules and applicable federal and state laws and regulations become part of the contract.

Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Grant awards may be conditioned upon the timely completion of these requirements.

24.12(2) *Record keeping and retention.* Financial records, supporting documents, statistical records, and all other records pertinent to the grant program shall be retained by the grantee. Private nonprofit recipients covered through an ESGP contract from a local city or county government are responsible for ensuring that pertinent records of their ESGP funds be made available to the administering city or county and to IDED upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after final closeout and, if applicable, until audit procedures are completed and accepted by IDED;

b. Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IDED shall have access to all books, accounts, documents, records, and other property belonging to or in use by a grantee pertaining to the receipt of assistance under these rules.

24.12(3) *Reporting requirements.* Grantees shall submit reports to IDED as prescribed in the contract. These reports are:

a. CHIP data reports. All recipients of ESGP funds are required to submit monthly reports on clients served through the counting homeless Iowans program (CHIP) as prescribed by IDED.

b. ESGP Form-1, request for funds. Grantees must submit requests for funds as needed during the contract year as prescribed by IDED.

IDED may perform any review or field inspections it deems necessary to ensure program compliance, including review of grantee records and reports. When problems of compliance are noted, IDED may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the implementation of 24.12(5).

24.12(4) *Amendments to contracts.* Any substantive change to a funded emergency shelter operation grants program will be considered a contract amendment. Substantive changes include: contract time extensions, budget revisions, and significant alterations of existing activities that will change the scope, location, objectives, or scale of the approved activities or beneficiaries. An amendment must be requested in writing by the chief elected or appointed official of the grantee. No amendment will be valid until approved in writing by IDED.

24.12(5) *Remedies for noncompliance.* At any time before project closeout, IDED may, for cause, find that a grantee is not in compliance with the requirements under this program. At IDED's discretion, remedies for noncompliance may include the following:

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

b. Condition a future grant.

c. Direct the grantee to stop incurring costs with grant amounts.

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

e. Reduce the levels of funds the recipient would otherwise be entitled to receive.

f. Elect not to provide future grant funds to the recipient until appropriate actions are taken to ensure compliance.

Reasons for a finding of noncompliance include, but are not limited to: the grantee's use of program funds for activities not described in its application, the grantee's failure to complete approved activities in a timely manner, the grantee's failure to comply with any applicable state or federal rules or regulations, or the lack of continuing capacity by the grantee to carry out the approved program in a timely manner.

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

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CHAPTER 29
HOMELESS SHELTER OPERATION GRANTS PROGRAM

261—29.1(77GA,ch1225) Purpose. The program is designed to help improve the quality of services to the homeless; to make available additional needed services; and to help meet the costs of operating essential social services to homeless individuals so that these persons have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance homeless persons need to improve their situations.

261—29.2(77GA,ch1225) Definitions.

"Applicant" means a provider of homeless services applying for funds through the homeless shelter operation grants program.

"Grantee" means a qualifying city government, county government, or nonprofit organization receiving funds under this chapter.

"Homeless" or *"homeless individual"* means:

1. An individual who lacks a fixed, regular, and adequate nighttime residence; and
2. An individual who has a primary nighttime residence that is:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
- An institution that provides a temporary residence for individuals intended to be institutionalized; or
- A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

"HSOG" means the homeless shelter operation grants program.

"IDED" means the Iowa department of economic development.

"Legislature" means the Iowa general assembly.

"Nonprofit recipient" means any private nonprofit organization providing assistance to the homeless to which a unit of general local government distributes HSOG funds. For purposes of this chapter, a nonprofit recipient is a subgrantee.

"Obligated" means that the grantee has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. Grant amounts awarded by IDED by a written agreement or letter of award requiring payment from the grant amounts are obligated.

"Private nonprofit organization" means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board, and
3. Practices nondiscrimination in the provision of assistance to homeless clients.

"Rehabilitation" means labor, materials, tools, and other costs of improving buildings including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings.

"Renovation" means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

"Value of the building" means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee.

261—29.3(77GA,ch1225) Eligible applicants. City governments, county governments, and private nonprofit organizations are eligible applicants under the homeless shelter operation grants program.

261—29.4(77GA,ch1225) Eligible activities. Activities assisted by this program may include but are not limited to the following:

1. Rehabilitation, renovation, or conversion of buildings for use as providers of services for the homeless.
2. Provision of essential services if the service is a new service or a quantifiable increase in the level of service.
3. Payment of normal operating expenses that include staff salaries, maintenance, insurance, utilities, furnishings, and all other documented normal operating expenses.
4. Payment for eligible activities that assist in homeless prevention. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent for a family to acquire its own apartment; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.
5. Administrative costs. A grantee may use a portion of a grant received for administrative purposes as determined by IDED. The maximum allowed for these administrative costs shall be 5 percent of the state of Iowa's HSOG allocation. IDED reserves the authority to determine the distribution of administrative funds.

261—29.5(77GA,ch1225) Ineligible activities. The general rule is that any activity that is not allowed under 261—29.4(77GA,ch1225) is ineligible to be carried out with homeless shelter operation grants program funds. The following items are ineligible under this rule:

1. Acquisition of an emergency shelter for the homeless;
2. Renting commercial, transient accommodations for the homeless;
3. Rehabilitation services, such as preparation of work specification, loan processing, or inspections;
4. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities.

261—29.6(77GA,ch1225) Application procedures. The Iowa department of economic development will request applications from eligible applicants as often as the state expects funding for the HSOG program. Applicants will be given at least 30 days in which to reply to the state's request for applications. The Iowa department of economic development will make funding decisions in the U.S. Department of Housing and Urban Development's Emergency Shelter Grants Program (ESGP) which is a federal program utilizing the same application procedure as the HSOG program. The application must be submitted on forms prescribed by IDED and the application must, at a minimum, include the amount of funds requested, the need for the funds, documentation on other available funding sources, and estimated number of persons to be served by the applicant (daily average).

261—29.7(77GA,ch1225) Application review process. Applications will be reviewed by a panel of the staff of the Iowa department of economic development and coordinated with representatives of other homeless assistance programs. Applications will be reviewed to determine basic eligibility based on the following criteria:

1. The identified community need for the funds, including the number of clients served, the unmet need in the community, geographic area of service, and common factors leading to the need for the service.
2. The comprehensiveness and flexibility of the program, including how the applicant strives to meet the total needs of its clients, how special needs of clients are not being met, and how homeless assistance is integrated with other programs.
3. The accessibility of the program to the community, including how well the applicant promotes its services within the community, any barriers to service, and any network with other service providers in the area.
4. How the applicant deals with cultural diversity within its community.
5. Partnerships or collaborations between the applicant and other programs within the organization or with other organizations performing similar or complementary services.
6. Description of the unique role of the applicant within the area of service, including innovative parts of the applicant's project that would make it stand out.
7. A description of specific outcome measures for short- or long-term objectives for clients.
8. The experience of the applicant in administering an HSOG program contract.
9. How well the applicant maximizes or leverages resources.

If an application contains an activity determined to be ineligible under the HSOG program within the request for funds, the ineligible activity will be deleted from the application or referred to another funding source, if applicable.

Staff reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application. Staff may also review applications with the department of human rights, department of human services, or other groups with an expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources. Based on the review process, IDED may revise the overall funding request by activity or funding level and recommend a final funding figure to the director of IDED for approval. A city or county government may be determined, at the discretion of IDED, to administer a contract for multiple applicants within a prescribed geographic area. IDED reserves the right to negotiate all aspects of a funding request prior to final approval.

261—29.8(77GA,ch1225) Matching requirement. There is no matching requirement with the HSOG program.

261—29.9(77GA,ch1225) Grant awards. Grants will be awarded to individual applicants. IDED may award a grant to a local city or county government on behalf of multiple applicants, at the discretion of IDED and with the approval of those applicants affected and the local governmental unit. If a city or county is designated as the grantee of an award, that city or county will be responsible for coordination of requests for funds by eligible private nonprofit recipients within its jurisdiction by consolidating them into one contract. IDED reserves the right to negotiate the amount of the grant award, the scale of the project, and alternative methods in completing the project.

261—29.10(77GA,ch1225) Compliance with applicable federal and state laws and regulations. All grantees shall comply with the Iowa Code governing activities performed under this program. Use of HSOG funds must comply with the following nondiscrimination and equal opportunity requirements:

1. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d) and its implementing regulations at 24 CFR Part 1.

2. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

3. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07).

4. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act.

261—29.11(77GA,ch1225) Administration.

29.11(1) *Contracts.* Upon selection of an application for funding, IDED will issue a contract. The contract shall be between IDED and the designated grantee as determined by IDED. If a local city or county government is designated as the grantee, the private nonprofit providers covered through the contract shall remain responsible for adherence to the requirements of the HSOG program, including these rules. These rules and state laws and regulations become part of the contract.

Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Grant awards may be conditioned upon the timely completion of these requirements.

29.11(2) *Record keeping and retention.* Financial records, supporting documents, statistical records, and all other records pertinent to the grant program shall be retained by the grantee for three years. Private nonprofit recipients covered through an HSOG contract from a local city or county government are responsible for ensuring that pertinent records of their HSOG funds be made available to the administering city or county and to IDED upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after final closeout and, if applicable, until audit procedures are completed and accepted by IDED;

b. Representatives of the state auditor's office and IDED shall have access to all books, accounts, documents, records, and other property belonging to or in use by a grantee pertaining to the receipt of assistance under these rules.

29.11(3) *Reporting requirements.* Grantees shall submit reports to IDED as prescribed in the contract. These reports are:

a. CHIP data reports. All recipients of HSOG funds are required to submit monthly reports on clients served through the counting homeless Iowans program (CHIP) as prescribed by IDED.

b. HSOG Form-1, request for funds. Grantees must submit requests for funds as needed during the contract year as prescribed by IDED.

IDED may perform any review or field inspections it deems necessary to ensure program compliance, including review of grantee records and reports. When problems of compliance are noted, IDED may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the implementation of 29.11(5).

29.11(4) *Amendments to contracts.* Any substantive change to a funded homeless shelter operation grants program will be considered a contract amendment. Substantive changes include contract time extensions, budget revisions, and significant alterations of existing activities that will change the scope, location, objectives, or scale of the approved activities or beneficiaries. An amendment must be requested in writing by the chief elected or appointed official of the grantee. No amendment will be valid until approved in writing by IDED.

29.11(5) *Remedies for noncompliance.* At any time before project closeout, IDED may, for cause, find that a grantee is not in compliance with the requirements under this program. At IDED's discretion, remedies for noncompliance may include the following:

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

b. Condition a future grant.

c. Direct the grantee to stop incurring costs with grant amounts.

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

e. Reduce the levels of funds the recipient would otherwise be entitled to receive.

f. Elect not to provide future grant funds to the recipient until appropriate actions are taken to ensure compliance.

Reasons for a finding of noncompliance include, but are not limited to: the grantee's use of program funds for activities not described in its application, the grantee's failure to complete approved activities in a timely manner, the grantee's failure to comply with any applicable state rules or regulations, or the lack of continuing capacity by the grantee to carry out the approved program in a timely manner.

These rules are intended to implement 1998 Iowa Acts, chapter 1225, section 1(3)*"f."*

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CHAPTER 30
JOB OPPORTUNITIES FOR PERSONS WITH DISABILITIES PROGRAM

261—30.1(76GA,SF2470) Purpose. The purpose of this program is to provide technical assistance grants to Iowa nonprofit organizations providing training and employment opportunities for individuals with disabilities. The grant funds may be used for the direct purchase of technical services to further integrated employment initiatives at the local level. This program encourages: analytical decision making, comprehensive business planning, and pooling of resources among organizations/community groups/entities. The program is a joint effort by the department of education, division of vocational rehabilitation services; the Iowa department for the blind; and the Iowa department of economic development.

261—30.2(76GA,SF2470) Definitions.

"DVRS" means the Iowa department of education, division of vocational rehabilitation services.

"IDB" means the Iowa department for the blind.

"IDED" means the Iowa department of economic development.

"Client" means an individual who is an eligible client of the department of education, division of vocational rehabilitation services, or the Iowa department for the blind.

261—30.3(76GA,SF2470) Eligible applicant. Iowa nonprofit organizations providing training and employment opportunities for individuals with disabilities may apply. A consortium of eligible applicants may also apply. If a consortium applies, a lead Iowa nonprofit organization providing training and employment opportunities for individuals with disabilities must be designated in the application. This lead entity shall be responsible for all contractual obligations.

261—30.4(76GA,SF2470) Project awards. An applicant may receive an award of up to $10,000 to conduct a project; examples of projects include, but are not limited to, the following: business feasibility studies, business planning, business organization structure analysis, implementation planning including accommodation of facilities and equipment for people with disabilities, market research/planning/analysis, and business specific technical assistance.

261—30.5(76GA,SF2470) Eligible and ineligible use of grant funds.

30.5(1) *Eligible expenditures of grant funds.* Expenses eligible for reimbursement under the program include:

a. Fees to be paid to a private consultant to purchase technical assistance. The consultant name, address, biography including references and past experience, and fee schedule must be included in the application.

b. Fees to be paid to a council of governments, not-for-profit organization, or higher educational institution, including public and private universities and colleges and merged area schools, to purchase technical assistance.

30.5(2) *Ineligible expenditures of grant funds.* Expenses ineligible for reimbursement under the program include, but are not limited to, the following:

a. Operating capital or equipment.

b. The purchase of office equipment or office rental.

c. Meeting expenses (e.g., room rental).

d. Application preparation.

e. Administrative costs.

f. Purchase of land, buildings, or improvements.

g. Any proposal to duplicate the services of another program or organization.

261—30.6(76GA,SF2470) General guidelines for applications.

30.6(1) *Letters of endorsement.*

a. If services will be purchased from a not-for-profit entity or higher educational institution, including public and private universities and colleges and merged area schools, the application shall include a letter from the director of the not-for-profit entity or the appropriate official within the educational institution stating the staff assignment, agreement with the proposed timetable, and fee structure to the project. If services from a council of governments will be purchased, the application shall include a letter from the director of the council of governments stating the staff assignment, agreement with the proposed timetable, and fee structure to the project.

b. If a consultant is to be hired, a letter from the consultant shall be included stating: name, address, biography (including references and past experience); a detailed description of the technical assistance to be provided; and a fee schedule for the proposed project.

c. Applications shall include a letter of cooperation from any other fee or nonfee source pledging technical assistance or services to the project.

d. Applications shall include a letter of endorsement from the DVRS area supervisor and the local representative for IDB.

30.6(2) *Timetable.* Projects cannot exceed 12 months, unless a longer period is specified in the originally approved application or by the consensus of the review committee.

30.6(3) *Applications.* Applications from eligible applicants will be accepted on an ongoing basis throughout the year as long as funds are available.

30.6(4) *Applicant submission.* Applications shall be submitted to the IDED Program Administrator, Division of Community and Rural Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available from the DVRS, the IDB, and the IDED.

30.6(5) *Application contents.* Required contents of the applications include:

a. A brief statement of existing needs, issues, and capabilities of the applicant to complete the project.

b. A statement of the estimated economic impact and the impact on individuals with disabilities.

c. A work plan and objectives.

d. Timetable and budget.

CHAPTER 65
RECREATION, ENVIRONMENT, ART AND CULTURAL HERITAGE INITIATIVE (REACH) — COMMUNITY ATTRACTION AND TOURISM DEVELOPMENT PROGRAM

261—65.1(78GA,HF772) Purpose. The community attraction and tourism development program, a component of the recreation, environment, art and cultural heritage initiative (REACH), is designed to assist communities in the development and creation of multiple purpose attraction and tourism facilities.

261—65.2(78GA,HF772) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific activities or projects assisted with community attraction and tourism development funds.

"Attraction" means a permanently located recreational, cultural, or entertainment activity, or event that is available to the general public.

"Community" or *"political subdivision"* means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

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

"Economic development organization" means an entity organized to position a community to take advantage of economic development opportunities and strengthen a community's competitiveness as a place to work and live.

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

"Fund" means the community attraction and tourism fund established pursuant to 1999 Iowa Acts, House File 772, section 3(2).

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

"Local support" means endorsement by local individuals or entities that have a substantial interest in a project, particularly by those whose opposition or indifference would hinder the activity's success.

"Private organization" means a corporation, partnership, or other organization that is operated for profit.

"Public organization" means a not-for-profit economic development organization or other not-for-profit organization that sponsors or supports community or tourism attractions and activities.

"Recipient" means the entity under contract with IDED to receive community attraction and tourism development funds and undertake the funded activity.

"Subrecipient" means a private organization or other entity operating under an agreement or contract with a recipient to carry out a funded community attraction and tourism development activity.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. "Vertical infrastructure" does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

261—65.3(78GA,HF772) Program components and eligibility requirements. There are three direct components to the community attraction and tourism development program. The first component relates to community attraction, tourism or leisure activities that are sponsored by political subdivisions and public organizations. This component is referred to as the community attraction component. The second component relates to the encouragement and creation of public-private partnerships for exploring the development of new community tourism and attraction activities. This component is referred to as the project development component. A third component provides community attraction and tourism development funds for interim financing for eligible activities under the community attraction component. This component is referred to as the interim financing component.

65.3(1) *Community attraction component.* The objective of the community attraction component is to provide financial assistance for community-sponsored attraction and tourism activities. Community attraction activities may include but are not limited to the following: museums, theme parks, cultural and recreational centers, sports arenas and other attractions.

65.3(2) *Project development component.* The department, at its discretion, may also provide funding for project development related to proposed activities under this program. Project development assistance could be for the purpose of assisting in departmental evaluation of proposals, or could be one of the proposed activities in a funding request whose further project development could reasonably be expected to lead to an eligible community attraction and tourism development activity. Feasibility studies are eligible for assistance under this component.

65.3(3) *Interim financing component.*

a. The objective of the community attraction and tourism development interim financing component is to provide short-term financial assistance for eligible community attraction and tourism activities. Financial assistance may be provided as a float loan. A float loan may be made only for activities that can provide the department with an irrevocable letter of credit or equivalent security instrument from a lending institution rated AA or better, assignable to IDED in an amount equal to or greater than the principal amount of the loan.

b. Applications for float loans shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority. Applications for float loans shall meet all other criteria required for the community attraction component.

261—65.4(78GA,HF772) Allocation of funds.

65.4(1) Except as otherwise noted in this rule, all community attraction and tourism development funds shall be awarded for activities as specified in rule 65.3(78GA,HF772).

65.4(2) IDED may retain a portion of community attraction and tourism development funds for administrative costs associated with program implementation and operation. The percent of funds retained for administrative costs shall not exceed 1 percent in any year.

65.4(3) For the fiscal year beginning July 1, 1999, $400,000 is allocated from the fund to be used to provide grants to up to three political subdivisions, in an amount not to exceed $200,000 per grant. The purpose of the three grants is to study the feasibility and viability of developing and creating a multiple-purpose attraction and tourism facility.

261—65.5(78GA,HF772) Eligible applicants. Eligible applicants for community attraction and tourism development funds include political subdivisions and public organizations.

65.5(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

65.5(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—65.6(78GA,HF772) Eligible activities and forms of assistance—all components.

65.6(1) Eligible activities include those which are related to a community or tourism attraction, and which would position a community to take advantage of economic development opportunities in tourism and strengthen a community's competitiveness as a place to work and live. Eligible activities include building construction or reconstruction, rehabilitation, conversion, acquisition, demolition for the purpose of clearing lots for development, site improvement, equipment purchases, and other activities as may be deemed appropriate by IDED.

65.6(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, float loans under the interim financing component, interest subsidies, deferred payment loans, forgivable loans, loan guarantees, or other forms of assistance as may be approved by IDED.

65.6(3) Financial assistance for an eligible activity may be provided in the form of a multiyear award to be paid in increments over a period of years, subject to the availability of funds.

65.6(4) IDED reserves the right to negotiate the amount and terms of an award.

65.6(5) Recipients may use community attraction and tourism funds in conjunction with other sources of funding including the local recreation infrastructure grants program administered by the department of natural resources and the Iowa historic site preservation program administered by the department of cultural affairs. IDED may consult with appropriate staff from the department of cultural affairs and the department of natural resources to coordinate the review of applications under the programs.

261—65.7(78GA,HF772) Ineligible projects.

65.7(1) The department shall not approve an application for assistance under this program to refinance an existing loan.

65.7(2) An applicant may not receive more than one award under this program for a single project. However, previously funded projects may receive an additional award(s) if the applicant demonstrates that the funding is to be used for a significant expansion of the project, a new project, or a project that results from previous project-development assistance.

65.7(3) The department shall not approve an application for assistance in which community attraction and tourism development funding would constitute more than 50 percent of the total project costs. A portion of the resources provided by the applicant for project costs may be in the form of in-kind or noncash contributions.

261—65.8(78GA,HF772) Threshold application requirements. To be considered for funding under the community attraction and tourism development program, an application must meet the following threshold requirements:

65.8(1) There must be demonstrated local support for the proposed activity.

65.8(2) A need for community attraction and tourism development program funds must exist after other financial resources have been identified for the proposed activity.

65.8(3) Some portion of the proposed activity must involve the creation or renovation of vertical infrastructure.

261—65.9(78GA,HF772) Application review criteria. Applications meeting the threshold requirements of rule 65.8(78GA,HF772) will be reviewed by IDED staff. IDED staff shall evaluate and rank applications based on the following criteria:

65.9(1) *Feasibility.* The feasibility of the existing or proposed facility to remain a viable enterprise (0-25 points). Rating factors for this criterion include, but are not limited to, the following: initial capitalization, project budget, financial projections, marketing analysis, marketing plan, management team, and operational plan. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

65.9(2) *Economic impact (0-25 points).* Number of jobs created and other measure of economic impact including long-term tax generation. The evaluation of the economic impact of a proposed activity shall also include a review of the wages, benefits, including health benefits, safety, and other attributes of the activity that would improve the quality of attraction and tourism employment in the community. Additionally, the economic impact of an activity may also be reviewed based on the degree to which the activity enhances the quality of life in a community and contributes to the community's efforts to retain and attract a skilled workforce. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

65.9(3) *Leveraged activity.* The degree to which the facility will stimulate the development of other community attraction and tourism activities (0-25 points). In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

65.9(4) *Geographic diversity.* The extent to which facilities are located in different regions of the state (0-10 points).

65.9(5) *Local match.* The proportion of local match to be contributed to the project, and the extent of public and private participation (0-15 points).

A minimum score of 65 points is needed for a project to be recommended for funding.

261—65.10(78GA,HF772) Application procedure. Subject to availability of funds, applications are reviewed and rated by IDED staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. The IDED staff may refer applications to the project development component, subject to the availability of funds. Recommendations from the IDED staff will be submitted to the director of the department for final approval, denial or deferral.

65.10(1) Application forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4770.

65.10(2) IDED may provide technical assistance to applicants as necessary. IDED staff may conduct on-site evaluations of proposed activities.

65.10(3) A comprehensive business plan must accompany the application and shall include at least the following information: initial capitalization including a description of sources of funding, project budget, financial projections, marketing analysis, marketing plan, management team, and the operational plan including a time line for implementing the activity. Additionally, applicants shall also provide the following information: the number of jobs to be created, and the wages and benefits associated with those jobs; direct measures of economic impact including long-term tax generation, but excluding the use of economic multipliers; a description of the current attraction and tourism employment opportunities in the community including information about wages, benefits and safety; and a description of how the activity will enhance the quality of life in a community and contribute to the community's efforts to retain and attract a skilled workforce.

261—65.11(78GA,HF772) Administration.

65.11(1) *Administration of awards.*

a. A contract shall be executed between the recipient and IDED. These rules and applicable state laws and regulations shall be part of the contract.

b. The recipient must execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

c. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

d. Awards may be conditioned upon commitment of other sources of funds necessary to complete the activity.

e. Awards may be conditioned upon IDED receipt and approval of an implementation plan for the funded activity.

65.11(2) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in an amount equal to or greater than $500 per request, except for the final draw of funds.

65.11(3) *Record keeping and retention.* The recipient shall retain all financial records, supporting documents and all other records pertinent to the community attraction and tourism development activity for three years after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to community attraction and tourism development funds.

65.11(4) *Performance reports and reviews.* Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

65.11(5) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded activities that change the scope, location, objectives or scale of the approved activity. Amendments must be requested in writing by the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

65.11(6) *Contract closeout.* Upon contract expiration, IDED shall initiate contract closeout procedures.

65.11(7) *Compliance with state and local laws and regulations.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable local regulations.

65.11(8) *Remedies for noncompliance.* At any time before contract closeout, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activity in a timely manner.

These rules are intended to implement 1999 Iowa Acts, House File 772, section 3, subsection 2, and sections 23 and 24.

[Filed emergency 6/18/99—published 7/14/99, effective 7/1/99]

CHAPTER 66
RURAL DEVELOPMENT PROJECTS
Rescinded IAB 7/19/95; effective 8/23/95

PART VI
INTERNATIONAL DIVISION

CHAPTER 67
DIVISION RESPONSIBILITIES

261—67.1(15) Mission. The mission of the division is to promote Iowa goods and services internationally and to favorably position Iowa as a location for foreign development.

261—67.2(15) Activities. The international division provides services in the following areas:

67.2(1) *Strategic counsel and management support on critical initiatives for Iowa's international business community.* Through broad-based programs in trade promotion, investment attraction and technical assistance, the division provides assistance to Iowa companies.

67.2(2) *Trade promotion programs.* The division coordinates a range of trade promotion programs targeted to Iowa exporters. The programs provide enough flexibility that new-to-market companies as well as experienced exporters are able to access programs to assist them in developing their presence in international markets.

67.2(3) *Technical assistance and educational programming.* The division provides businesses with access to educational programs directed toward business development. Representative topics include business practices in different countries, assistance in documentation, and international finance issues. In-house counseling sessions that are tailored to meet the unique requirements of an individual company are also provided by the division.

67.2(4) *Investment attraction.* The division is actively involved in foreign investment attraction in targeted markets. The department's foreign office directors are Iowa's contact people for networking with prospective investors.

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

261—72.1(15) Purpose and limitation.

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

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

261—72.2(15) Definitions.

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

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

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

"Director" means the director of IDED.

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

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

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

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

"Produced in Iowa" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

261—72.7(15) Request for hearing.

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

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

a. The date of filing of the request;

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

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

d. The signature of the requesting party.

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

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

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

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

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CHAPTERS 73 and 74
Reserved

EDUCATION DEPARTMENT[281]

Created by 1986 Iowa Acts, chapter 1245, section 1401.
Prior to 9/7/88, see Public Instruction Department[670]
(Replacement pages for 9/7/88 published in 9/21/88 IAC)

CHAPTER 12
GENERAL ACCREDITATION STANDARDS
[Prior to 9/7/88, see Public Instruction Department[670] Ch 4]

PREAMBLE

The goal for the early childhood through twelfth grade educational system in Iowa is to improve the learning, achievement, and performance of all students so they become successful members of a community and workforce. It is expected that each school and school district shall continue to improve its educational system so that more students will increase their learning, achievement, and performance.

Accreditation focuses on an ongoing school improvement process for schools and school districts. However, general accreditation standards are the minimum requirements that must be met by an Iowa public school district to be accredited. A public school district that does not maintain accreditation shall be merged, by the state board of education, with one or more contiguous school districts as required by Iowa Code subsection 256.11(12). A nonpublic school must meet the general accreditation standards if it wishes to be designated as accredited for operation in Iowa.

General accreditation standards are intended to fulfill the state's responsibility for making available an appropriate educational program that has high expectations for all students in Iowa. The accreditation standards ensure that each child has access to an educational program that meets the needs and abilities of the child regardless of race, color, national origin, gender, disability, religion, creed, marital status, geographic location, or socioeconomic background.

With local community input, school districts and accredited nonpublic schools shall incorporate accountability for student achievement into comprehensive school improvement plans designed to increase the learning, achievement, and performance of all students. As applicable, and to the extent possible, comprehensive school improvement plans shall consolidate federal and state program goal setting, planning, and reporting requirements. Provisions for multicultural and gender fair education, technology integration, global education, gifted and talented students, at-risk students, students with disabilities, and the professional development of all staff shall be incorporated, as applicable, into the comprehensive school improvement plan. See subrules 12.5(8) to 12.5(13), 12.7(1), and 12.8(1).

DIVISION I
GENERAL STANDARDS

281—12.1(256) General standards.

12.1(1) *Schools and school districts governed by general accreditation standards.* These standards govern the accreditation of all prekindergarten, if offered, or kindergarten through grade 12 school districts operated by public school corporations and the accreditation, if requested, of prekindergarten or kindergarten through grade 12 schools operated under nonpublic auspices. Each school district shall take affirmative steps to integrate students in attendance centers and courses. Schools and school districts shall collect and annually review district, attendance center, and course enrollment data on the basis of race, national origin, gender, and disability. Equal opportunity in programs shall be provided to all students regardless of race, color, national origin, gender, disability, religion, or creed. Nothing in this rule shall be construed as prohibiting any bona fide religious institution from imposing qualifications based upon religion when such qualifications are related to a bona fide religious purpose.

12.1(2) *School board.* Each school or school district shall be governed by an identifiable authority which shall exercise the functions necessary for the effective operation of the school and referred to in these rules as the "board."

12.1(3) *Application for accreditation.* The board of any school or school district that is not accredited on the effective date of these standards and which seeks accreditation shall file an application with the director, department of education, on or before the first day of January of the school year preceding the school year for which accreditation is sought.

12.1(4) *Accredited schools and school districts.* Each school or school district receiving accreditation under the provisions of these standards shall remain accredited except when by action of the state board of education it is removed from the list of accredited schools maintained by the department of education in accordance with Iowa Code subsections 256.11(11) and 256.11(12).

12.1(5) *When nonaccredited.* A school district shall be nonaccredited on the day after the date it is removed from the list of accredited schools by action of the state board of education. A nonpublic school shall be nonaccredited on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

12.1(6) *Alternative provisions for accreditation.* School districts may meet accreditation requirements through the provisions of Iowa Code sections 256.13, nonresident students; 273.7A, services to school districts; 279.20, superintendent—term; 280.15, joint employment and sharing; 282.7, attending in another corporation—payment; and 282.10, whole grade sharing. Nonpublic schools may meet accreditation requirements through the provisions of Iowa Code section 256.12.

12.1(7) *Minimum school calendar and day of instruction.* Each board shall adopt a school calendar that identifies specific days for student instruction, staff development and in-service time, and time for parent-teacher conferences. The length of the school calendar does not dictate the length of contract or days of employment for instructional and noninstructional staff. The school calendar may be operated anytime during the school year of July 1 to June 30 as defined by Iowa Code section 279.10. A minimum of 180 days of the school calendar, for school districts beginning no sooner than a day during the calendar week in which the first day of September falls, shall be used for student instruction. However, if the first day of September falls on a Sunday, school may begin any day during the calendar week preceding September 1. These 180 days shall meet the requirements of "day of school" in subrule 12.1(8), "minimum school day" in subrule 12.1(9), and "day of attendance" in subrule 12.1(10). (Exception: A school or school district may, by board policy, excuse graduating seniors up to five days of instruction after school or school district requirements for graduation have been met.) If additional days are added to the regular school calendar because of inclement weather, a graduating senior who has met the school district's requirements for graduation may be excused from attendance during the extended school calendar. A school or school district may begin its school calendar earlier for other educational purposes involving instructional and noninstructional staff.

12.1(8) *Day of school.* A day of school is a day during which the school or school district is in session and students are under the guidance and instruction of the instructional professional staff. School shall be considered in session during parent-teacher conferences as well as during activities such as field trips if students are engaged in programs or activities under the guidance and direction of the instructional professional staff. All grade levels of the school or school district must be operated and available for attendance by all students. An exception is if either the elementary or secondary grades are closed and provided that this time missed is made up at some other point during the school calendar so as to meet the minimum of 180 days of instruction for all grades 1 through 12. If a classroom or attendance center is closed for emergency health or safety reasons but the remainder of the school or school district is in operation, the day may be counted as a day of school.

12.1(9) *Minimum school day.* A school day shall consist of a minimum of 5½ hours of instructional time for all grades 1 through 12. The minimum hours shall be exclusive of the lunch period. Passing time between classes as well as time spent on parent-teacher conferences may be counted as part of the 5½-hour requirement. The school or school district may record a day of school with less than the minimum instructional hours if emergency health or safety factors require the late arrival or early dismissal of students on a specific day; or if the total hours of instructional time for all grades 1 through 12 in any five consecutive school days equal a minimum of 27½ hours, even though any one day of school is less than the minimum instructional hours because staff development is provided for the instructional professional staff or because parent-teacher conferences have been scheduled beyond the regular school day.

Furthermore, if the total hours of instructional time for the first four consecutive days equal at least 27½ hours because parent-teacher conferences are held beyond the regular school day, a school or school district may record zero hours of instructional time on the fifth consecutive school day as a minimum school day.

12.1(10) *Day of attendance.* A day of attendance shall be a day during which students were present and under the guidance and instruction of the instructional professional staff. When staff development designated by the board occurs outside of the time required for a "minimum school day," students shall be counted in attendance. (Note exceptions in subrules 12.1(8) and 12.1(9).)

12.1(11) *Kindergarten.* The number of instructional days within the school calendar and the length of the school day for kindergarten shall be defined by the board. This subrule applies to an accredited nonpublic school only if it offers kindergarten.

DIVISION II
DEFINITIONS

281—12.2(256) Definitions. For purposes of these rules, the following definitions shall apply:

"Annual improvement goals" means the desired one-year rate of improvement for students. Data from multiple measures may be used to determine the rate of improvement.

"Baseline data" means information gathered at a selected point in time and used thereafter as a basis from which to monitor change.

"Benchmarks" means specific knowledge and skills anchored to content standards that a student needs to accomplish by a specific grade or grade span.

"Board" means the board of directors in charge of a public school district or the authorities in charge of an accredited nonpublic school.

"Comprehensive school improvement plan" means a design that shall describe how the school or school district will increase student learning, achievement, and performance. This ongoing improvement design may address more than student learning, achievement, and performance.

"Content standards" means broad statements about what students are expected to know and be able to do.

"Curriculum" means a plan that outlines what students shall be taught. Curriculum refers to all the courses offered, or all the courses offered in a particular area of study.

"Department" means the department of education.

"Districtwide" means all attendance centers within a school district or accredited nonpublic school.

"Districtwide assessments" means large-scale achievement or performance measures. At least one districtwide assessment shall allow for the following: the comparison of the same group of students over time as they progress through the grades or the cross-sectional comparison of students at the same grades over multiple years.

"Districtwide progress" means the quantifiable change in school or school district student achievement and performance.

"Educational program." The educational program adopted by the board is the entire offering of the school, including out-of-class activities and the sequence of curriculum areas and activities. The educational program shall provide articulated, developmental learning experiences from the date of student entrance until high school graduation.

"Enrolled student" means a person that has officially registered with the school or school district and is taking part in the educational program.

"Incorporate" means integrating career education, multicultural and gender fair education, technology education, global education, higher-order thinking skills, learning skills, and communication skills into the total educational program.

"Indicators" provide information about the general status, quality, or performance of an educational system.

"Long-range goals" means desired targets to be reached over an extended period of time.

"Multiple assessment measures," for reporting to the local community or the state, means more than one valid and reliable instrument that quantifies districtwide student learning, including specific grade-level data.

"Performance levels." The federal Elementary and Secondary Education Act (ESEA) requires that at least three levels of performance be established to assist in determining which students have or have not achieved a satisfactory or proficient level of performance. At least two of those three levels shall describe what all students ought to know or be able to do if their achievement or performance is deemed proficient or advanced. The third level shall describe students who are not yet performing at the proficient level. A school or school district may establish more than three performance levels that include all students for districtwide or other assessments.

"Proficient," as it relates to content standards, characterizes student performance at a level that is acceptable by the school or school district.

"School" means an accredited nonpublic school.

"School district" means a public school district.

"School improvement advisory committee" means a committee, as defined in Iowa Code section 280.12, that is appointed by the board. Committee membership shall include students, parents, teachers, administrators, and representatives from the local community which may include business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership shall have balanced representation of the following: race, gender, national origin, and disability. The school improvement advisory committee as defined by Iowa Code section 280.12 and the board are also part of, but not inclusive of, the local community.

"Student learning goals" means general statements of expectations for all graduates.

"Students with disabilities" means students who have individualized education programs regardless of the disability.

"Subgroups" means a subset of the student population that has a common characteristic. Subgroups include, but are not limited to, gender, race, students with disabilities, and socioeconomic status.

"Successful employment in Iowa" may be determined by, but is not limited to, reviewing student achievement and performance based on locally identified indicators such as earnings, educational attainment, reduced unemployment, and the attainment of employability skills.

DIVISION III
ADMINISTRATION

281—12.3(256) Administration. The following standards shall apply to the administration of accredited schools and school districts.

12.3(1) *Board records.* Each board shall adopt by written policy a system for maintaining accurate records. The system shall provide for recording and maintaining the minutes of all board meetings, coding all receipts and expenditures, and recording and filing all reports required by the Iowa Code or requested by the director of the department of education. Financial records of school districts shall be maintained in a manner as to be easily audited according to accepted accounting procedures.

12.3(2) *Policy manual.* The board shall develop and maintain a policy manual which provides a codification of its policies, including the adoption date, the review date, and any revision date for each policy. Policies shall be reviewed at least every five years to ensure relevance to current practices and compliance with the Iowa Code, administrative rules and decisions, and court decisions.

12.3(3) *Personnel evaluation.* Each board shall adopt evaluation criteria and procedures for all contracted staff. The evaluation processes shall conform to Iowa Code sections 272.33, 279.14, and 279.23A.

12.3(4) *Student records.* Each board shall require its administrative staff to establish and maintain a system of student records. This system shall include for each student a permanent office record and a cumulative record.

The permanent office record shall serve as a historical record of official information concerning the student's education. At a minimum, the permanent office record should contain evidence of attendance and educational progress, serve as an official transcript, contain other data for use in planning to meet student needs, and provide data for official school and school district reports. This record is to be permanently maintained and stored in a fire-resistant safe or vault or can be maintained and stored electronically with a secure back-up file.

The cumulative record shall provide a continuous and current record of significant information on progress and growth. It should reflect information such as courses taken, scholastic progress, school attendance, physical and health record, experiences, interests, aptitudes, attitudes, abilities, honors, extracurricular activities, part-time employment, and future plans. It is the "working record" used by the instructional professional staff in understanding the student. At the request of a receiving school or school district, a copy of the cumulative record shall be sent to officials of that school when a student transfers.

For the sole purpose of implementing an interagency agreement with state and local agencies in accordance with Iowa Code section 280.25, a student's permanent record may include information contained in the cumulative record as defined above.

The board shall adopt a policy concerning the accessibility and confidentiality of student records that complies with the provisions of the federal Family Educational Rights and Privacy Act of 1974 and Iowa Code chapter 22.

12.3(5) *Requirements for graduation.* Each board providing a program through grade 12 shall adopt a policy establishing the requirements students must meet for high school graduation. This policy shall make provision for early graduation and shall be consistent with these requirements and Iowa Code section 280.14.

12.3(6) *Student responsibility and discipline.* The board shall adopt student responsibility and discipline policies as required by Iowa Code section 279.8. The board shall involve parents, students, instructional and noninstructional professional staff, and community members in the development and revision of those policies where practicable or unless specific policy is mandated by legislation. The policies shall relate to the educational purposes of the school or school district. The policies shall include, but are not limited to, the following: attendance; use of tobacco; the use or possession of alcoholic beverages or any controlled substance; harassment of or by students and staff; violent, destructive, and seriously disruptive behavior; suspension, expulsion, emergency removal, weapons, and physical restraint; out-of-school behavior; participation in extracurricular activities; academic progress; and citizenship.

The policies shall ensure due process rights for students and parents, including consideration for students who have been identified as requiring special education programs and services.

The board shall also consider the potential, disparate impact of the policies on students because of race, color, national origin, gender, disability, religion, creed, or socioeconomic background.

The board shall publicize its support of these policies; its support of the staff in enforcing them; and the staff's accountability for implementing them.

12.3(7) *Health services.* The board shall adopt a policy for the implementation of a school health services program consistent with the provisions of 281—41.96(256B).

12.3(8) *Audit of school funds.* This subrule applies to school districts. The results of the annual audit of all school district funds conducted by the state auditor or a private auditing firm shall be made part of the official records of the board as described in Iowa Code section 11.6.

12.3(9) *School or school district building grade-level organization.* The board shall adopt a grade-level organization for the buildings under its jurisdiction as described in Iowa Code section 279.39.

12.3(10) *Report on accredited nonpublic school students.* Between September 1 and October 1 of each year, the board secretary of each school district shall secure from each accredited nonpublic school located within its boundaries information about enrolled students as required by Iowa Code section 299.3. Each accredited nonpublic school shall submit the required information in duplicate. The board secretary of each school district shall send one copy to the board secretary of the area education agency within which the school district is located.

Within ten days of receipt of notice, each accredited nonpublic school shall send a report to the board secretary of the school district within which the accredited nonpublic school is located. This report shall conform to the requirements of Iowa Code section 299.3.

DIVISION IV
SCHOOL PERSONNEL

281—12.4(256) School personnel. License/certificate and endorsement standards required in this rule relate to licenses/certificates and endorsements issued by the state board of educational examiners. The following standards shall apply to personnel employed in accredited schools.

12.4(1) *Instructional professional staff.* Each person who holds a license/certificate endorsed for the service for which that person is employed shall be eligible for classification as a member of the instructional professional staff.

12.4(2) *Noninstructional professional staff.* A person who holds a statement of professional recognition, including but not limited to a physician, dentist, nurse, speech therapist, or a person in one of the other noninstructional professional areas designated by the state board of education, shall be eligible for classification as a member of the noninstructional professional staff.

12.4(3) *Basis for approval of professional staff.* Each member of the professional staff shall be classified as either instructional or noninstructional. An instructional professional staff member shall be regarded as approved when holding either an appropriate license/certificate with endorsement or endorsements, or a license/certificate with an endorsement statement, indicating the specific teaching assignments that may be given. A noninstructional professional staff member shall be regarded as approved when holding a statement of professional recognition for the specific type of noninstructional professional school service for which employed.

12.4(4) *Required administrative personnel.* Each board that operates both an elementary school and a secondary school shall employ as its executive officer and chief administrator a person who holds a license/certificate endorsed for service as a superintendent. The board of a school district may meet this requirement by contracting with its area education agency for "superintendency services" as provided by Iowa Code section 273.7A. The individual employed or contracted for as superintendent may serve as elementary principal in that school or school district provided that the superintendent holds the proper licensure/certification but cannot also serve as a high school principal in that school or school district. For purposes of this subrule, high school means a school which commences with either grade 9 or grade 10, as determined by the board of directors of the school district, or by the governing authority of the nonpublic school in the case of nonpublic schools. Boards of school districts may jointly employ a superintendent, provided such arrangements comply with the provisions of Iowa Code subsection 279.23(4).

12.4(5) *Staffing policies—elementary schools.* The board operating an elementary school shall develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating an elementary school shall employ at least one elementary principal. This position may be combined with that of secondary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements.

When grades seven and eight are part of an organized and administered junior high school, the staffing policies adopted by the board for secondary schools shall apply. When grades seven and eight are part of an organized and administered middle school, the staffing policies adopted by the board for elementary schools shall apply.

12.4(6) *Staffing policies—secondary schools.* The board operating a secondary school shall develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating a secondary school shall employ at least one secondary principal. This position may be combined with that of elementary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements. This position cannot be combined with that of superintendent.

12.4(7) *Principal.* "Principal" means a licensed/certificated member of a school's instructional staff who serves as an instructional leader, coordinates the process and substance of educational and instructional programs, coordinates the budget of the school, provides formative evaluation for all practitioners and other persons in the school, recommends or has effective authority to appoint, assign, promote, or transfer personnel in a school building, implements the local school board's policy in a manner consistent with professional practice and ethics, and assists in the development and supervision of a school's student activities program.

12.4(8) *Teacher.* A teacher shall be defined as a member of the instructional professional staff who holds a license/certificate endorsed for the type of position in which employed. A teacher diagnoses, prescribes, evaluates, and directs student learnings in terms of the school's objectives, either singly or in concert with other professional staff members; shares responsibility with the total professional staff for developing educational procedures and student activities to be used in achieving the school's objectives; supervises educational aides who assist in serving students for whom the teacher is responsible; and evaluates or assesses student progress during and following instruction in terms of the objectives sought, and uses this information to develop further educational procedures.

12.4(9) *Educational assistant.* An educational assistant shall be defined as an employee who, in the presence or absence of an instructional professional staff member but under the direction, supervision, and control of the instructional professional staff, supervises students or assists in providing instructional and other direct educational services to students and their families. An educational assistant shall not substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

During the initial year of employment, an educational assistant shall complete staff development approved by the board as provided in subrule 12.7(1).

12.4(10) *Record of license/certificate or statement of professional recognition.* The board shall require each administrator, teacher, support service staff member, and noninstructional professional staff member on its staff to supply evidence that each holds a license/certificate or statement of professional recognition which is in force and valid for the type of position in which employed.

12.4(11) *Record required regarding teacher and administrative assignments.* The board shall require its superintendent or other designated administrator to maintain a file for all regularly employed members of the instructional professional staff, including substitute teachers. The file shall consist of complete official transcripts of the preparation of these staff members and their legal licenses/certificates or copies thereof showing that they are eligible for the position in which employed. The official shall also maintain on file a legal license/certificate or statement of professional recognition as defined in subrule 12.4(2) for each member of the noninstructional professional staff. These records shall be on file at the beginning of and throughout each school year and shall be updated annually to reflect all professional growth.

On December 1 of each year, the official shall verify to the department of education the licensure/certification and endorsement status of each member of the instructional and administrative staff. This report shall be on forms provided by the department of education and shall identify all persons holding conditional authorizations and their specific assignment(s) with the conditional authorization(s).

12.4(12) *Nurses.* Each board that employs a nurse shall require a current license to be filed with the superintendent or other designated administrator as specified in subrule 12.4(10).

12.4(13) *Prekindergarten staff.* Prekindergarten teachers shall hold a license/certificate valid for the prekindergarten level. The board shall employ personnel as necessary to provide effective supervision and instruction in the prekindergarten program.

12.4(14) *Physical examination.* Except as otherwise provided in 281—43.15(285), the local board shall require each employee to file with it certification of fitness to perform the tasks assigned which shall be in the form of a written report of a physical examination, including a check for tuberculosis, by a licensed physician and surgeon, osteopathic physician and surgeon, osteopath, or qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner. A report shall be filed at the beginning of service and at three-year intervals.

Each doctor of chiropractic licensed as of July 1, 1974, shall affirm on each certificate of physical examination that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic examiners.

12.4(15) *Support staff.* The board shall develop and implement procedures for the use of educational support staff to augment classroom instruction and to meet individual student needs. These staff members may be employed by the board or by the area education agency.

12.4(16) *Volunteer.* A volunteer shall be defined as an individual who, without compensation or remuneration, provides a supportive role and performs tasks under the direction, supervision, and control of the school or school district staff. A volunteer shall not work as a substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

DIVISION V
EDUCATION PROGRAM

281—12.5(256) Education program. The following education program standards shall be met by schools and school districts for accreditation with the start of the 1989-1990 school year.

12.5(1) *Prekindergarten program.* If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child's developing sense of self and perception of others. Planning and carrying out prekindergarten activities designed to encourage cooperative efforts between home and school shall focus on community resources. A prekindergarten teacher shall hold a license/certificate licensing/certifying that the holder is qualified to teach in prekindergarten. A nonpublic school which offers only a prekindergarten may, but is not required to, seek and obtain accreditation.

(9) "Competency" is a learned student performance statement which can be accurately repeated and measured. Instruction is based on incumbent worker-validated statements of learner results (competencies) which clearly describe what skills the students will be able to demonstrate as a result of the instruction. Competencies function as the basis for building the instructional program to be offered. Teacher evaluation of students, based upon their ability to perform the competencies, is an integral part of a competency-based system.

(10) "Minimum competency lists" contain competencies validated by statewide technical committees, composed of representatives from appropriate businesses, industries, agriculture, and organized labor. These lists contain essential competencies which lead to entry level employment and are not intended to be the only competencies learned. Districts will choose one set of competencies per service area upon which to build their program or follow the process detailed in 281—subrule 46.7(2) to develop local competencies.

(11) "Clinical experience" involves direct instructor supervision in the actual workplace, so that the learner has the opportunity to apply theory and to perfect skills taught in the classroom and laboratory.

"Field training" is an applied learning experience in a nonclassroom environment under the supervision of an instructor.

"Lab training" is experimentation, practice or simulation by students under the supervision of an instructor.

"On-the-job training" is a cooperative work experience planned and supervised by a teacher-coordinator and the supervisor in the employment setting.

(12) "Coring" is an instructional design whereby competencies common to two or more different vocational service areas are taught as one course offering. Courses shall be no longer than one unit of instruction. Course(s) may be placed wherever appropriate within the program offered. This offering may be acceptable as a unit or partial unit in more than one vocational program to meet the standard.

(13) "Articulation" is the process of mutually agreeing upon competencies and performance levels transferable between institutions and programs for advanced placement or credit in a vocational program. An articulation agreement is the written document which explains the decisions agreed upon and the process used by the institution to grant advanced placement or credit.

(14) "Multioccupational courses" combine on-the-job training in any of the occupational areas with the related classroom instruction. The instructor provides the related classroom instruction and coordinates the training with the employer at the work site. A multioccupational course may only be used to complete a sequence in more than one vocational service area if competencies from the appropriate set of minimum competencies are a part of the related instruction.

j. Vocational education/nonpublic schools (five units). A nonpublic school which provides an educational program that includes grades 9 through 12 shall offer and teach five units of occupational education subjects, which may include, but are not limited to, programs, services, and activities which prepare students for employment in business or office occupations, trade and industrial occupations, consumer and family sciences or home economics occupations, agricultural occupations, marketing occupations, and health occupations. By July 1, 1993, instruction shall be competency-based, articulated with postsecondary programs of study, and may include field, laboratory, or on-the-job training.

12.5(6) *Physical education and health courses exemption.* A pupil shall not be required to enroll in either physical education or health courses if the pupil's parent or guardian files a written statement with the school principal that the course conflicts with the pupil's religious beliefs.

12.5(7) *Career education.* Each school or school district shall incorporate school-to-career educational programming into its comprehensive school improvement plan. Curricular and cocurricular teaching and learning experiences regarding career education shall be provided from the prekindergarten level through grade 12. Career education shall be incorporated into the total educational program and shall include, but is not limited to, awareness of self in relation to others and the needs of society; exploration of employment opportunities, at a minimum, within Iowa; experiences in personal decision making; experiences that help students connect work values into all aspects of their lives; and the development of employability skills. In the implementation of this subrule, the board shall comply with Iowa Code section 280.9.

12.5(8) *Multicultural and gender fair approaches to the eudcational program.* The board shall establish a policy to ensure that students are free from discriminatory practices in the educational program as required by Iowa Code section 256.11. In developing or revising the policy, parents, students, instructional and noninstructional staff, and community members shall be involved. Each school or school district shall incorporate multicultural and gender fair goals for the educational program into its comprehensive school improvement plan. Incorporation shall include the following:

a. Multicultural approaches to the educational program. These shall be defined as approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of diverse cultural groups, including race, color, national origin, gender, disability, religion, creed, and socioeconomic background. The contributions and perspectives of Asian Americans, African Americans, Hispanic Americans, American Indians, European Americans, and persons with disabilities shall be included in the program.

b. Gender fair approaches to the educational program. These shall be defined as approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of women and men to society. The program shall reflect the wide variety of roles open to both women and men and shall provide equal opportunity to both sexes.

12.5(9) *Special education.* The board of each school district shall provide special education programs and services for its resident children which comply with rules of the state board of education implementing Iowa Code chapters 256, 256B, 273, and 280.

12.5(10) *Technology integration.* Each school or school district shall incorporate into its comprehensive school improvement plan demonstrated use of technology to meet its student learning goals. As described in Iowa Code section 295.3, progress with the use of technology shall be included in the school district's annual progress report.

12.5(11) *Global education.* Each school or school district shall incorporate global education into its comprehensive school improvement plan as required by Iowa Code section 256.11. Global education shall be incorporated into all areas and levels of the educational program so students have the opportunity to acquire a realistic perspective on world issues, problems, and the relationship between an individual's self-interest and the concerns of people elsewhere in the world.

12.5(12) *Provisions for gifted and talented students.* Each school district shall incorporate gifted and talented programming into its comprehensive school improvement plan as required by Iowa Code section 257.43. The comprehensive school improvement plan shall include the following gifted and talented program provisions: valid and systematic procedures, including multiple selection criteria for identifying gifted and talented students from the total student population; goals and performance measures; a qualitatively differentiated program to meet the students' cognitive and affective needs; staffing provisions; an in-service design; a budget; and qualifications of personnel administering the program. Each school district shall review and evaluate its gifted and talented programming. This subrule does not apply to accredited nonpublic schools.

12.5(13) *Provisions for at-risk students.* Each school district shall make provisions in its comprehensive school improvement plan for meeting the needs of at-risk students. Valid and systematic procedures and criteria shall be used to identify at-risk students within the school district's school-age population. Provisions for at-risk students shall include the following: modified instructional practices; specialized curriculum; parental involvement; and in-school and community-based support services as required in Iowa Code sections 256.11, 280.19, and 280.19A. Each school district shall review and evaluate its at-risk program. This subrule does not apply to accredited nonpublic schools.

For those school districts requesting to use additional allowable growth for its at-risk program, the comprehensive school improvement plan shall incorporate the requirements specified in Iowa Code sections 257.38 to 257.40.

12.5(14) *Unit.* A unit is a course which meets one of the following criteria: it is taught for at least 200 minutes per week for 36 weeks; it is taught for the equivalent of 120 hours of instruction; or it is an equated requirement as a part of an innovative program filed as prescribed in rule 12.9(256). A fractional unit shall be calculated in a manner consistent with this subrule. Multiple-section courses taught at the same time in a single classroom situation by one teacher do not meet this unit definition for the assignment of a unit of credit. However, the third and fourth years of a foreign language may be taught at the same time by one teacher in a single classroom situation each yielding a unit of credit.

12.5(15) *Credit.* A student shall receive a credit or a partial credit upon successful completion of a course which meets one of the criteria in subrule 12.5(14). The board may award credit on a performance basis through the administration of an examination, provided the examination covers the content ordinarily included in the regular course.

12.5(16) *Subject offering.* A subject shall be regarded as offered when the teacher of the subject has met the licensure and endorsement standards of the state board of educational examiners for that subject; instructional materials and facilities for that subject have been provided; and students have been informed, based on their aptitudes, interests, and abilities, about possible value of the subject.

A subject shall be regarded as taught only when students are instructed in it in accordance with all applicable requirements outlined herein. Subjects which the law requires schools and school districts to offer and teach shall be made available during the school day as defined in subrules 12.1(8) to 12.1(10).

12.5(17) *Educational excellence program—Phase III.* Educational excellence funds received by school districts shall support the school district's comprehensive school improvement plan according to the intent of the general assembly as described in Iowa Code section 294A.12. When Phase III funds are used to support the district's comprehensive school improvement plan, the school district shall submit the Phase III budget on forms supplied by the department.

12.5(18) *Early intervention program.* Each school district receiving early intervention program funds shall make provisions to meet the needs of kindergarten through grade 3 students. The intent of the early intervention program is to reduce class size, to achieve a higher level of student success in the basic skills, and to increase teacher-parent communication and accountability. Each school district shall develop a class size management strategy by September 15, 1999, to work toward, or to maintain, class sizes in basic skills instruction for kindergarten through grade 3 that are at the state goal of 17 students per teacher. Each school district shall incorporate into its comprehensive school improvement plan goals and activities for kindergarten through grade 3 students to achieve a higher level of success in the basic skills, especially reading. A school district shall, at a minimum, biannually inform parents of their individual child's performance on the results of diagnostic assessments in kindergarten through grade 3. If intervention is appropriate, the school district shall inform the parents of the actions the school district intends to take to improve the child's reading skills and provide the parents with strategies to enable the parents to improve their child's skills.

DIVISION VI
ACTIVITY PROGRAM

281—12.6(256) Activity program. The following standards shall apply to the activity program of accredited schools and school districts.

12.6(1) *General guidelines.* Each board shall sponsor a pupil activity program sufficiently broad and balanced to offer opportunities for all pupils to participate. The program shall be supervised by qualified professional staff and shall be designed to meet the needs and interests and challenge the abilities of all pupils consistent with their individual stages of development; contribute to the physical, mental, athletic, civic, social, moral, and emotional growth of all pupils; offer opportunities for both individual and group activities; be integrated with the instructional program; and provide balance so a limited number of activities will not be perpetuated at the expense of others.

12.6(2) *Supervised intramural sports.* If the board sponsors a voluntary program of supervised intramural sports for pupils in grades seven through twelve, qualified personnel and adequate facilities, equipment, and supplies shall be provided. Middle school grades below grade seven may also participate.

DIVISION VII
STAFF DEVELOPMENT

281—12.7(256) Staff development. The following standards shall apply to staff development for accredited schools and school districts.

12.7(1) *Provisions for staff development.* Each school or school district shall incorporate into its comprehensive school improvement plan provisions for the professional development of all staff. To meet the professional needs of all staff, staff development activities shall align with district goals; shall be based on student and staff information; shall prepare all employees to work effectively with diverse learners and to implement multicultural, gender fair approaches to the educational program; and shall emphasize the research-based practices to achieve increased student achievement, learning, and performance as stated in the comprehensive school improvement plan.

12.7(2) *Budget for staff development.* The board shall annually budget specified funds to implement the plan required in subrule 12.7(1).

DIVISION VIII
ACCOUNTABILITY FOR STUDENT ACHIEVEMENT

281—12.8(256) Accountability for student achievement. Schools and school districts shall meet the following accountability requirements for increased student achievement. Area education agencies shall provide technical assistance as required by 281—72.7(273).

12.8(1) *Comprehensive school improvement.* The general accreditation standards are minimum, uniform requirements. However, the department encourages schools and school districts to go beyond the minimum with their work toward ongoing improvement. As a means to this end, local comprehensive school improvement plans shall be specific to a school or school district and designed, at a minimum, to increase the learning, achievement, and performance of all students.

As a part of ongoing improvement in its educational system, the board shall adopt a written comprehensive school improvement plan designed for continuous school, parental, and community involvement in the development and monitoring of a plan that is aligned with school or school district determined needs. The plan shall incorporate, to the extent possible, the consolidation of federal and state planning, goal setting, and reporting requirements. The plan shall contain, but is not limited to, the following components:

a. Community involvement.

(1) Local community. The school or school district shall involve the local community in decision-making processes as appropriate. The school or school district shall seek input from the local community about, but not limited to, the following elements at least once every five years:

1. Statement of philosophy, beliefs, mission, or vision;
2. Major educational needs; and
3. Student learning goals.

(2) School improvement advisory committee. To meet requirements of Iowa Code section 280.12(2), the board shall appoint and charge a school improvement advisory committee to make recommendations to the board. Based on the committee members' analysis of the needs assessment data, they shall make recommendations to the board about the following components:

1. Major educational needs;
2. Student learning goals; and
3. Long-range goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement.

(3) At least annually, the school improvement advisory committee shall also make recommendations to the board with regard to, but not limited to, the following:

1. Progress achieved with the annual improvement goals for the state indicators that address reading, mathematics, and science in subrule 12.8(3);
2. Progress achieved with other locally determined core indicators; and
3. Annual improvement goals for the state indicators that address reading, mathematics, and science achievement.

b. Data collection, analysis, and goal setting.

(1) Policy. The board shall adopt a policy for conducting ongoing and long-range needs assessment processes. This policy shall ensure involvement of and communication with the local community regarding its expectations for adequate preparation for all students as responsible citizens and successful wage earners. The policy shall include provisions for keeping the local community regularly informed of progress on state indicators as described in subrule 12.8(3), other locally determined indicators within the comprehensive school improvement plan as required by Iowa Code section 280.12, and the methods a school district will use to inform kindergarten through grade 3 parents of their individual child's performance biannually as described in 1999 Iowa Acts, House File 743. The policy shall describe how the school or school district shall provide opportunities for local community feedback on an ongoing basis.

(2) Long-range data collection and analysis. The long-range needs assessment process shall include provisions for collecting, analyzing, and reporting information derived from local, state, and national sources. The process shall include provisions for reviewing information acquired over time on the following:

1. State indicators and other locally determined indicators;
2. Locally established student learning goals; and
3. Specific data collection required by federal and state programs.

Schools and school districts shall also collect information about additional factors influencing student achievement which may include, but are not limited to, demographics, attitudes, health, and other risk factors.

(3) Long-range goals. The board, with input from its school improvement advisory committee, shall adopt long-range goals to improve student achievement in at least the areas of reading, mathematics, and science.

(4) Annual data collection and analysis. The ongoing needs assessment process shall include provisions for collecting and analyzing annual assessment data on the state indicators, other locally determined indicators, and locally established student learning goals.

(5) Annual improvement goals. The board, with input from its school improvement advisory committee, shall adopt annual improvement goals based on data from at least one districtwide assessment. The goals shall describe desired annual increase in the curriculum areas of, but not limited to, mathematics, reading, and science achievement for all students, for particular subgroups of students, or both. Annual improvement goals may be set for the early intervention program as described in subrule 12.5(18), other state indicators, locally determined indicators, locally established student learning goals, other curriculum areas, future student employability, or factors influencing student achievement.

c. Content standards and benchmarks.

(1) Policy. The board shall adopt a policy outlining its procedures for developing, implementing, and evaluating its total curriculum. The policy shall describe a process for establishing content standards, benchmarks, performance levels, and annual improvement goals aligned with needs assessment information.

(2) Content standards and benchmarks. The board shall adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide the learning of students from the date of school entrance until high school graduation. Standards and benchmarks may be adopted for other curriculum areas defined in 281—Chapter 12, Division V. The comprehensive school improvement plan submitted to the department shall contain, at a minimum, content standards for reading, mathematics, and science. The educational program as defined in 281—Chapter 12, Division II, shall incorporate career education, multicultural and gender fair education, technology integration, global education, higher-order thinking skills, learning skills, and communication skills as outlined in subrules 12.5(7), 12.5(8), 12.5(10), and 12.5(11), and subparagraph 12.8(1)*"c"*(1).

d. Determination and implementation of actions to meet the needs. The comprehensive school improvement plan shall include actions the school or school district shall take districtwide in order to accomplish its long-range and annual improvement goals as required in Iowa Code section 280.12(1)*"b."*

(1) Actions shall include, but are not limited to, addressing the improvement of curricular and instructional practices to attain the long-range goals, annual improvement goals, and the early intervention goals as described in subrule 12.5(18).

(2) A school or school district shall document consolidation of state and federal resources and requirements, as appropriate, to implement the actions in its comprehensive school improvement plan. State and federal resources shall be used, as applicable, to support implementation of the plan.

(3) A school or school district may have building-level action plans, aligned with its comprehensive school improvement plan. These may be included in the comprehensive school improvement plan or kept on file at the local level.

e. Evaluation of the comprehensive school improvement plan. A school or school district shall develop strategies to collect data and information to determine if the plan has accomplished the goals for which it was established.

f. Assessment of student progress. Each school or school district shall include in its comprehensive school improvement plan provisions for districtwide assessment of student progress for all students. The plan shall identify valid and reliable student assessments aligned with local content standards. These assessments are not limited to commercially developed measures. School districts receiving early intervention funding described in subrule 12.5(18) shall provide for diagnostic reading assessments for kindergarten through grade 3 students as described in 1999 Iowa Acts, House File 743.

(1) State indicators. Using at least one districtwide assessment, a school or school district shall assess student progress on the state indicators in, but not limited to, reading, mathematics, and science as specified in subrule 12.8(3). At least one districtwide assessment shall allow for, but not be limited to, the comparison of the school or school district's students with students from across the state and in the nation in reading, mathematics, and science. A school or school district shall use additional assessments to measure progress on locally determined content standards in at least reading, mathematics, and science.

(2) Performance levels. A school or school district shall establish at least three performance levels on at least one districtwide valid and reliable assessment in the areas of reading and mathematics for at least grades 4, 8, and 11 and science in grades 8 and 11 or use the achievement levels as established by the Iowa Testing Program to meet the intent of this subparagraph (2).

g. Assurances and support. A school or school district shall provide evidence that its board has approved and supports the five-year comprehensive school improvement plan and any future revisions of that plan. This assurance includes the commitment for ongoing improvement of the educational system.

12.8(2) *Submission of a comprehensive school improvement plan.* A school or school district shall submit to the department and respective area education agency a multiyear comprehensive school improvement plan on or before September 15, 2000. Beginning July 1, 2001, a school or school district shall submit a revised five-year comprehensive school improvement plan by September 15 of the school year following the comprehensive site visit specified in Iowa Code section 256.11 which incorporates, when appropriate, areas of improvement noted by the school improvement visitation team as described in subrule 12.8(4). A school or school district may, at any time, file a revised comprehensive school improvement plan with the department and respective area education agency.

12.8(3) *Annual reporting requirements.* A school or school district shall, at minimum, report annually to its local community about the progress on the state indicators and other locally determined indicators.

a. State indicators. A school or school district shall collect data on the following indicators for reporting purposes:

(1) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher reading status using at least three achievement levels and by gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(2) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher mathematics status using at least three achievement levels and for gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(3) The percentage of all eighth and eleventh grade students achieving proficient or higher science status using at least three achievement levels.

(4) The percentage of students considered as dropouts for grades 7 to 12 by gender, race, students with disabilities, and other subgroups as required by state or federal law.

(5) The percentage of high school seniors who intend to pursue postsecondary education/training.

(6) The percentage of high school students achieving a score or status on a measure indicating probable postsecondary success. This measure should be the measure used by the majority of students in the school, school district, or attendance center who plan to attend a postsecondary institution.

(7) The percentage of high school graduates who complete a core program of four years of English-language arts and three or more years each of mathematics, science, and social studies.

b. Annual progress report. Each school or school district shall submit an annual progress report to its local community, its respective area education agency, and the department. That report shall be submitted to the department by September 15, 2000, and by September 15 every year thereafter. The report shall include, but not be limited to, the following information:

(1) Baseline data on at least one districtwide assessment for the state indicators described in subrule 12.8(3). Every year thereafter the school or school district shall compare the annual data collected with the baseline data. A school or school district is not required to report to the community about subgroup assessment results when a subgroup contains fewer than ten students at a grade level. A school or school district shall report districtwide assessment results for all enrolled and tuitioned-in students.

(2) Locally determined performance levels for at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. Student achievement levels as defined by the Iowa Testing Program may be used to fulfill this requirement.

(3) Long-range goals to improve student achievement in the areas of, but not limited to, reading, mathematics, and science.

(4) Annual improvement goals based on at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. One annual improvement goal may address all areas, or individual annual improvement goals for each area may be identified. When a school or school district does not meet its annual improvement goals for one year, it shall include in its annual progress report the actions it will take to meet annual improvement goals for the next school year.

(5) Data on multiple assessments for reporting achievement for all students in the areas of reading and mathematics by September 15, 2001, and for science by September 15, 2003.

(6) Results by individual attendance centers, as appropriate, on the state indicators as stated in subrule12.8(3) and any other locally determined factors or indicators. An attendance center, for reporting purposes, is a building that houses students in grade 4 or grade 8 or grade 11.

(7) Progress with the use of technology as required by Iowa Code section 295.3. This requirement does not apply to accredited nonpublic schools.

(8) School districts are encouraged to provide information on the reading proficiency of kindergarten through grade 3 students by grade level. However, all school districts receiving early intervention block grant funds shall report to the department the progress toward achieving their early intervention goals.

(9) Other reports of progress as the director of the department requires and other reporting requirements as the result of federal and state program consolidation.

12.8(4) *Comprehensive school improvement and the accreditation process.* All schools and school districts having accreditation on August 18, 1999, are presumed accredited unless or until the state board takes formal action to remove accreditation. The department shall use a Phase I and a Phase II process for the continued accreditation of schools and school districts as defined in Iowa Code section 256.11(10).

a. Phase I. The Phase I process includes ongoing monitoring by the department of each school and school district to determine if it is meeting the goals of its comprehensive school improvement plan and meeting the accreditation standards. Phase I contains the following two components:

(1) Annual comprehensive desk audit. This audit consists of a review by the department of a school or school district's annual progress report. The department shall review the report as required by subrule 12.8(3) and provide feedback regarding the report. The audit shall also include a review by the department of other annual documentation submitted by a school or school district as required for compliance with the educational standards in Iowa Code section 256.11 and other reports required by the director.

When the department determines a school or school district has areas of noncompliance, the department shall consult with the school or school district to determine what appropriate actions shall be taken by the school or school district. The department shall facilitate technical assistance when requested. When the department determines that a school or school district has not met compliance with one or more accreditation standards within a reasonable amount of time, the school or school district shall submit an action plan that is approved by the department. The action plan shall contain reasonable timelines for coming into compliance. If the department determines that the school or school district is not taking the necessary actions, the director of the department may place the school or school district in a Phase II accreditation process.

If a school or school district does not meet its stated annual improvement goals for at least two consecutive years in the areas of mathematics and reading and is not taking corrective steps, the department shall consult with the school or school district and determine whether a self-study shall be required. The department shall facilitate technical assistance when needed. The self-study shall include, but is not limited to, the following:

1. A review of the comprehensive school improvement plan.
2. A review of each attendance center's student achievement data.
3. Identification of factors that influenced the lack of goal attainment.
4. Submission of new annual improvement goals, if necessary.
5. Submission, if necessary, of a revised comprehensive school improvement plan.

Upon completion of a department-required self-study, the department shall collaborate with the school or school district to determine whether one or more attendance centers are to be identified as in need of improvement. For those attendance centers identified as being in need of improvement, the department shall facilitate technical assistance.

When a school or school district has completed a required self-study and has not met its annual improvement goals for at least two or more consecutive years, the department may conduct a site visit. When a site visit occurs, the department shall determine if appropriate actions were taken. If the site visit findings indicate that appropriate actions were taken, accreditation status shall remain.

(2) Comprehensive site visit. A comprehensive site visit shall occur at least once every five years as required by Iowa Code section 256.11(10) or before, if requested by the school or school district. The purpose of a comprehensive site visit is to assess progress with the comprehensive school improvement plan, to provide a general assessment of educational practices, to make recommendations with regard to the visit findings for the purposes of improving educational practices above the level of minimum compliance, and to determine that a school or school district is in compliance with the accreditation standards. The department and the school district or school may coordinate the accreditation with activities of other accreditation associations. The comprehensive site visit shall include the following components:

1. School improvement site visit team. The department shall determine the size and composition of the school improvement site visit team. The team shall include members of the department staff and may include other members such as, but not limited to, area education agency staff, postsecondary staff, and other school district or school staff.

2. Previsit actions. The school improvement team shall review the five-year comprehensive school improvement plan, annual progress reports, and any other information requested by the department.

3. The site visit report. Upon review of documentation and site visit findings, the department shall provide a written report to the school or school district based on the comprehensive school improvement plan and other general accreditation standards. The report shall state areas of strength, areas in need of improvement, and areas, if any, of noncompliance. For areas of noncompliance, the school or school district shall submit, within a reasonable time frame, an action plan to the department. The department shall determine if the school or school district is implementing the necessary actions to address areas of noncompliance. If the department determines that the school or school district is not taking the necessary actions, the director of the department may place the school or school district in a Phase II accreditation process.

b. Conditions under which a Phase II visit may occur. A Phase II accreditation process shall occur if one or more of the following conditions exist:

(1) When either the annual monitoring or the comprehensive site visit indicates that a school or school district is deficient and fails to be in compliance with accreditation standards;

(2) In response to a petition filed with the director of the department requesting such a committee visitation that is signed by 20 percent or more of the registered voters of a school district;

(3) In response to a petition filed with the director of the department requesting such a committee visitation that is signed by 20 percent or more of the families having enrolled students in a school or school district; or

(4) At the direction of the state board of education.

c. The Phase II process. The Phase II process shall consist of monitoring by the department. This monitoring shall include the appointment of an accreditation committee to complete a comprehensive review of the school or school district documentation on file with the department. The accreditation committee shall complete one or more site visits. The Phase II process shall include the following components:

(1) Accreditation committee. The director of the department shall determine accreditation committee membership. The chairperson and majority of the committee shall be department staff. The committee may also include at least one representative from another school or school district, AEA staff, postsecondary education staff, board members, or community members. No member of an accreditation committee shall have a direct interest, as determined by the department, in the school or school district involved in the Phase II process. The accreditation committee shall have access to all documentation obtained from the Phase I process.

(2) Site visit. The accreditation committee shall conduct one or more site visits to determine progress made on noncompliance issues.

(3) Accreditation committee actions. The accreditation committee shall make a recommendation to the director of the department regarding accreditation status of the school or school district. This recommendation shall be contained in a report to the school or school district that includes areas of strength, areas in need of improvement, and, if any, the areas still not in compliance. The committee shall provide advice on available resources and technical assistance for meeting the accreditation standards. The school or school district may respond in writing to the director if it does not agree with the findings in the Phase II accreditation committee report.

(4) State board of education actions. The director of the department shall provide a report and a recommendation to the state board as a result of the Phase II accreditation committee visit and findings. The state board shall determine accreditation status. When the state board determines that a school or school district shall not remain accredited, the director of the department shall collaborate with the school or school district board to establish an action plan that includes deadlines by which areas of noncompliance shall be corrected. The action plan is subject to approval by the state board.

(5) Accreditation status. During the period of time the school or school district is implementing the action plan approved by the state board, the school or school district shall remain accredited. The accreditation committee may revisit the school or school district and determine whether the areas of noncompliance have been corrected. The accreditation committee shall report and recommend one of the following actions:

1. The school or school district shall remain accredited.
2. The school or school district shall remain accredited under certain specified conditions.
3. The school or school district shall have its accreditation removed as outlined in Iowa Code section 256.11(12).

The state board shall review the report and recommendation, may request additional information, and shall determine the accreditation status and further actions required by the school or school district as outlined in Iowa Code section 256.11(12).

DIVISION IX
EXEMPTION REQUEST PROCESS

281—12.9(256) General accreditation standards exemption request. A school or school district may seek department approval for an exemption as stated in Iowa Code sections 256.9(48) and 256.11(8). The school or school district shall submit the exemption request to the director of the department with, at a minimum, the following: (1) the written request and (2) the standard exemption plan as described in subrule 12.9(1). For the 1999-2000 school year, the written request and plan shall be submitted before October 1, 1999. For subsequent school years, the written request and plan shall be submitted on or before January 1 preceding the beginning of the school year for which the exemption is sought. The exemption request may be approved for a time period not to exceed five years. The department may approve, on request of the school or school district, an extension of the exemption beyond the initial five-year period. The department shall notify the school or school district of the approval or denial of its exemption request not later than March 1 of the school year in which the request was submitted.

12.9(1) *General accreditation standards exemption plan.* The plan shall contain, but is not limited to, the following components:

a. The standard or standards for which the exemption is requested.

b. A rationale for each general accreditation standard identified in paragraph *"a."* The rationale shall describe how the approval of the request will assist the school or school district to improve student achievement or performance as described in its comprehensive school improvement plan.

c. The sources of supportive research evidence and information, when appropriate, that were analyzed and used to form the basis of each submitted rationale.

d. How the school or school district staff collaborated with the local community or with the school improvement advisory committee about the need for the exemption request.

e. Evidence that the board approved the exemption request.

f. A list of the indicators that will be measured to determine success.

g. How the school or school district will measure the success of the standards exemption plan on improving student achievement or performance.

In its annual progress report as described in paragraph 12.8(3)*"b,"* the school or school district that receives an exemption approval shall include data to support increased student learning, achievement, or performance that has resulted from the approved standards exemption.

12.9(2) *General accreditation standards exemption request and exemption plan review criteria.* The department shall use the information provided in the written request and exemption plan as described in subrule 12.9(1) to determine approval or denial of requests for exemptions from the general accreditation standards. The department will use the following criteria for approval or denial of an exemption plan:

a. Components *"a"* through *"g"* listed in subrule 12.9(1) are addressed.

b. Clarity, thoroughness, and reasonableness are evident, as determined by the department, for each component of the accreditation standards exemption plan.

These rules are intended to implement Iowa Code sections 256.11, 280.23, and 256.7(21).

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EDUCATIONAL EXAMINERS BOARD[282]

[Prior to 6/15/88, see Professional Teaching Practices Commission[640]]
[Prior to 5/16/90, see Professional Teaching Practices Commission[287]]

CHAPTER 14
ISSUANCE OF PRACTITIONER'S LICENSES AND ENDORSEMENTS

[Prior to 9/7/88, see Public Instruction Department(670) Ch 70]
[Prior to 10/3/90, see Education Department(281) Ch 73]
[282—14.25 to 14.29 transferred from 281—84.18 to 84.22, IAB 1/9/91, effective 12/21/90]

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

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

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

Applicants whose preparation was completed through a nontraditional program or through an accumulation of credits from several institutions shall file all transcripts with the board of educational examiners for a determination of eligibility for licensure.

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

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

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

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

To add an endorsement, the applicant must follow one of these options:

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

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

Option 3. Identify with a recognized teacher education institution and receive a statement that based on the institution's evaluation of the individual's preparation the applicant has completed all of the Iowa requirements for the endorsement sought.

Appeal: If an applicant cannot obtain an equivalent statement from an institution and if the applicant believes the Iowa requirements have been met, the applicant may file the transcripts for review. The rejection from the institution must be in writing. In this situation, the staff in the board of educational examiners will review the preparation in terms of the Iowa requirements.

282—14.7(272) Correcting licenses. If at the time of the original issuance or renewal of a certificate, a person does not receive an endorsement for which eligible, a corrected license will be issued. Also, if a person receives an endorsement for which not eligible, a corrected license will be issued.

282—14.8(272) Duplicate licenses. Upon application and fee, duplicate licenses will be issued. The fee for the duplicate license is set out in subrule 14.32(3).

282—14.9(272) Fraud in procurement or renewal of licenses. Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

282—14.10(272) Licenses. These licenses will be issued effective October 1, 1988.

Provisional
Educational
Professional Teacher
Professional Administrator
Conditional
Substitute
Area Education Agency Administrator

282—14.11(272) Requirements for a provisional license.

1. Baccalaureate degree from a regionally accredited institution.
2. Completion of an approved teacher education program.
3. Completion of an approved human relations component.
4. Completion of requirements for one of the teaching endorsements listed under 282—14.18(272), the special education teaching endorsements in 282—Chapter 15, or the secondary level occupational endorsements listed in rule 282—16.1(272).
5. Meet the recency requirement of 14.15"3."

The provisional license is valid for two years and may be renewed under certain prescribed conditions listed in 282—17.8(272).

282—14.12(272) Requirements for an educational license.

1. Completion of items 1, 2, 3, 4 listed under 14.11(272).
2. Evidence of two years' successful teaching experience based on a local evaluation process.
3. Meet the recency requirement of 14.15"3."

The educational license is valid for five years and may be renewed by meeting requirements listed in 282—17.5(272).

282—14.13(272) Requirements for a professional teacher's license.

1. Holder of or eligible for an educational license.
2. Five years of teaching experience.
3. Master's degree in an instructional endorsement area, or in an area of educational or instructional improvement or school curriculum; the master's degree must be related to school-based programming.

The professional teacher's license is valid for five years and may be renewed by meeting requirements listed in 282—17.6(272).

282—14.25(272) Two-year administrator exchange license.

14.25(1) A two-year nonrenewable exchange license may be issued to an individual under the following conditions. The individual:

a. Has completed a state-approved teacher education program in a college or university approved by the state board of education or the state board of educational examiners in the individual's home state.

b. Has completed a state-approved administrator education program in a college or university approved by the state board of education or the state board of educational examiners in the individual's home state.

c. Holds a valid regular administrative certificate or license.

d. Is not subject to any pending disciplinary proceedings in any state.

e. Meets the experience requirements for the administrative endorsements. Verified successful completion of five years of full-time teaching and administrative experience in other states, on a valid license, shall be considered equivalent experience necessary for the principal endorsement. Verified successful completion of eight years of full-time teaching and administrative experience in other states, on a valid license, shall be considered equivalent experience for the superintendent endorsement provided that three years were as a building principal or other PK-12 districtwide or area education agency administrator.

14.25(2) Each exchange license shall be limited to the area(s) and level(s) of administration as determined by an analysis of the application, the transcripts, and the license or certificate held in the state in which the basic preparation for the administrative licensure was completed.

14.25(3) Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for a regular educational and administrative license in Iowa.

282—14.26(272) Two-year nonrenewable school counseling exchange license.

14.26(1) A two-year nonrenewable school counseling exchange license may be issued to an individual, provided that the individual:

a. Has completed a regionally accredited master's degree program in school guidance counseling.

b. Holds a valid school counseling certificate or license issued by an examining board which issues certificates or licenses based on requirements which are substantially equivalent to those of the board of educational examiners.

c. Meets the qualifications in Iowa Code section 272.6.

d. Is not subject to any pending disciplinary proceeding in any state.

14.26(2) Each exchange license shall be limited to the area(s) and level(s) of counseling as determined by an analysis of the application, the transcripts, and the license or certificate held in the state in which the basic preparation for the school counseling license was completed.

14.26(3) Each applicant for the exchange license shall comply with all requirements with regard to application processes and payment of licensure fees.

14.26(4) Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for a regular educational license in Iowa.

14.26(5) Individuals licensed under this provision are subject to the administrative rules of the board.

282—14.27(272) Human relations requirements for practitioner licensure. Preparation in human relations shall be included in programs leading to practitioner licensure. Human relations study shall include interpersonal and intergroup relations and shall contribute to the development of sensitivity to and understanding of the values, beliefs, lifestyles and attitudes of individuals and the diverse groups found in a pluralistic society.

14.27(1) Beginning on or after August 31, 1980, each applicant for an initial practitioner's license shall have completed the human relations requirement.

14.27(2) On or after August 31, 1980, each applicant for the renewal of a practitioner's license shall have completed an approved human relations requirement.

14.27(3) Credit for the human relations requirement shall be given to licensed practitioners who can give evidence that they have completed a human relations program which meets board of educational examiners criteria (see 14.30(272)).

282—14.28(272) Development of human relations components. Human relations components shall be developed by teacher preparation institutions. In-service human relations components may also be developed by educational agencies other than teacher preparation institutions, as approved by the board of educational examiners.

282—14.29(272) Advisory committee. Education agencies developing human relations components shall give evidence that in the development of their programs they were assisted by an advisory committee. The advisory committee shall consist of equal representation of various minority and majority groups.

282—14.30(272) Standards for approved components. Human relations components will be approved by the board of educational examiners upon submission of evidence that they are designed to develop the ability of participants to:

14.30(1) Be aware of and understand the various values, lifestyles, history, and contributions of various identifiable subgroups in our society.

14.30(2) Recognize and deal with dehumanizing biases such as sexism, racism, prejudice, and discrimination, and become aware of the impact that such biases have on interpersonal relations.

14.30(3) Translate knowledge of human relations into attitudes, skills, and techniques which will result in favorable learning experiences for students.

14.30(4) Recognize the ways in which dehumanizing biases may be reflected in instructional materials.

14.30(5) Respect human diversity and the rights of each individual.

14.30(6) Relate effectively to other individuals and various subgroups other than one's own.

282—14.31(272) Evaluation. Educational agencies providing the human relations components shall indicate the means to be utilized for evaluation.

282—14.32(272) Licensure and authorization fee.

14.32(1) *Issuance and renewal of licenses, authorizations, and statements of professional recognition.* The fee for the issuance of each initial practitioner's license, the evaluator license, the statement of professional recognition, and the coaching authorization and the renewal of each license, evaluator approval license, statement of professional recognition, and coaching authorization shall be $50.

14.32(2) *Adding endorsements.* The fee for the addition of each endorsement to a license, following the issuance of the initial license and endorsement(s), shall be $25.

14.32(3) *Duplicate licenses, authorizations, and statements of professional recognition.* The fee for the issuance of a duplicate practitioner's license, evaluator license or coaching authorization shall be $10.

14.32(4) *Evaluation fee.* Each application from an out-of-state institution for initial licensure shall include, in addition to the basic fee for the issuance of a license, a one-time nonrefundable $50 evaluation fee.

Each application or request for a statement of professional recognition shall include a one-time nonrefundable $50 evaluation fee.

14.32(5) *One-year emergency license.* The fee for the issuance of a one-year emergency license based on an expired conditional license or an expired administrative decision license shall be $100.

282—14.33 Reserved.

282—14.34(272) NCATE accredited programs. The requirements of the professional education core at 282—subrule 14.19(3), notwithstanding, an applicant from an out-of-state institution who has completed a program accredited by the National Council for the Accreditation of Teacher Education on and after October 1, 1988, shall be recognized as having completed the professional education core set out in 14.19(3), with the exception of paragraphs *"h"* and *"n."*

These rules are intended to implement Iowa Code chapter 272.

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◊Two ARCs

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434]

Created by 1989 Iowa Acts, chapter 1201, section 2, under the "umbrella" of the Department of Human Rights[421]
[Renamed Division on the Status of African-Americans by 1991 Iowa Acts, ch 50]
[Prior to 7/14/99, Status of Blacks Commission[434]]

CHAPTER 1
ORGANIZATION

434—1.1(216A) Commission on the status of blacks.

1.1(1) *Commission established.* The commission on the status of blacks is established, pursuant to Iowa Code section 216A.142, consisting of nine members. The members of the commission are appointed by the governor, to serve terms of not more than four years per appointment, and confirmed by the senate. In addition, the director of the department of human rights will serve as an ex-officio member of the commission.

1.1(2) *Nominations.* Nominations for commission officers shall be made in March of each year. An official ballot shall be prepared and ballots shall be cast at the May meeting.

1.1(3) *Election.* Officers shall hold office for one year, July 1 through June 30, unless removed by two-thirds vote of the commission. No officer shall hold the same office for more than three consecutive terms.

1.1(4) *Meetings.* The commission on the status of blacks shall meet every other month and may hold special meetings on the call of the chairperson. Six members of the commission shall constitute a quorum. A simple majority of the quorum is necessary to carry or defeat a motion.

a. Nonattendance. In accordance with Iowa Code section 69.15, any person who has been appointed to serve on the commission shall be deemed to have submitted a resignation from the commission if any of the following occurs:

(1) The person does not attend three or more consecutive regular meetings.

(2) The person attends less than half of the regular meetings in any period of 12 calendar months, beginning July 1.

b. Persons wishing to appear before the commission shall submit a written request to the division administrator not less than four weeks prior to a scheduled meeting. The written request shall include ten copies of any materials the requester desires the commission to review. Presentations may be made at the discretion of the chairperson and only upon matters appearing on the agenda.

c. Special meetings may be called by the chairperson only upon finding good cause and shall be held in strict accordance with Iowa Code chapter 21.

d. Cameras and recording devices may be used at open meetings, provided they do not obstruct the meeting.

e. The presiding officer of a meeting may exclude any person from the meeting for repeated behavior that disrupts the meeting.

f. Cases not covered by these rules shall be governed by Robert's Rules of Order (newly revised edition).

1.1(5) *Minutes.* Minutes of the commission meetings are prepared and sent to all commission members. Approved minutes are available at the division office for inspection during regular business hours.

1.1(6) *Duties.* In accordance with Iowa Code section 216A.146, the commission shall serve as an information clearinghouse on programs and agencies operating to assist blacks. Clearinghouse duties shall include, but are not limited to:

a. Serving as a referral agency to assist blacks in securing access to state agencies and programs.

b. Serving as a liaison with federal, state, and local governmental units and private organizations on matters relating to blacks.

c. Serving as a communications conduit to state government for black organizations in the state.

d. Stimulating of public awareness of the problems of blacks.

e. Conducting conferences and training programs for blacks, public and private agencies and organizations, and the general public.

f. Coordinating, assisting, and cooperating with public and private agencies in efforts to expand equal rights and opportunities for blacks in the areas of employment, economic development, education, health, housing, recreation, social welfare, social services, and the legal system.

g. Serving as the central permanent agency for the advocacy of services for blacks.

h. Providing assistance to and cooperating with individuals and public and private agencies and organizations in joint efforts to study and resolve problems relating to the improvement of the status of blacks.

i. Publishing and disseminating information relating to blacks, including publicizing their accomplishments and contributions to this state.

j. Evaluating existing and proposed programs and legislation for their impact on blacks.

k. Coordinating or conducting training programs for blacks to enable them to assume leadership positions.

l. Conducting surveys of blacks to ascertain their needs.

m. Assisting the department of personnel in the elimination of underutilization of blacks in the state's workforce.

n. Recommending legislation to the governor and the general assembly designed to improve the educational opportunities and the economic and social conditions of blacks in the state.

1.1(7) *Additional authority.* In accordance with 216A.147, the commission may do any or all of the following:

a. Do all things necessary, proper, and expedient in accomplishing the duties listed in 1.1(6) and this subrule.

b. Hold hearings.

c. Issue subpoenas, in accordance with Iowa Code section 17A.13, so that all departments, divisions, agencies, and offices of the state shall make available, upon request of the commission, information which is pertinent to the subject matter of the study and which is not by law confidential.

d. Enter into contracts, within the limits of funds made available, with individuals, organizations, and institutions for services furthering the objectives of the commission as listed herein below:

The commission shall study the changing needs and problems of blacks in this state and recommend new programs, policies, and constructive action to the governor and the general assembly including, but not limited to, the following areas:

(1) Public and private employment policies and practices.

(2) Iowa labor laws.

(3) Legal treatment relating to political and civil rights.

(4) Black children, youth, and families.

(5) The employment of blacks and the initiation and sustaining of black businesses and black entrepreneurship.

(6) Blacks as members of private and public boards, committees, and organizations.

(7) Education, health, housing, social welfare, human rights, and recreation.

(8) The legal system, including law enforcement, both criminal and civil.

(9) Social service programs.

e. Seek advice and counsel of informed individuals and organizations in the accomplishment of the objectives of the commission.

f. Apply for and accept grants of money or property from the federal government or any other source, and upon its own order use this money, property, or other resources to accomplish the objectives of the commission.

434—1.2(216A) Division on the status of blacks. The division on the status of blacks, within the department of human rights, was created pursuant to Iowa Code section 216A.1 and is required to advocate, coordinate, implement, and provide services to, and on behalf of, black citizens. The commission on the status of blacks is responsible for establishing policies for the division on the status of blacks to be carried out by the administrator of the division as set out in Iowa Code section 216A.145.

434—1.3(216A) Organization.

1.3(1) *Location.* The division on the status of blacks consists of an office located in the Department of Human rights, first floor, Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-3855. The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

1.3(2) *Composition of staff.*

a. Administrator. The governor shall appoint the administrator, subject to confirmation by the senate. The administrator shall serve at the pleasure of the governor. The administrator is responsible for the overall administration of the program. The administrator recruits, interviews, appoints, trains, supervises, evaluates, and terminates staff; plans and oversees the execution of the budget; ensures provision of adequate services in the application of policies, rules, and regulations; determines the number and type of personnel and makes staffing and budgetary recommendations to the commission; develops, establishes, and maintains cooperative working relations with public and private agencies and organizations; identifies legislative issues; interprets program objectives and promotes public interest in and the acceptance of the division on the status of blacks; and maintains an adequate reporting system for necessary records.

b. Consultants. The consultant is responsible for planning programs for the division; developing training activities consistent with program requirements; facilitating and presenting training activities to private and public agencies; identifying and making application to grant programs to assist with program initiatives; organizing and implementing informational programs that serve the public; and conducting research and studies that are necessary to program operations.

These rules are intended to implement Iowa Code sections 216A.141 to 216A.149.

[Filed 1/2/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed emergency 7/22/94—published 8/17/94, effective 7/22/94]

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

434—2.1(22) Adoption by reference. The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

434—2.2(22) Custodian of records. The custodian for the records maintained by this division is the division administrator.

These rules are intended to implement Iowa Code section 22.11.

[Filed 1/2/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]

CHAPTER 3
PETITIONS FOR RULE MAKING

434—3.1(17A) Adoption by reference. The division on the status of African-Americans hereby adopts the petitions 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 "(designate office)", insert "division on the status of African-Americans, department of human rights".
2. In lieu of the words "(AGENCY NAME)", insert "DIVISION ON THE STATUS OF AFRICAN-AMERICANS".
3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

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

[Filed 6/25/99, Notice 4/7/99—published 7/14/99, effective 8/18/99]

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

434—4.1(17A) Adoption by reference. The division on the status of African-Americans 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 "administrator".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)281-7283".
5. In lieu of the words "(designate office)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

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

[Filed 6/25/99, Notice 4/7/99—published 7/14/99, effective 8/18/99]

CHAPTER 5
DECLARATORY ORDERS

434—5.1(17A) Adoption by reference. The division on the status of African-Americans hereby adopts the declaratory orders 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 "(designate agency)", insert "division on the status of African-Americans".
2. In lieu of the words "(designate office)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
3. In lieu of the words "(AGENCY NAME)", insert "DIVISION ON THE STATUS OF AFRICAN-AMERICANS".
4. In lieu of the words "_____ days (15 or less)", insert "10 days".
5. In lieu of the words "_____ days" in subrule 6.3(1), insert "20 days".
6. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(specify office and address)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
8. In lieu of the words "(agency name)", insert "division on the status of African-Americans".
9. In lieu of the words "(designate agency head)", insert "administrator".

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

[Filed 6/25/99, Notice 4/7/99—published 7/14/99, effective 8/18/99]

CHAPTER 6
CONTESTED CASES

434—6.1(17A) Adoption by reference. The division on the status of African-Americans hereby adopts the contested cases 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 "(agency name)", insert "division on the status of African-Americans, department of human rights".
2. In lieu of the words "(designate official)", insert "administrator".
3. In subrule 7.3(2) delete the words "or by (specify rule number)".
4. In lieu of the words "(agency specifies class of contested case)", insert "division contested cases".
5. In lieu of the words "(specify office and address)", insert "Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(designate office)", insert "division on the status of African-Americans".
7. In lieu of the words "(agency to designate person to whom violations should be reported)", insert "administrator".
8. In lieu of the words "(board, commission, director)", insert "administrator".
9. In lieu of the words "(the agency)", insert "division on the status of African-Americans".

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

[Filed 6/25/99, Notice 4/7/99—published 7/14/99, effective 8/18/99]

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 9
HARNESS RACING

CHAPTER 10
THOROUGHBRED RACING

CHAPTER 11
Reserved

CHAPTER 12
SIMULCASTING

CHAPTER 13
OCCUPATIONAL AND VENDOR LICENSING

CHAPTERS 14 to 19
Reserved

CHAPTER 20
APPLICATION PROCESS FOR EXCURSION BOATS AND RACETRACK ENCLOSURE GAMING LICENSE

CHAPTER 4
CONTESTED CASES AND OTHER PROCEEDINGS

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the racing and gaming commission. The chapter shall also apply to gaming boards' and board of stewards' proceedings and gaming representatives' actions.

491—4.2(17A) Definitions. Except where otherwise specifically defined by law:

"Board of stewards" means a board established by the administrator to review conduct by occupational and pari-mutuel licensees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

"Commission" means the racing and gaming commission.

"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.

"Gaming board" means a board established by the administrator to review conduct by occupational, excursion gambling boat, and gambling game licensees that may constitute violations of the rules and statutes relating to gaming. The administrator may serve as a board of one.

"Gaming representative" means an employee of the commission assigned by the administrator to a licensed pari-mutuel racetrack or excursion gambling boat to perform the supervisory and regulatory duties of the commission.

"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 administrative law judge presiding over a contested case hearing or the commission in cases heard by the commission.

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

"Steward" means an employee of the commission assigned by the administrator to a licensed pari-mutuel racetrack to perform the supervisory and regulatory duties of the commission relating to pari-mutuel racing.

491—4.3(17A) Time requirements.

4.3(1) In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

4.3(2) All documents or papers required to be filed with the commission shall be delivered to any commission office within such time limits as prescribed by law or by rules or orders of the commission. No papers shall be considered filed until actually received by the commission.

4.3(3) 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.

DIVISION I
GAMING REPRESENTATIVE, GAMING BOARD,
AND BOARD OF STEWARDS

491—4.4(99D,99F) Gaming representatives—licensing and regulatory duties.

4.4(1) The gaming representative shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying a license for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Each decision denying a license for an occupational license shall be served on the applicant by personal service or by certified mail with return receipt requested to the last-known address on the application.

c. An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the gaming representative or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.4(2) The gaming representative shall monitor, supervise, and regulate the activities of occupational, pari-mutuel racetrack, gambling game, and excursion gambling boat licensees. A gaming representative may investigate any questionable conduct by a licensee for any violation of the rules or statutes. A gaming representative may refer an investigation to the gaming board upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

a. A gaming representative shall make a referral to the gaming board in writing. The referral shall make reference to rules or statutory provisions at issue and provide a factual basis supporting the violation.

b. The gaming representative making the referral to the gaming board, or a designee of the gaming board, shall appear before the gaming board at the hearing to provide any information requested by the board.

4.4(3) A gaming representative shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the person from holding a license if convicted. The gaming representative shall take one the following courses of action upon the occupational licensee providing proof of resolution of the criminal action:

a. The gaming representative shall reinstate the license if the charges are dismissed or the licensee is acquitted of the charges.

b. The gaming representative shall deny the license.

c. If convicted of a lesser charge, it is at the discretion of the gaming representative whether to reinstate or deny the license.

d. If the occupational licensee receives a deferred judgment, the gaming representative will evaluate the qualifications of the individual, pursuant to 491—Chapter 13, to hold an occupational license.

4.4(4) A gaming representative may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

4.4(5) A gaming representative may eject and exclude any person from the premises of a parimutuel racetrack or excursion gambling boat for any reason justified by the rules or statutes. The gaming representative may provide notice of ejection or exclusion orally or in writing. The gaming representative may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The gaming representative may exclude the person for a certain or an indefinite period of time.

4.4(6) The gaming representative may forbid any person from continuing to engage in an activity the representative feels is detrimental to racing or gaming until resolved.

4.4(7) The gaming representative shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

491—4.5(99D,99F) Gaming board—duties. The gaming board conducts informal hearings whenever the board has reasonable cause to believe that a licensee, an occupational licensee, or other persons have committed an act or engaged in conduct which is in violation of statute or commission rules. The hearings precede a contested case hearing and are investigative in nature. The following procedures will apply:

4.5(1) The gaming board shall consist of three gaming representatives, as assigned by the administrator. The administrator has the discretion to create more than one gaming board, to set terms for gaming board members, to assign alternates, and to make any decisions necessary for the efficient and effective operation of the gaming board. A gaming representative who has made a referral to the gaming board shall not sit on the board that makes a decision on the referral.

4.5(2) The administrator may designate an employee to act as gaming board coordinator. The gaming board coordinator shall have the power to assist and advise the gaming board through all aspects of the gaming board hearing process. The gaming board coordinator may review any referral from gaming representatives prior to setting the matter for hearing before the gaming board. The gaming board coordinator, in consultation with the administrator or the administrator's designee, may return the referral to the initiating gaming representative if the information provided appears insufficient to establish a violation. The gaming board coordinator shall otherwise assist the gaming board in setting the matter for hearing.

4.5(3) The gaming board, upon receipt of a referral, may review the referral prior to the hearing. The gaming board may return a referral to the initiating gaming representative on its own motion prior to hearing if the information provided appears insufficient to establish a violation.

4.5(4) Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder, at which all board members or their appointed representatives shall be present in person or by teleconference. The license holder may request a continuance for good cause in writing not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

4.5(5) The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing, and shall specify by number the statutes or rules allegedly violated. Delivery of the notice of hearing may be executed by either personal service or certified mail with return receipt requested to the last-known address listed in the license application. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

4.5(6) The gaming board has complete and total authority to decide all issues concerning the process of the hearing. The gaming board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The gaming board has the right to request witnesses or additional documents that have not been submitted by the initiating gaming representative. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the gaming board.

4.5(7) It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

4.5(8) Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track or on a riverboat is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 4.7(99D,99F).

4.5(9) The gaming board has the power to interpret the rules and to decide all questions not specifically covered by them. The board has the power to determine all questions arising with reference to the conduct of gaming, and the authority to decide any question or dispute relating to racing or gaming in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

4.5(10) The gaming board shall enter a written decision after each hearing. The decision shall find whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The gaming board has the authority to impose any penalty as set forth in these rules.

4.5(11) A licensee may appeal a gaming board decision. An appeal must be made in writing to the office of the gaming representative or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

4.5(12) Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.5(13) Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with a gaming representative. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the gaming board. Stipulations are considered final agency action and cannot be appealed.

491—4.6(99D,99F) Stewards—licensing and regulatory duties.

4.6(1) The stewards shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying an application for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Each decision denying an application for an occupational license shall be served on the applicant by personal service or by certified mail with return receipt requested to the last-known address listed in the application.

c. An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.6(2) The stewards shall monitor, supervise, and regulate the activities of occupational and parimutuel racetrack licensees. A steward may investigate any questionable conduct by a licensee for any violation of the rules or statutes. Any steward may refer an investigation to the board of stewards upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

4.6(3) A steward shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the person from a license if convicted. The steward shall take one the following courses of action upon resolution of the criminal action:

a. The steward shall reinstate the licensee if the charges are dismissed or the licensee is acquitted of the charges.

b. The steward shall deny the license.

c. If convicted of a lesser charge, it is at the discretion of the steward whether to reinstate or deny the license.

4.6(4) A steward may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

4.6(5) Hearings before the board of stewards intended to implement Iowa Code section 99D.7(13) shall be conducted under the following parameters:

a. Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder. The license holder may request a continuance in writing for good cause not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

b. The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing, and shall specify by number the statutes or rules allegedly violated. Delivery of the notice of hearing may be executed by either personal service or certified mail with return receipt requested to the last-known address listed in the application. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

c. The board has complete and total authority to decide the process of the hearing. The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

d. It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

e. Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

f. The board of stewards has the power to interpret the rules and to decide all questions not specifically covered by them. The board of stewards has the power to determine all questions arising with reference to the conduct of racing, and the authority to decide any question or dispute relating to racing in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

g. The board of stewards shall enter a written decision after each hearing. The decision shall state whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The board of stewards has the authority to impose any penalty, as set forth in these rules.

h. A licensee may appeal a board of stewards' decision. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

i. Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.6(6) A steward may eject and exclude any person from the premises of a pari-mutuel racetrack or excursion gambling boat for any reason justified by the rules or statutes. The steward may provide notice of ejection or exclusion orally or in writing. The steward may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The steward may exclude the person for a certain or indefinite period of time.

4.6(7) The stewards shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

491—4.7(99D,99F) Penalties (gaming board and board of stewards). The board may remove the license holder, either from any racetrack or riverboat, under its jurisdiction, suspend the license of the holder for up to 365 days from the date of the original suspension, or impose a fine of up to $1000, or both. The board may set the dates in which the suspension must be served. In addition, the board may order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing and gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission. All fines and suspensions imposed will be promptly reported to the riverboat or racetrack licensee and commission in writing.

4.7(1) Fines shall be paid within ten calendar days of receipt of the ruling, by the end of business hours at any commission office. Nonpayment or late payment may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

4.7(2) If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

4.7(3) If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

4.7(4) Refunds due under subrule 4.7(3) will be mailed to the party's current address on record.

4.7(5) When a racing animal or the holder of an occupational license is suspended by the board at one location, the suspension shall immediately become effective at all other facilities under the jurisdiction of the commission.

491—4.8(99D,99F) Effect of another jurisdiction's order. The commission or board may take appropriate action against a license holder or other person who has been excluded from a track or gaming establishment in another jurisdiction to exclude that person from any track or gaming establishment under the commission's jurisdiction. Proceedings shall be conducted in the same manner as prescribed by these rules for determining misconduct on Iowa tracks or in gaming establishments and shall be subject to the same appeal procedures.

491—4.9 to **4.19** Reserved.

DIVISION II
CONTESTED CASES

491—4.20(17A) Requests for contested case proceedings not covered in Division I. Any person or entity claiming an entitlement to a contested case proceeding, which is not otherwise covered by the procedures set forth in Division I, 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, if 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.

491—4.21(17A) Notice of hearing.

4.21(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.

4.21(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 commission 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 commission 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 491—4.22(17A), that the presiding officer be an administrative law judge.

491—4.22(17A) Presiding officer. Contested case hearings may be heard directly by the commission. The commission, or the administrator, shall decide whether it will hear the appeal or whether the appeal will be heard by an administrative law judge who shall serve as the presiding officer. When the appeal is heard by an administrative law judge, the administrative law judge is authorized to issue a proposed decision.

4.22(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 chair, members of the commission or commission employees.

4.22(2) The administrator may deny the request only upon a finding that one or more of the following apply:

a. Neither the administrator 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 significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

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

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

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

4.22(3) The administrator shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

4.22(4) An administrative law judge assigned to act as presiding officer in a contested case shall have a Juris Doctorate degree unless waived by the agency.

4.22(5) Except as provided otherwise by rules 491—4.41(17A) and 491—4.42(17A), 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.

4.22(6) Unless otherwise provided by law, the commission, 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.

491—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.

491—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.

491—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 4.39(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 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 491—4.41(17A) and seek a stay under rule 491—4.45(17A).

491—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.

491—4.27(17A) Pleadings.

4.27(1) Pleadings, other than the notice of appeal, will not be required in appeals from a licensing decision by a gaming representative, gaming board, or board of stewards. However, pleadings may be required in other contested cases or as ordered by the presiding officer.

4.27(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.

4.27(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 that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.27(4) Amendment. Any notice of appeal, 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.

491—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 at 717 East Court, Suite B, Des Moines, Iowa 50309. 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 office at 717 East Court, Suite B, Des Moines, Iowa 50309, 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 (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)

491—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.

491—4.30(17A) Subpoenas.

4.30(1) *Issuance.*

a. A commission 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.

4.30(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.

491—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 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 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 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 491—4.44(17A) and appeal pursuant to rule 491—4.43(17A).

491—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.

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 that 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 that 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.

491—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 commission 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.

491—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.

491—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.

491—4.36(17A) Hearing procedures.

4.36(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.

4.36(2) All objections shall be timely made and stated on the record.

4.36(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.

4.36(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.

4.36(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.36(6) Witnesses may be sequestered during the hearing.

4.36(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.

491—4.37(17A) Evidence.

4.37(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.

4.37(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.37(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.

4.37(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.

4.37(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.

4.37(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.

491—4.38(17A) Default.

4.38(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.

4.38(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.

4.38(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 491—4.43(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.

4.38(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.

4.38(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.

4.38(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.

4.38(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 491—4.41(17A).

4.38(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.

4.38(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).

4.38(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 491—4.45(17A).

491—4.39(17A) Ex parte communication.

4.39(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 commission 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.

4.39(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.

4.39(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.39(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 communication shall be provided in compliance with rule 491—4.28(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.39(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.

4.39(6) The administrator 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 subrule 4.25(1) or other law and they comply with subrule 4.39(1).

4.39(7) Communications with the presiding officer involving scheduling or procedural matters uncontested 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 491—4.33(17A).

4.39(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.

4.39(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, 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.

4.39(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 commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

491—4.40(17A) Recording costs. Upon request, the 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.

491—4.41(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 time for compliance with the order or the date of hearing, whichever is first.

491—4.42(17A) Final decision.

4.42(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

4.42(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 commission without further proceedings unless there is an appeal to, or review on motion of, the commission within the time provided in rule 491—4.43(17A).

491—4.43(17A) Appeals and review.

4.43(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 10 days after issuance of the proposed decision.

4.43(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.

4.43(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the 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.

4.43(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.43(5) *Scheduling.* The commission shall issue a schedule for consideration of the appeal.

4.43(6) *Briefs and arguments.* Unless otherwise ordered, briefs, if any, must be filed within five days of meeting.

491—4.44(17A) Applications for rehearing.

4.44(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.44(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 4.43(4), the applicant requests an opportunity to submit additional evidence.

4.44(3) *Time of filing.* The application shall be filed with the commission within 20 days after issuance of the final decision.

4.44(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.

4.44(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

491—4.45(17A) Stays of commission actions.

4.45(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 for a stay shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The administrator 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 for a stay shall state the reasons justifying a stay or other temporary remedy.

4.45(2) *When granted.* In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

4.45(3) *Vacation.* A stay may be vacated by the issuing authority upon application by the commission or any other party.

491—4.46(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.

491—4.47(17A) Emergency adjudicative proceedings.

4.47(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the commission, gaming representatives, or stewards 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 commission by emergency adjudicative order. Before the issuing of 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.

4.47(2) *Issuance.*

a. 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.

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

4.47(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.

4.47(4) *Completion of proceedings.* 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.

These rules are intended to implement Iowa Code chapters 99D and 99F and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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◊Two ARCs

CHAPTER 9
HARNESS RACING

[Prior to 11/9/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—9.1(99D) Terms defined. As used in these rules, unless the context otherwise requires, the following definitions apply:

"Also eligible" means a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or the next preferred nonqualifier for the finals or consolation from a set of elimination trials which will become eligible in the event a finalist is scratched by the stewards/judges for a rule violation or is otherwise eligible if written race conditions permit.

"Arrears" means all moneys owed by a licensee, including subscriptions, forfeitures, and any other payment and default incident to these rules.

"Association" means a nonprofit corporation defined in Iowa Code section 99D.8, holding a license from the commission to conduct harness racing and pari-mutuel wagering, and an annual license authorizing the specific dates of the annual racing meet.

"Association grounds" means all real property utilized by the association in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stables area, employee housing facilities, parking lots and any other areas under the jurisdiction of the commission.

"Authorized agent" means a person licensed by the commission as an agent for a horse owner or principal by virtue of a notarized appointment. The agent shall be designated on a form approved by the commission, filed by the owner or principal with the commission, authorizing the agent to handle matters pertaining to racing and stabling, including authorization to claim and to withdraw money from the horsemen's bookkeeper.

"Bleeder" means a horse that hemorrhages from within the respiratory tract during a race or within one and one-half hours post race, or during exercise or within one and one-half hours of exercise.

"Bleeder list" means a tabulation of all bleeders to be maintained by the commission.

"Chemist" means any official racing chemist designated by the commission.

"Claiming race" means one which includes a condition that any horse starting the race may be claimed and purchased by any licensed owner, or person(s) approved by the commission for an owner's license, for the designated amount specified in the conditions for that race by the racing secretary.

"Commission" means the racing and gaming commission.

"Conditioned race" means any overnight event to which eligibility is determined according to specified qualifications. Qualifications may be based among other things upon any one or more of the following:

1. Horses' money winnings in a specified number of previous races or during a specified previous interval of time.
2. A horse's finishing position in a specific number of previous races or during a specified period of time.
3. Age.
4. Sex.
5. Number of starts during a specified period of time.
6. Special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada.
7. Use of records or time bars as a condition is prohibited.

"Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

"Contest" means a competitive racing event on which pari-mutuel wagering is contested.

"Contestant" means an individual participant in a contest.

"Contractual concessionaire" means any business or individual dealing in the furnishing, sale or distribution of materials, supplies or services to an association.

"Coupled entry" means two or more horses starting in a race when owned or trained by the same person, or trained in the same stable or by the same management.

"Dash" means a race decided in a single trial. Dashes may be given in a series of two or three governed by one entry fee for the series, in which event a horse must start in all dashes. Positions may be drawn for each dash. The number of premiums awarded shall not exceed the number of starters in the dash.

"Day" means a 24-hour period beginning at 12:01 a.m. and ending at midnight, also referred to as a race day.

"Declaration" means the naming of a particular horse into a particular race.

"Detention barn" means the barn designated for the collection from horses of test samples under the supervision of the commission veterinarian; also it is the barn assigned by the commission to a horse on the bleeder list for occupancy as a prerequisite for receiving bleeder medication.

"Driver" means a person licensed to drive in races as a driver.

"Early closing race" means a race for a definite amount to which entries close at least six weeks preceding the race. The entrance fee may be on the installment plan or otherwise and no payment shall be refunded.

"Elimination heats" means the individual heats of a race in which the contestants must qualify for a final heat.

"Entry" means a horse made eligible to run in a race; or two or more horses, entered in the same race, which have common ties of ownership, lease, or training (see coupled entry).

"Foreign substances" means all substances except those that exist naturally in the untreated horse at normal physiological concentration.

"Futurity" means a stake in which the dam of the competing animal is nominated either when in foal or during the year of foaling.

"Guaranteed stake" means same as a stake, with a guarantee by the party opening it that the sum shall not be less than the amount named.

"Heat" means a single trial in a race, two in three, or three heat plan.

"Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgling or gelding) registered for racing under the jurisdiction of the commission.

"Late closing race" means a race for a fixed amount to which entries close less than six weeks and more than three days before the race is to be contested.

"Licensee" means any person or entity holding a license from the commission to engage in racing or related regulated activity.

"Matinee race" means a race where an entrance fee may be charged and where the premiums, if any, are other than money.

"Meeting" means the specified period and dates each year during which an association is authorized to conduct racing by approval of the commission.

"Month" means a calendar month.

"Nomination" means the naming of a horse or in the event of a futurity, the naming of a foal in utero to a certain race or series of races, eligibility that is conditioned on the payment of a fee at the time of naming and the payment of subsequent sustaining fees or starting fees.

"Nominator" means the person or entity in whose name a horse is nominated for a race or series of races.

"Objection" means a verbal claim of foul in a race lodged by the horse's driver, trainer, owner, or the owner's authorized agent before the race is declared official.

"Optional claiming race" means a contest restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less, in the case of horses to be claimed in such a race. The race shall be considered, for the purpose of these rules, a claiming race; in the case of horses not entered to be claimed in such a race, the race shall be considered a condition race.

"Overnight race" means a race for which declarations close not more than three days (omitting Sundays) or less than one day before such race is to be contested. In the absence of conditions or notice to contrary, all entries in overnight events must close not later than 12 noon the day preceding the race.

"Owner" means a person who holds any title, right or interest, whole or partial, in a horse including the lessee and lessor of a horse.

"Paddock" means an enclosure in which horses scheduled to compete in a contest are confined prior to racing.

"Post position" means the position assigned to, drawn by, or earned by a horse behind the starting gate.

"Post time" means the scheduled starting time for a contest.

"Prima facie evidence" means evidence that, until its effect is overcome by other evidence, will suffice as proof of fact in issue.

"Program" means the published listings of all contests and contestants for a specific performance.

"Protest" means an objection, properly sworn to, charging that a horse is ineligible to race, or alleging improper entry or declaration or citing any act of an owner, driver or official prohibited by the rules, and that, if true, should under these rules exclude the horse or driver from the race.

"Race" means a contest between horses for a purse, prize, or other reward contested at a licensed association in the presence of the stewards of the meeting. Every heat or dash shall be deemed a race for pari-mutuel betting purposes.

"Restricted area" means an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access.

"Rules" means the rules promulgated by the commission or United States Trotting Association (U.S.T.A.) to regulate the conduct of harness racing. Where a conflict exists between the commission and the U.S.T.A. rules, the commission's rule shall govern.

"Sample" means any bodily substance including but not limited to blood or urine taken from a horse under the supervision of the commission veterinarian and in the manner prescribed by the commission for the purpose of analysis.

"Scratch" means the act of withdrawing an entered horse from a contest after the closing of entries.

"Scratch time" means the deadline set by the commission for withdrawal of entries from a scheduled performance.

"Stable name" means a name used other than the actual legal name of an owner or lessee and registered with the U.S.T.A. and the commission.

"Stake" means a race that will be contested in a year subsequent to its closing in that the money given to the track conducting the same is added to the money contributed by the nominators, all of which except deductions for the cost of promotion, breeders of nominators awards belong to the winner or winners.

"Starter" means a horse that becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

"Stewards" means the duly appointed racing officials or their deputies serving at a licensed harness racing meeting, with the powers and duties specified by rules.

"Subscription" means moneys paid for nomination, entry, eligibility or starting of a horse in a stakes race.

"Sulky" means a dual wheel racing vehicle with dual shafts not exceeding the height of the horse's withers. Shafts must be hooded separately on each side.

"Two-year-olds" means no two-year-old shall be permitted to start in a dash or heat exceeding one mile in distance, and no two-year-old shall be permitted to race in more than two heats or dashes in any single day.

"U.S.T.A." means the United States Trotting Association.

"Veterinarian" means a veterinarian licensed by the appropriate state regulatory authority and the commission.

"Year" means a calendar year.

491—9.2(99D) Racing officials.

9.2(1) *General description.* Every association conducting a race meeting shall appoint at least the following officials, who shall all have U.S.T.A. certification:

a. One associate steward, one of the members of a three-member board of stewards;
b. The racing secretary;
c. The paddock judge;
d. The horse identifier;
e. The clerk of the course;
f. Official starter;
g. Official timer;
h. Three placing judges;
i. Official charter;
j. Program director;
k. Photo finish technician;
l. Patrol judge.

9.2(2) *Eligibility for officials.* To qualify as a racing official, the appointee must be licensed by the commission after a determination that the appointee:

a. Is of good moral character and reputation;
b. Is experienced in and knowledgeable of harness racing;
c. Is familiar with the duties to which appointed and for which responsible and with the commission's rules of harness racing;
d. Possesses the mental and physical capacity to perform the required duties;
e. Possesses natural or correctable eyesight sufficient to perform the duties; and
f. Is not under suspension or ejection by the U.S.T.A. or any other racing jurisdiction.

9.2(3) *Official's prohibited activities.* No racing official or the racing official's assistant(s) listed in 9.2(1) while serving during any meeting may engage in any of the following:

a. A business or employment which would be a conflict of interest or interfere or conflict with the proper discharge of duties including:
(1) A business which does business with an association.
(2) A business issued a concession operator's license.
b. Participate in the sale or purchase or ownership of any horse racing at the meeting.
c. Sell or solicit horse insurance on any horse racing at the meeting; or engage in any other business sales or solicitation not a part of the official's duties;
d. Wager on the outcome of any live or simulcast race;
e. Accept or receive money or anything of value for assistance in connection with the official's duties; or
f. Refuse to take a breath analyzer test or submit to a blood or urine sample when directed by the commission or its designee.

9.2(4) *Report of violations.* Every racing official and assistant(s) is responsible to report immediately to the stewards of the meeting every observed violation of these rules and of the laws of this state which occur within the official's jurisdiction.

9.2(5) *Single official appointment.* No official appointed to any meeting may hold more than one official position listed in 9.2(1) unless, in the determination of the stewards or commission, the holding of more than one appointment would not subject the official to a conflict of interests and duties in the two appointments.

9.2(6) *Stewards (for practice and procedure before the stewards and the racing commission, see 491—Chapter 4).*

a. General authority.

(1) General. The board of stewards for each racing meet shall be responsible to the commission for the conduct of the race meetings in accordance with the laws of this state and the rules adopted by the commission. The stewards shall only have authority to resolve conflicts or disputes between all other racing officials or licensees where the disputes are reasonably related to the conduct of a race, or races, and to punish violators of these rules in accordance with the provisions of these rules.

(2) Appointment of substitute. Should any steward be absent at race time, the other two stewards shall agree on the appointment of a deputy for the absent steward or if they are unable to agree on a deputy, then the racing secretary shall appoint a deputy for that race. If any deputy steward is appointed, the commission shall be notified immediately by the stewards.

(3) Attendance. All three stewards shall be present in the stand while the race is contested.

(4) Period of authority. The period of authority shall commence 30 days prior to the beginning of each racing meet and shall terminate 30 days after the end of each racing meet.

(5) Initiate action. Stewards may, from their own observations, take notice of misconduct or rule violations and institute investigations and compliance of possible rule violations.

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of racing during racing. They shall have the authority to charge any licensee for a violation of these rules, to conduct hearings and to impose fines or suspensions within the limits and procedures of the commission. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final for purposes of distribution of the pari-mutuel pool.

b. Duties of stewards.

(1) The laws of Iowa and the rules of racing supersede the conditions of a race and the regulations of a race meeting, and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the association.

(2) The stewards shall have the power to interpret the rules and to decide all questions not specifically covered by them.

(3) All questions pertaining to which their authority extends shall be determined by a majority of the stewards.

(4) The stewards shall have the power to regulate and control owners, trainers, grooms and other persons attendant on horses and also over all officials and licensed personnel of the meeting.

(5) The stewards shall have control over and access to all areas of the racetrack grounds.

(6) The stewards shall have the power to determine all questions arising with reference to entries and racing.

(7) Persons entering horses to run on licensed Iowa tracks agree in so doing to accept the decision of the stewards on any questions relating to a race or racing.

(8) The stewards shall have the power to punish for violation of the rules any person subject to their control and in their discretion to impose fines or suspensions or both for infractions.

(9) The stewards shall have the power to order the exclusion or ejection from all premises and enclosures of the association any person who is disqualified for corrupt practices on any race course in any country.

(10) The stewards shall have the power to call for proof that a horse is neither itself disqualified in any respect, nor nominated by, nor the property, wholly or in part, of a disqualified person, and in default of proof being given to their satisfaction, they may declare the horse disqualified.

(11) The stewards shall have the power at any time to order an examination, by person or persons they think fit, of any horse entered for a race or which has run in a race.

(12) The stewards shall take notice of any questionable conduct with or without complaint and shall investigate promptly and render a decision on every objection and on every complaint made to them.

(13) The stewards, in order to maintain necessary safety and health conditions and to protect the public confidence in horse racing as a sport, shall have the right to authorize a person or persons in their behalf to enter into or upon the buildings, barns, motor vehicles, trailers or other places within the grounds of a licensed racetrack, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

(14) Upon the finding of a violation of these rules, or an attempted violation, on the grounds of a licensed facility, the stewards may suspend the license of any person for one calendar year or racing season, whichever is greater, or they may impose a fine not to exceed $1,000 or both. All fines imposed by the stewards/judges shall be paid to the commission within ten days after the ruling is issued, unless otherwise ordered. They may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing commission or a board of stewards of any recognized meeting. They may also order the redistribution of purse payments where appropriate. All suspensions and fines must be reported to the commission. If the punishment so imposed is not sufficient, in the opinion of the stewards, they shall so report to the commission. All fines and suspensions imposed by the stewards shall be promptly reported to the racing secretary and commission.

c. Emergency authority.

(1) Substitute officials. When in an emergency any official is unable to discharge duties, the stewards may approve the appointment of a substitute. The stewards shall report the appointment immediately to the commission.

(2) Substitutes. The stewards have the authority in an emergency to designate a substitute trainer or driver for any horse.

(3) Excuse horse. In case of accident or injury to a horse or any other emergency deemed by the stewards before the start of any race, the stewards may excuse the horse from starting.

d. Investigations and decisions.

(1) Investigations. The stewards may, upon direction of the commission, conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses and shall submit a written report of every inquiry made by them to the commission.

(2) Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering or determine that the conduct of the race would not be in the interest of the regulation of the pari-mutuel wagering industry or in the public confidence in racing. The stewards shall cancel trifecta wagering anytime there are fewer than seven betting interests at the time the horses leave the paddock for the post. The administrator may approve smaller fields for trifecta wagering if extraneous circumstances are shown by the licensee.

(3) Protest to patrol judge. A driver who intends to enter a protest must report to the patrol judge in the starting gate following the running of any race and, before the race is declared official, shall notify the patrol judge of the driver's intention immediately after the finish of the race. The driver then will proceed to the paddock judge's office to be available to talk to the stewards.

(4) Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer or other persons connected with the horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win or finish as near as possible to first.

(5) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and shall place any horse found to be disqualified behind others in the race with which it interfered or the stewards may place the offending horse last in the race.

2. Coupled entry. When a horse is disqualified under this rule and that horse was part of a coupled entry and, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may, at their discretion, disqualify the other part of the entry.

(6) Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and file reports daily with the administrator.

1. Involving fraud. Protests involving fraud may be made by any person at any time to the stewards.

2. Not involving fraud. Protests arising out of the contesting of a race may be filed only by the owner of a horse, authorized agent, the trainer, or the driver of the horse in the race over which the protest is made. The protest must be made to the stewards before the race is declared official.

3. Prize money of protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race shall be paid to and held by the horsemen's accountant until the protest is decided.

4. Protest in writing. A protest, other than one arising out of the actual contesting of a race, must be in writing, signed by the complainant, and filed with the stewards one hour before post time of the race out of which the protest arises.

5. Frivolous protests. No person or licensee shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

9.2(7) *Racing secretary.*

a. General authority. The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due and the recording of racing results. The racing secretary shall permit no person other than licensed racing officials to enter the racing secretary's office or work areas until such time as all entries are closed, drawn, or smoked. Exceptions to this rule must be approved by the stewards.

(1) Minimum purse. Thirty days prior to the opening of a race meeting, the association shall present to the commission for approval the proposed purse structure for the race meeting, including the minimum purse to be offered. Any contract with an organization representing the horsemen shall also be presented for commission approval at this time.

(2) Purse supplements for registered Iowa-bred horses. The commission shall also approve the proposed plan for purse supplements for the owners of registered Iowa-bred horses to be funded by the breakage as provided in Iowa Code section 99D.12.

b. Conditions. The secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers and the commission and be posted in the racing secretary's office. Corrections to the conditions must be made within 24 hours of publication.

c. Posting of entries. Upon the completion of the draw each day, the race secretary shall post a list of entries in a conspicuous location in the race office and make the list available to the media.

d. Stakes and entrance money records. The race secretary shall be caretaker of the permanent records of all stakes, entrance moneys and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.

e. Winnings—all inclusive. For the purpose of the setting of conditions by the race secretary, winnings shall be considered to include all moneys and prizes won up to the time when entries close, but winnings on the closing date of eligibility shall not be considered.

f. Cancellation of a race. The secretary has the authority to withdraw, cancel or change any race which has not been closed. In the event the canceled race is a stakes race, all subscriptions and fees paid in connection with the race shall be refunded.

g. Coggins test or equine infectious anemia. The racing secretary shall ensure that all horses have a current negative Coggins test or negative equine infectious anemia test. The racing secretary shall report all expired certificates to the board of stewards.

h. Rejection of declaration.

(1) The race secretary may reject the declaration on any horse whose eligibility certificate was not in possession of the race secretary on the date the condition book is published.

(2) The race secretary may reject the declaration on any horse whose past performance indicates that the horse would be below the competitive level of other horses declared, provided the rejection does not result in a race being canceled.

i. Eligibility certificates. The race secretary will receive and keep the eligibility certificate of horses competing at the racetrack or stabled on the grounds of member tracks and to return same to the owner of a horse or the owner's representative upon request.

j. Declaration blanks. The race secretary will examine all declaration blanks to verify all information set forth therein.

k. Verify eligibility. The race secretary will check the eligibility of all horses drawn in to race and verify the horses' eligibility with the stewards/judges.

9.2(8) *Paddock judge.*

a. General authority. The paddock judge shall:

(1) Be in charge of the paddock and shall have general responsibility for the inspection of horses and for the equipment used.

(2) Attempt to maintain consistency in the use of equipment on individual horses.

(3) Supervise paddock gate men.

b. Duties.

(1) Require that a farrier be in the paddock prior to each race to ensure that all horses are properly shod.

(2) Exclude from the paddock all those persons who have no immediate business with the horses entered in a race and report rule violations in the paddock area to the stewards.

(3) Get the fields on the racetrack for post parades.

(4) Properly check in and check out horses and drivers.

(5) Immediately notify the stewards of anything that could in any way change, delay, or otherwise affect the racing program.

(6) Report to stewards any observed cruelty to a horse.

9.2(9) *Horse identifier.*

a. General authority. The horse identifier shall be present for each race and shall inspect each horse prior to its departure from the paddock to the post for identification to include tattoo number, color, and any markings.

b. Report violations. Any discrepancy detected in the tattoo number, color or markings of a horse shall be reported immediately to the paddock judge, who shall in turn report same forthwith to the stewards.

9.2(10) *Clerk of the course.* The clerk of the course shall be responsible for:

a. Keeping and verifying the stewards/judges' book and eligibility certificates provided by the U.S.T.A./C.T.A. and record therein all required information:

(1) Names and addresses of owners;

(2) The standard symbols for medications, where applicable;

(3) Notations of placing, disqualifications and claimed horses;

(4) Notations of scratched or ruled out horses;

(5) Returning the eligibility certificate to the horse's owner or the owner's representative after the race, when requested;

(6) Notifying owners and drivers of penalties assessed by the officials;

(7) Assisting in drawing post positions, if requested; and

(8) Maintaining the stewards/judges' list.

b. Reserved.

9.2(11) *Starter.*

a. General authority. The starter is responsible to provide a fair start for each race.

b. Violations. The starter shall report to the stewards any violations of these rules occurring in the starting of a race.

c. Disciplinary action. The official starter may recommend fines or suspension of the licenses of drivers for any violations of these rules from the formation of the parade until the word "go" is given to the stewards/judges.

9.2(12) *Timer.*

a. General authority. Each association shall provide for each race an official timer who shall occupy the timer's stand or other appropriate place to observe the contesting of each race. The official timer shall accurately record the time elapsed between the start and finish of each race. The chief timer shall sign the stewards' book for each race verifying the correctness of the record.

b. Timing procedure. The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line. The time of the leading horse at the quarter, half, three-quarters and the finish shall be taken.

c. Timing races.

(1) In every race, the time of each heat shall be accurately recorded by two timers or an approved electrical timing device, in which case, there shall be one timer.

(2) Times of heats shall be recorded in minutes, seconds and fifths of a second.

(3) Immediately following each heat, the elapsed time of the heat shall be publicly announced or posted, or both, on the totalizator board.

(4) No unofficial timing shall be announced, posted or entered in the official record.

9.2(13) *Patrol judges.*

a. General authority. An association may employ patrol judges who shall observe the contesting of the race and report the following to the stewards:

(1) Violation of the racing rules.

(2) Violation of the rules of decorum.

(3) Lameness or unfitness of any horse.

(4) Lack of proper racing equipment.

(5) Any action on the track which could improperly affect the result of a race.

b. Duty stations. Each patrol judge shall have a duty station assigned by the stewards.

9.2(14) *Placing judges.*

a. General authority. It is the duty of the placing judges to determine the winner of each race and the order of finish for each of the remaining horses in the race. In case of a difference of opinion among the judges, the majority opinion shall govern. In determining places at the finish of a race, the placing judges shall consider only the noses of the placing horses.

b. Corrections. The placing judges, with approval of the stewards, may correct errors in their determination of the placing of horses at the finish before the display of the official sign, or if the official's sign has been displayed in error, after that display. If the display is in error, no person shall be entitled to any proceeds of the pari-mutuel pool on account of the error.

c. The stewards' decision on the race shall be final.

9.2(15) *Commission veterinarians.*

a. The commission shall employ graduate veterinarians licensed to practice in the state of Iowa at each race meeting as provided in Iowa Code section 99D.23. The veterinarians shall advise the commission and the stewards on all veterinary matters.

b. The commission veterinarians shall have supervision and control of the detention barn for the collection of test samples for the testing of horses for prohibited medication as provided in Iowa Code sections 99D.23 and 99D.25. The commission may employ persons to assist the commission veterinarians in maintaining the detention barn area and collecting test samples.

c. The commission veterinarians shall not buy or sell any horse under their supervision; shall not wager on a race under their supervision; and shall not be licensed to participate in racing in any other capacity.

d. Prerace examination. The stewards or commission veterinarians may request that any horse entered in a race undergo an examination on the day of the race to determine the general fitness of the horse for racing. During the examination, all bandages shall be removed by the groom upon request and the horse may be exercised outside the stall to permit the examiner to determine the condition of the horse's legs and feet. The examining veterinarian shall report any unsoundness in a horse to the stewards.

e. Inspection prior to and following a race. All of the horses in a race shall be inspected during warm-ups and in the paddock by a commission veterinarian. After the finish of a race, the veterinarian shall observe the horses upon their leaving the track.

f. The commission veterinarian shall place any horse determined to be sick or too unsafe, unsound or unfit to race on a veterinarian's list which shall be posted in a conspicuous place available to all owners, trainers, and officials.

g. A horse placed on the veterinarian's list may be allowed to enter only after it has been removed from the list by the commission veterinarian. Requests for the removal of any horse from the veterinarian's list will be accepted only after three calendar days from the placing of the horse on the veterinarian's list have elapsed. Removal from the list will be at the discretion of the commission veterinarian and the commission veterinarian may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified.

h. The commission veterinarians shall perform the duties and responsibilities regarding:

(1) The administration of lasix and phenylbutazone;

(2) Postmortem examination on all horses which have expired or been euthanized on racetrack grounds; and

(3) Receipt of veterinary reports as required by Iowa Code section 99D.25.

9.2(16) *Driver room custodian.* The driver room custodian shall have the following duties:

a. Maintain order, decorum and cleanliness in the driver's room.

b. Ensure that no person other than representatives of the commission, association, and drivers are admitted to the driver's room on a racing day except by permission of the stewards and ensure that no unauthorized personnel are permitted in the driver's room after the final race on racing days.

c. Ensure that drivers are neat in appearance and properly attired when they leave the driver's room to drive in a race.

d. Report any rule violations within the driver's room to stewards.

e. Assign to drivers a locker capable of being locked for the use of the driver in storing clothing, equipment and personal effects.

9.2(17) *Licensed charter.* The charting of races is mandatory and the track shall employ a licensed charter from the U.S.T.A.

491—9.3(99D) Trainer and driver responsibilities.

9.3(1) *Trainer.*

a. Responsibility.

(1) Absolute insurer. Trainers are responsible for and are the absolute insurers of the condition of the horses in their care and custody and for the conditions and contents of stalls, tack rooms, feed rooms, and other areas which have been assigned them by the association. Trainers are the absolute insurers of the condition of the horses in their care and custody during the race and are liable for the presence of any drug, medication, or any other prohibited substance in the horse during the race. A trainer whose horse has been claimed remains responsible for the horse under this rule until after the collection of required urine or blood specimens. The licensed trainer of a horse found to have been administered a medication, drug, or foreign substance in violation of these rules or Iowa Code chapter 99D shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering; and, failing to prove freedom from negligence, shall be subject to disciplinary action.

(2) The assistant trainer, groom or any other person having immediate care and custody of a horse found to have been administered a medication, drug, or foreign substance in violation of these rules or Iowa Code chapter 99D, found negligent in guarding or protecting the horse from tampering shall be subject to disciplinary action.

(3) Licensed trainers shall maintain the barn area assigned to them in a clean, neat and sanitary condition at all times and ensure that fire prevention rules are strictly observed in those areas.

(4) Report of illness or sex alteration. Trainers shall report immediately to the stewards and the commission veterinarian any illness in a horse entrusted to their care presenting unusual or unknown symptoms. Any alteration in the sex of a horse must be reported and noted by the trainer to the racing secretary or horse identification office immediately, and that office must note the same on the eligibility certificate.

(5) On a form provided by track security, trainers shall register with track security the names of all employees. This form must be presented to track security not later than 24 hours after the arrival of any personnel. All changes must be made not later than 24 hours after taking place.

(6) Trainers shall register with the racing secretary, on a form provided by the racing secretary, all horses which are intended to race at the meeting stating their names, age, sex, color, breeding, and the names of any and all persons having any interest in said horse(s). This registration must be presented to the racing secretary immediately upon arrival of the trainer and all changes must be reported within 24 hours after taking place.

(7) Trainer at paddock. A trainer or assistant must be present with the horse in the paddock and shall supervise the preparation of the horse to race unless the stewards permit a substitute trainer to perform those duties. Every trainer who brings a horse to the paddock warrants that the horse is qualified for the race, is ready to race and is in physical condition to exert its best efforts, and is entered with the intention to win.

(8) Paddock time. A trainer shall present the horse in the paddock at the time so designated by the steward prior to post time before the race in which the horse is entered. Except for warm-up trips, no horse shall leave the paddock until called to the post.

(9) Coggins test certificate or equine infectious anemia. Each trainer shall maintain for each horse under the trainer's care a valid certificate indicating that the horse has a negative Coggins test or a negative test for equine infectious anemia and attach it to the horse's eligibility certificate. The test must have been conducted within the previous 12 months and must be repeated upon expiration.

(10) The transfer of ownership of a horse or the change of trainers must be presented to the stewards in writing and approved by the stewards before any entry is made reflecting the change. The transfer or attempt to transfer a horse to circumvent a commission rule or order is prohibited.

(11) Three-day absence. Trainers shall not be absent from their stable or from the association premises where their horses are racing for more than three full days unless they have delegated responsibility for the horses in their care to another licensed trainer. In the event of a delegation, the temporary trainer shall accept, in writing and in the presence of the stewards, the responsibility for the horses.

b. Prohibited acts.

(1) Entry ineligible. No trainer shall enter or start a horse in any race if the horse is ineligible under these rules or the laws of this state related to racing.

(2) Employees.

1. Unlicensed veterinarian. No trainer shall employ a veterinarian who is not licensed by both this state's veterinary regulatory authority and the commission.

2. Minor. No trainer shall employ any person under the age of 16. Persons under the age of 16 may be allowed to work for their parents if one of their parents is present during working hours.

(3) Training for suspended persons. No trainer shall train or be responsible for any horse that is wholly or partly owned by a person under suspension by the stewards or the commission.

9.3(2) *Driver.*

a. Driving duty. Every driver shall participate when programmed unless excused by the stewards.

b. Driver suspension.

(1) Offenses involving fraud. Suspension of a license for an offense involving fraud or deception of the public or another participant in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.

(2) Offenses not involving fraud. Suspension for an offense not involving fraud or deception of the public or another participant in racing shall begin on the third day after the ruling or at the stewards' discretion subject to the following. Where the penalty is for a driving violation and does not exceed five days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five days or less, but the suspension will be extended one day for each date the driver drives.

(3) Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission shall be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the commission why the withdrawal should not be deemed frivolous.

c. Driving colors. Drivers must wear distinguishing colors and clean white pants and shall not be allowed to start in a race or other public performance unless, in the opinion of the stewards, they are properly dressed. No person shall drive a horse during the time when colors are required on the racetrack unless wearing a protective helmet, painted as registered or of compatible colors, and having a chin strap in place. The helmet shall be approved by the stewards.

d. Driver betting. No driver, trainer, or owner of a horse shall bet or cause any other person to bet on their behalf on any other horse in any race in which they shall start a horse driven, trained, or owned by them, or which they in any way represent or handle or in which they have an interest. No such person shall participate in exacta, quinella or other multiple-pool wagering on a race in which such horse starts other than the daily double.

491—9.4(99D) Conduct of races.

9.4(1) *Horses ineligible.* Any horse ineligible to be entered for a race, or ineligible to start in any race, that competes in that race may be disqualified and the stewards may discipline the persons responsible for that horse competing in that race. A horse is ineligible to start a race when:

a. The horse is not stabled on the grounds of the licensed association by the time so designated by the stewards, or

b. The U.S.T.A. or C.T.A. eligibility certificate has not been examined by the racing secretary, or horse identifier, and determined to be proper and in order, or

c. The horse is not fully identified by an official tattoo on the inside of the upper lip, or

d. With respect to a horse that is entered for the first time, the nominator has failed to identify the horse by name, color, sex and age, names of sire and dam as registered, and present owner and trainer, or

e. A horse is brought to the paddock and is not in the care of and harnessed by a trainer or assistant trainer, or

f. A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered eligibility certificate, or altered lip tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any association or regulatory agency, or

g. A horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in, or assisted in the entry of racing of some other horse under the name of the horse in question, or

h. A horse is wholly or partially owned by a disqualified person or a horse is under the direct or indirect management of a disqualified person, or

i. A horse is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, is being presumed that the disqualified person and spouse constitute a single financial entry with respect to the horse, which presumption may be rebutted, or

j. A horse has no current negative Coggins test certificate or negative equine infectious anemia test attached to the eligibility certificate, or

k. The stakes or entrance money for the horse has not been paid, or

l. A horse appears on the starter's list, steward's list, paddock list, or veterinarian's list, or

m. A horse is a first-time starter not meeting qualifications standards for the race meeting, or

n. A horse is owned in whole or in part by an undisclosed person of interest, or

o. The owner or trainer is not licensed by the commission before the start of a race, or

p. A horse is subject to a lien that has not been approved by the stewards and filed with the horseman's bookkeeper, or

q. A horse is subject to a lease not filed with the stewards, or

r. A horse is not in sound racing condition, or

s. A horse has been nerved by surgical neurectomy, or

t. A horse has been trachea-tubed to artificially assist breathing, or

u. A horse has been blocked with alcohol or injected with any other foreign substance or drug to desensitize the nerves of the leg, or

v. A horse has impaired eyesight in both eyes, or

w. A horse appears on the starters' list, stewards' list, or veterinarians' list and is barred from racing in any racing jurisdiction, or

x. A horse has started in any race on the previous calendar day.

9.4(2) *Registration.* All matters relating to registration of standardbred horses shall be governed by the rules of the U.S.T.A.

9.4(3) *Eligibility certificate.* A track may refuse to accept any declaration without the eligibility certificate for the proper gait first being presented. Fax or telephone declarations may be sent and accepted without penalty, provided the declarer furnished adequate program information, but the eligibility certificate must be presented when the horse arrives at the track before it races. The racing secretary shall check each certificate and certify to the stewards as to the eligibility of all the horses.

9.4(4) *Canadian track information.* Prior to the declaration, owners of horses having Canadian eligibility certificates shall furnish the racing secretary with a Canadian eligibility certificate completely filled out for the current year, which has a U.S.T.A. validation certificate attached.

9.4(5) *Foreign entries.* No eligibility certificate will be issued on a horse coming from a country other than Canada unless the following information certified by the trotting association or governing body of that country from which the horse comes is furnished:

a. The number of starts during the preceding year, together with the number of firsts, seconds and thirds for each horse, and the total amount of money won during this period.

b. The number of races in which the horse has started during the current year, together with the number of firsts, seconds and thirds for each horse and the money won during this period.

c. A detailed list of the last six starts giving the date, place, track condition, post position or handicap, if it was a handicap race, distance of the race, position at the finish, the time of the race, the driver's name and the first three horses in the race.

9.4(6) *Time bars.* No time records or bars shall be used as an element of eligibility.

9.4(7) *Date when eligibility is determined.*

a. Horses must be eligible when entries close but winnings on the closing date of eligibility shall not be considered.

b. In mixed races, trotting and pacing, a horse must be eligible to the class at the gait at which it is stated in the entry the horse will perform.

9.4(8) *Conflicting conditions.* In the event there are conflicting published conditions and neither is withdrawn by the track, the more favorable to the nominator shall govern.

9.4(9) *Standards for overnight events.* Where time standards are established at a meeting for both trotters and pacers, trotters shall be given a minimum of two seconds' allowance in relation to pacers.

Posting of overnight conditions. At extended pari-mutuel meetings, condition books will be prepared and races may be divided or substituted races may be used only where regularly scheduled races fail to fill except where they race less than five days a week. Books containing at least three days' racing programs will be available to horsemen at least 24 hours prior to closing declarations on any race program contained. When published, the conditions must be clearly stated and not printed as TBA—To Be Announced. The racing secretary shall forward copies of each condition book and overnight sheet to the commission and U.S.T.A. office as soon as it is available to the horsemen.

9.4(10) *Supplemental purse payments.* Supplemental purse payments made by a track after the termination of a meeting will be charged and credited to the winnings of any horse at the end of the racing year in which they are distributed and will appear on the eligibility certificate for the subsequent year. Distribution shall not affect the current eligibility until placed on the next eligibility certificate.

9.4(11) *Rejection of declaration.*

a. The racing secretary may reject the declaration on any horse whose eligibility certificate was not in their possession on the date the condition book is published.

b. The racing secretary may reject the declaration on any horse whose past performance indicates that it would be below the competitive level of other horses declared, provided the rejection does not result in a race being canceled.

9.4(12) *Substitute and divided races.*

a. Substitute races may be provided for each day's program and shall be so designated. Entries in races not filling shall be posted. A substitute race or a race divided into two divisions shall be used only if regularly scheduled races fail to fill.

b. If a regular race fills, it shall be raced on the day it was offered.

c. Overnight events and substitutes shall not be carried to the next racing day.

9.4(13) *Qualifying races.* A horse qualifying in a qualifying race for which no purse is offered shall not be deprived by reason of that performance of the right to start in any conditioned race.

9.4(14) *Definition of "start."* The definition of the word "start" in any type of condition unless specifically so stated will include only those performances in a purse race. Qualifying and matinee races are excluded.

9.4(15) *Claiming races.*

a. Eligibility.

(1) Registered to race or open claiming certificate. No person may file a claim for any horse unless the person:

1. Is a licensed owner at the meeting or the licensed authorized agent for an owner authorized to claim. The owner must be registered in good faith for racing or have started a horse at the meeting; or

2. Has a valid open claim certificate. Any person not licensed as an owner or a licensed agent for the account of such person may request an open claim certificate from the commission. The person must submit a completed application for a prospective owner's license to the commission. The applicant must have the name of the trainer licensed or eligible to be licensed by the commission who will be responsible for the claimed horse. A nonrefundable fee must accompany the application along with any financial information requested by the commission. The names of the prospective owners shall be prominently displayed in the offices of the commission and the racing secretary. The application will be processed by the commission and, when the open claim certificate is exercised, an owner's license will be issued.

3. Is a current active member of the U.S.T.A.

(2) One stable claim. No stable which consists of horses owned by more than one person and which has a single trainer may submit more than one claim in any race and an authorized agent may submit only one claim in any race regardless of the number of owners represented.

b. Prohibitions.

(1) No person shall claim the person's own horse nor shall the person claim a horse trained or driven by the person.

(2) No person shall claim more than one horse in a race.

(3) No qualified owner or the owner's agent shall claim a horse for another person or file a false claim.

(4) No owner shall cause the owner's horse to be claimed directly or indirectly for the owner's own account.

(5) No person shall offer, or enter into an agreement, to claim or not to claim or attempt to prevent another person from claiming any horse in a claiming race.

(6) No person shall enter a horse against which there is a mortgage, bill of sale, or lien of any kind, unless the written consent of the holder shall be filed with the clerk of the course of the track conducting the claiming race.

(7) Where a horse drawn to start in a claiming race has been declared to start in a subsequent claiming race, a successful claimant, if any, of the horse in the first race shall have the option of scratching the horse from the subsequent race.

(8) Any mare which has been bred shall not be declared into a claiming race for at least 45 days following the last breeding of the mare, and thereafter the mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race.

c. Claiming procedure.

(1) Claimant's credit. The claimant must have a credit with the track in an amount equivalent to the specified claiming prize applicable taxes, plus the required fees for transfer of registration.

(2) Owner's consent. No declaration may be accepted unless written permission in the form of a claiming authorization of the owner is filed with the stewards at the time of declaration.

(3) Program. The claiming price shall be printed on the program and all claims shall be for the amount so designated and any horse entered in a claiming race may be claimed for the designated amount.

d. Claim box.

(1) The claim box shall be approved by the commission and kept locked until ten minutes prior to the start of the race, when it shall be presented to the stewards or their designee for opening and publication of the claims.

(2) The claim box shall also include a time clock which automatically stamps the time on the claim envelope prior to its being dropped in the box.

(3) No official of an association shall give any information as to the filing of claims therein until after the race has been run.

e. Claim irrevocable. After a claim has been filed in the locked box, it shall not be withdrawn.

f. Multiple claims on single horse. If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their representatives.

g. Successful claims; later races.

(1) Sale or transfer. No successful claimant may sell or transfer a horse, except in a claiming race, for a period of 30 days from the date of claim.

(2) Eligibility price. A claimed horse may not start in a race in which the claiming price is less than 25 percent more than the amount for which it was claimed for a period of 30 days and no right, title or interest therein shall be sold or transferred except in a claiming race for a period of 30 days following the date of claiming. The day claimed shall not count but the following calendar day shall be the first day. The horse shall be entitled to enter whenever necessary so the horse may start on the thirty-first calendar day following the claim for any claiming price. The horse shall be required to continue to race at the track where claimed for the balance of the current race meeting.

(3) Racing elsewhere. A horse which was claimed under these rules may not participate at a race meeting other than that at which it was claimed until the end of the meeting, except with written permission of the stewards. This limitation shall not apply to stakes races.

(4) Same management. A claimed horse shall not remain in the same stable or under the control or management of its former owner.

(5) When a horse is claimed out of a claiming race, the horse's engagements are included.

h. Transfer after claim.

(1) Forms. Upon a successful claim, the stewards shall issue in triplicate, upon forms approved by the administrator, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the commission, the stewards, and the race secretary. No claimed horse shall be delivered by the original to the successful claimant until authorized by the stewards. Every horse claimed shall race in all heats or dashes of the event in the interest and for the account of the owner who declared it in the event, but title to the claimed horse shall be vested in the successful claimant from the time the word "go" is given in the first heat or dash, and said successful claimant shall become the owner of the horse, whether it be alive or dead or sound or unsound, or injured during the race or after it.

(2) Other jurisdiction rules. The commission will recognize and be governed by the rules of any jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction.

(3) Determination of sex and age. The claimant shall be responsible for determining the sex and age of the horse claimed notwithstanding any designation of sex and age appearing in the program or in any racing publication. In the event of a spayed mare, the (S) for spayed should appear next to the mare's name on the program. If it does not and the claimant finds that the mare is in fact spayed, claimant may then return the mare for full refund of the claiming price.

(4) Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for the claimant's own account or as an authorized agent for a principal and not for any other person.

(5) Delivery required. A horse claimed shall be delivered immediately by the original owner or the owner's trainer to the successful claimant upon authorization of the stewards. Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended together with the horse until delivery is made.

(6) Obstructing rules of claiming. No person or licensee shall obstruct or interfere with another person or licensee in claiming any horse nor enter an agreement with another to subvert or defeat the object and procedures of a claiming race or attempt to prevent any horse entered from being claimed.

i. Elimination of stable. An owner whose stable has been eliminated by claiming may claim for the remainder of the meeting at which eliminated or for 30 racing days, whichever is longer, with the permission of the stewards. Stables eliminated by fire or other casualty may claim under this rule.

j. Deceptive claim. The stewards may cancel and disallow any claim within 24 hours after a race if they determine that a claim was made upon the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim. In the event of a disallowance, the stewards may further order the return of a horse to its original owner and the return of the claims money.

k. Protest of claim. A protest to any claim must be filed with the stewards before noon of the day following the date the horse was claimed. Nonracing days are excluded from this rule.

l. Scratched horse. A horse scratched from a claiming race is not eligible to be claimed. The owner or trainer of a horse entered in a subsequent claiming race may request the steward to scratch the horse from that race.

m. Claiming price paid. The track shall pay the claiming price to the owner at the time the registration certificate is delivered for presentation to the successful claimant.

n. Claiming conditions. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a 20 percent minimum price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race. An allowance for age shall be given. Two-year-olds shall be given a 100 percent allowance, three-year-olds, 50 percent allowance, and four-year-olds, 25 percent allowance. Claiming races for two-year-olds may be conditioned. Claiming races for three-year-olds may be conditioned. The lowest claiming class written at a specific meeting may be conditioned. Horses eligible for multiple allowances shall be granted only the highest allowance.

o. Minimum price. No claiming race shall be offered permitting claims for less than the minimum purse offered at the time during the same racing week.

p. Determination of claiming price. Except as provided, no horse owner shall be prohibited from determining the price for which the owner's horse shall be entered.

q. Eligibility certificate. The current eligibility certificate of all horses entered in claiming races must be on file with the racing secretary. Registration papers and a separate claiming authorization form signed by the registered owner or owners and indicating the minimum amount for which the horse may be entered to be claimed will be on file with the stewards. To facilitate transfer of claimed horses, the presiding steward may sign the transfer provided that the clerk of course then sends the registration certificate and claiming authorization to the U.S.T.A. registrar for transfer.

r. Fraudulent claim.

(1) If the stewards determine that the declaration of any horse to a claiming race is fraudulent on the part of the declarer, they may void the claim and, at the option of the claimant, order the horse returned to the person declaring it in the race.

(2) If the stewards determine that any claim of a horse is fraudulent on the part of the person making the claim, they may void the claim and may, at the option of the person declaring it in the race, return the horse to the person declaring it in the race.

9.4(16) *Entries.* All entries must:

a. Be made in writing.

b. Be signed by the owner or authorized agent, except as provided in this chapter.

c. Give name and address of both the bona fide owner and agent or registered stable name or lessee.

d. Give name, color, sex, sire and dam of horse.

e. Name the event or events in which the horse is to be entered.

9.4(17) *Entries and starters; split races.*

a. Entries required. Tracks must specify how many entries are required for overnight events and after the condition is fulfilled, the event must be contested.

b. Elimination heats or two divisions. In any race where the number of horses declared in to start exceeds 11 on a half-mile track, or 14 on a larger track, unless lesser numbers are specified in the conditions of the race, the race, at the option of the track management conducting same, stated before positions are drawn, may be raced in elimination heats.

In the absence of conditions providing for a lesser number of starters, no more than two tiers of horses, allowing eight feet per horse, will be allowed to start in any race.

c. Elimination plans.

(1) Whenever elimination heats are required, or specified in the published conditions, the race shall be raced in the following manner unless otherwise stated in the condition or conducted under another segment of these rules. The field shall be divided by lot and the first division shall race a qualifying dash for 30 percent of the purse, the second division shall race a qualifying dash for 30 percent of the purse and the horses so qualified shall race in the main event for 40 percent of the purse. The winner of the main event shall be the race winner.

(2) In the event there are more horses declared to start than can be accommodated by the two elimination dashes, then there will be added enough elimination dashes to take care of the excess. The percent of the purse raced for each elimination dash will be determined by dividing the number of elimination dashes into 60. The main event will race for 40 percent of the purse.

(3) Unless the conditions provide otherwise, if there are two elimination dashes, the first four finishers in each dash qualify for the final; if there are three or more elimination dashes, not more than three horses will qualify for the final from each qualifying dash.

(4) The stewards shall draw the positions in which the horses are to start in the main event by one of the following methods, as prescribed by the sponsor in the conditions for the event:

1. They shall draw positions to determine which of the dash winners has the pole and which the second position; which of the two horses that have been second shall start in third position; and which in fourth, and subsequent positions, or

2. They shall have an open draw to determine the positions in which the horses are to start in the main event; that is, all positions shall be drawn by lot from among all horses qualified for the main event. In the event the sponsor fails to prescribe in the conditions for the event the method to be used for the drawing of post positions, the provisions of paragraph "1" above shall apply.

d. Overnight events. In overnight events at extended pari-mutuel meetings, not more than eight horses shall be allowed to start on a half-mile track and not more than ten horses on larger tracks.

e. Qualifying race for stake. Where qualifying races are provided in the conditions of any early closing event, stakes or futurity, the qualifying race must be held not more than seven days prior to contesting the main event and omitting the day of the race.

9.4(18) *Declaration to start; drawing horses.*

a. Declaration.

(1) Declaration time shall be determined by the board of stewards.

(2) No horse shall be declared to start in more than one race on any one racing day.

(3) Declaration box. The association shall provide a locked box with an aperture through which declarations shall be deposited.

(4) Responsibility for declaration box. The stewards shall be in charge of the declaration box.

(5) Search for declarations by the steward before opening box. Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the steward shall check with the racing secretary to ascertain if any declarations by mail, fax, or otherwise, are in the office and not deposited in the entry box and shall see that they are declared and drawn in the proper event.

(6) Opening of declaration box. Entry box and drawing of horses at extended pari-mutuel meetings. The entry box shall be opened by the steward at the advertised time and the steward will be responsible to see that at least one horseman or the horseman's official representative is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the steward, all entries shall be listed, the eligibility verified, the preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

(7) Drawing of post positions for second heat in races of more than one dash or heat. In races of a duration of more than one dash or heat, the stewards may draw post positions from the stand for succeeding dashes or heats.

(8) Declarations by mail, fax or telephone. Declarations by mail, fax, or telephone actually received and evidence of which is deposited in the box before the time specified to declare shall be drawn in the same manner as the others. Drawings shall be final. Mail, telephone and fax declarations must state the name and address of the owner or lessee; the name, color, sex, sire and dam of the horse; the name of the driver and colors; the date and place of last start; a current summary, including the number of starts, firsts, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.

(9) Effect of failure to declare on time. When a track requires a horse to be declared at a stated time, failure to declare as required shall be considered a withdrawal from the event.

(10) Drawings of horses after declaration. After declaration to start has been made, no horse shall be drawn except by permission of the stewards.

(11) Horses omitted through error. Drawings shall be final unless there is conclusive evidence that a horse properly declared was omitted from the race through the error of a track or its agent or employee in which event the horse shall be added to the race but given the last post position, provided the error is discovered prior to scratch time or the printing of the program, whichever is sooner. However, in the case of early closers of more than $10,000 and stake and futurity races, the race shall be redrawn. This shall not apply at extended pari-mutuel meetings in overnight events.

b. Qualifying races. At all extended pari-mutuel meetings, eligibility to declare for overnight events shall be governed by the following:

(1) Within 30 days of being declared in, a horse that has not raced previously at the gait chosen must go through a qualifying race under the supervision of a steward and acquire at least one charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths, a standard photo finish shall be in use.

(2) A horse that does not show a charted line for the previous season, or a charted line within its last six starts, must go through a qualifying race as set forth above. Uncharted races contested in heats of more than one dash and consolidated according to subparagraph (4) below will be considered one start.

(3) A horse that has not started at a charted meeting by April 1 of a season must go through a qualifying race and meet the qualifying standards of the meet.

(4) When a horse has raced at a charted meeting during the current season, then gone to meetings where the races are not charted, the information from the uncharted races may be summarized, including each start, and consolidated in favor of charted lines. The requirements of subparagraph (2) above would not then apply.

(5) The consolidated line shall carry date, place, time, driver, finish, track condition and distance if race is not at one mile.

(6) The stewards may require any horse that has been on the steward's list to go through a qualifying race. If a horse has raced an individual time not meeting the qualifying standards for that class of horse, the horse may be required to go through a qualifying race.

(7) The stewards may permit a fast horse to qualify by means of a timed workout consistent with the time of the races in which it will compete in the event adequate competition is not available for a qualifying race. A horse that is on the steward's list for breaks or refusing to come to the gate must qualify in a qualifying race.

(8) To enable a horse to qualify, qualifying races should be held at least one full week prior to the opening of any meeting and shall be scheduled once a week during the meeting and through the last week of the meeting.

(9) Where a race is conducted for the purpose of qualifying drivers and not horses, the race need not be charted, timed or recorded. This subparagraph is not applicable to races qualifying both drivers and horses.

(10) If a horse takes a win race record in a qualifying race, the record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has had a specimen taken and tested. It will be the responsibility of the steward to report the results of the test on the stewards' sheet.

(11) Any horse that fails to race at a charted meeting within 30 days after having started in a current year shall start in a charted race or a qualifying race and meet the standards of the meeting before being allowed to start.

c. Coupled entries.

(1) When the starters in a race include two or more horses owned or trained by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry" and a wager on one horse in the "entry" shall be a wager on all horses in the "entry." Provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownerships, the horses may, at the request of the association and with the approval of the commission, be permitted to race as separate betting entries. The fact that the horses are trained by the same person shall be indicated prominently in the program. If the race is split in two or more divisions, horses in an "entry" shall be seeded insofar as possible, first by owners, then by trainers, then by stables; but the divisions in which they compete and their post positions shall be drawn by lot. The above provision shall also apply to elimination heats.

(2) The steward shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to protect the public interest for the purpose of pari-mutuel wagering only.

(3) Whenever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined from the most recent previous starts which do not result in equal preference.

(4) When an overnight race has been reopened because it did not fill, all eligible horses declared into the race prior to the reopening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates.

d. Also eligibles. No more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the stewards, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horse shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse put into the race from the also eligible list cannot be drawn except by permission of the stewards, but the owner or trainer of the horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved into the race by scratch time for the race shall be released.

e. Preference.

(1) Preference shall be given in all overnight events according to a horse's last previous purse race during the current year. The preference date on a horse that has drawn to race and been scratched is the date of the race from which it was scratched.

(2) When a horse is racing for the first time in the current year, the date of the first declaration shall be considered its last race date and preference applied accordingly.

(3) If an error has been made in determining or posting a preference date and the error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one hour of the announcement of the draw. If in fact a preference date error has occurred, the race will be redrawn.

f. Steward's list.

(1) A horse that is unfit to race because it is dangerous, unmanageable, sick, lame, or unable to show a performance to qualify for races at the meeting, or is otherwise unfit to race at the meeting, may be placed on a "steward's list" by the steward, and declarations on the horse shall be refused, but the owner or trainer shall be notified in writing of such action and the reason as set forth above shall be clearly stated on the notice. When any horse is placed on the steward's list, the clerk of the course shall make a note on the eligibility certificate of such horse, showing the date the horse was put on the steward's list, the reason and the date of removal if the horse has been removed.

(2) No steward or other official at a nonextended meeting shall have the power to remove from the steward's list and accept as an entry any horse which has been placed on a steward's list and not subsequently removed for the reason that it is a dangerous or unmanageable horse. Meetings may refuse declarations on any horse that has been placed on the steward's list and has not been removed.

(3) A horse scratched from a race because of lameness or sickness may not race or enter another race for at least three days from the date scheduled to race.

g. Driver. Declarations shall state who shall drive the horse and give the driver's colors. Drivers may be changed until scratch time of the race, after which no driver may be changed without permission of the steward and for good cause. When a nominator starts two or more horses, the stewards shall approve or disapprove the second and third drivers.

9.4(19) *Starting.*

a. With starting gate.

(1) Starter's control. The starter shall have control of the horses from the formation of the parade until it gives the word "go."

(2) Scoring. After one or two preliminary warming up scores, the starter shall notify the drivers to fasten their helmet chin straps and come to the starting gate. During or before the parade, the drivers must be informed as to the number of scores permitted.

(3) Starting gate. The horses shall be brought to the starting gate as near one-quarter of a mile before the start as the track will permit.

(4) Speed of gate. Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained.

1. For the first one-eighth mile, not less than 11 miles per hour.
2. For the next one-sixteenth of a mile, not less than 18 miles per hour.
3. From the above point to the starting point, the speed will be gradually increased to maximum speed.

(5) On mile tracks, horses will be brought to the starting gate at the head of the stretch and the relative speeds mentioned in subparagraph (4) of this subrule will be maintained.

(6) The starting point will be a point on the inside rail a distance of not less than 200 feet from the first turn. The starter shall give the word "go" at the starting point.

(7) When a speed has been reached in the course of a start, there shall be no decrease except in the case of a recall.

(8) Recall notice. In case of a recall, a light plainly visible to the driver shall be flashed and a recall sounded and wherever possible the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use discretion to close the wings of the gate.

(9) There shall be no recall after the word "go" has been given and any horse, regardless of position or an accident, shall be deemed a starter from the time entered into the starter's control unless dismissed by the starter.

(10) Breaking horse. The starter shall endeavor to get all horses away in position and on gait but there shall be no recall for a breaking horse.

(11) Reason for recall. The starter may sound a recall only for the following reasons:

1. A horse scores ahead of the gate.
2. There is interference.
3. A horse has broken equipment.
4. A horse falls before the word "go" is given.
5. A starting gate malfunctions.

(12) Riding in gate. No persons shall be allowed to ride in the starting gate except the starter and driver or operator, and a patrol judge, unless permission has been granted by the board of stewards.

(13) Loudspeaker. Use of a mechanical loudspeaker for any purpose other than to give instructions to drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.

b. Holding horses before start. Horses may be held on the backstretch not to exceed two minutes awaiting post time, except when delayed by an emergency.

c. Two tiers. In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier. Whenever a horse is drawn from any tier, horses on the outside move in to fill up the vacancy.

d. Starters. The horses shall be deemed to have started when the word "go" is given by the starter and all the horses must go the course except in case of an accident, broken equipment or any other reason in which the stewards determine that it is impossible to go the course.

e. Unmanageable horse.

(1) If, in the opinion of the stewards or the starter, a horse is unmanageable or liable to cause accidents or injury to any other horse or to any driver, it may be sent to the barn. When this action is taken, the starter will notify the stewards who will in turn notify the public.

(2) A horse shall be considered unmanageable if it causes more than one recall in the same dash or heat and the horse shall be excused by the starter.

f. Post positions; heat racing. The horse winning the first heat shall take the pole (or inside position) in the succeeding heat, unless otherwise specified in the published conditions, and all others shall take their positions in the order they were placed in the last heat. When two or more horses shall have made a dead heat, their positions shall be settled by lot.

g. Shield. The arms of all starting gates shall be provided with a screen or shield in front of the position for each horse, and the arms shall be perpendicular to the rail.

h. Malfunction of the gate. Every licensed starter is required to check the starting gate for malfunctions before commencing any meeting and to practice the procedure to be followed in the event of a malfunction. Both the starter and the driver of the gate must know and practice emergency procedures, and the starter is responsible for the training of drivers in those procedures.

9.4(20) *Racing and track rules.*

a. Although a leading horse is entitled to any part of the track, except after selecting its position in the home stretch, neither the driver of the first horse nor any other driver in the race shall do any of the following things, which shall be considered violations of driving rules:

(1) Changing either to the right or left during any part of the race when another horse is so near that altering its position compels the horse behind to shorten its stride, or causes the driver of the other horse to pull out of its stride.

(2) Jostling, striking, hooking wheels, or interfering with another horse or driver.

(3) Crossing sharply in front of a horse or crossing over in front of a field of horses in a reckless manner, endangering other drivers.

(4) Swerving in and out or pulling up quickly.

(5) Crowding a horse or driver by "putting a wheel under them."

(6) "Carry a horse out" or "sit down in front" of a horse or taking up abruptly in front of other horses so as to cause confusion or interference among the trailing horses.

(7) Letting a horse pass inside needlessly or otherwise helping another horse to improve its position in the race.

(8) Laying off a normal pace and leaving a hole when it is well within the horse's capacity to keep the hole closed.

(9) Committing any act which shall impede the progress of another horse or cause it to "break."

(10) Changing course after selecting a position in the home stretch and swerving in or out, or bearing in or out, to interfere with another horse or cause it to change course or take back.

(11) Driving in a careless or reckless manner.

(12) Whipping under the arch of the sulky or hitting wheel disc.

(13) Kicking the horse.

(14) Drivers must set or maintain a pace comparable to the class in which they are racing. Failure to do so by going an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race will be considered a violation of this subrule.

(15) Crossing the inside limits of the course.

b. Complaints—reports of interference.

(1) Complaints. All complaints by drivers of any foul driving or other misconduct during the heat must be made to the starter at the termination of the heat, unless the driver is prevented from doing so by an accident or injury. Any driver desiring to enter a claim of foul or other complaint of violation of the rules must before dismounting indicate to the starter the desire to enter the claim or complaint and upon dismounting shall proceed to the telephone or stewards' stand where and when the claim, objection, or complaint shall be immediately entered. The stewards shall not cause the official sign to be displayed until the claim, objection, or complaint shall have been entered and considered.

(2) Report of interference. It is the duty of every driver to report to the official designated for that purpose, as promptly as possible after the conclusion of a race in which the driver has participated, any material interference to the driver or the horse by another horse or driver during a race.

c. If any of the above violations are committed by a person driving a horse coupled as an entry in the betting, the stewards shall set the offending horses back. The horse coupled in the entry with the offending horse shall also be set back if the stewards find that it improved its finishing position as a direct result of the offense committed by the offending horse.

d. In the case of interference, collision, or violation of any of the above restrictions, whether occurring before or after the start, the offending horse may be placed back one or more positions in that heat or dash and, in the event the collision or interference prevents any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings; and the driver may be fined or suspended. In the event a horse is set back, it must be placed behind the horse with whom it interfered.

e. Unsatisfactory drive—fraud. Every heat in a race must be contested by every horse in the race and every horse must be driven to the finish. If the stewards believe that a horse is being driven or has been driven heretofore, with design to prevent winning a heat or dash which it was evidently able to win, or is being raced in an inconsistent manner, or to perpetrate or to aid a fraud, they shall consider it a violation and the driver and anyone in concert with the driver, to so affect the outcome of the race(s) may be fined or have their license suspended or revoked. The stewards may substitute a competent and reliable driver at any time. The substitute driver shall be paid at the discretion of the stewards and the fee retained from the purse money due the horse, if any.

In the event a drive is unsatisfactory due to lack of effort or carelessness, and the judges believe that there is no fraud, gross carelessness, or a deliberate inconsistent drive, they shall impose a penalty under this rule including, but not limited to, a fine, suspension or revocation.

f. If, in the opinion of the stewards, a driver is for any reason unfit or incompetent to drive or refuses to comply with the directions of the stewards, or is reckless in conduct and endangers the safety of horses or other drivers in the race, the driver may be removed and another driver substituted at any time after the positions have been assigned in a race, and the offending driver shall be fined or have license suspended or revoked. The substitute driver shall be properly compensated.

g. If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled out.

h. Loud shouting or other improper conduct is forbidden in a race. After the starting gate is in motion, both feet must be kept in the stirrups until after the finish of the race, except that a driver shall be allowed to remove a foot from the stirrups temporarily for the purpose of pulling earplugs.

i. Drivers will be allowed whips not to exceed three feet nine inches, plus a snapper not longer than six inches. Provided further that the following actions may be considered as excessive or indiscriminate use of the whip:

(1) Causing visible injury to a horse.

(2) Whipping a horse after a race.

j. The use of any goading device, chain or mechanical devices or appliances, other than the ordinary whip or crop, upon any horse in any race shall constitute a violation of this rule.

k. The brutal use of a whip or crop or excessive or indiscriminate use of the whip or crop shall be considered a violation. A driver may use a whip only in the conventional manner. Welts, cuts or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this subrule. Drivers are prohibited from whipping under the arch of the sulky, kicking, punching or jabbing a horse, or using the whip so as to interfere with or cause disturbance to any other horse or driver in a race.

l. No horse shall wear hopples in a race unless it starts in the same in the first heat and, having so started, it shall continue to wear them to the finish of the race, and any person found guilty of removing or altering a horse's hopples during a race, or between races, for the purpose of fraud, shall be suspended or expelled. Any horse habitually wearing hopples shall not be permitted to start in a race without them except by permission of the stewards. Any horse habitually racing free legged shall not be permitted to wear hopples in a race except with the permission of the stewards. No horse shall be permitted to wear a head pole protruding beyond its nose.

m. Breaking.

(1) When any horse or horses break from their gait in trotting or pacing, their drivers shall at once, where clearance exists, take such horse to the outside and pull it to its gait.

(2) The following shall be considered violations of subparagraph (1) above:

1. Failure to properly attempt to pull the horse to its gait.
2. Failure to take to the outside where clearance exists.
3. Failure to lose ground by the break.

(3) Any breaking horse shall be set back when a contending horse on its gait is lapped on the hind quarter of the breaking horse at the finish.

(4) Any horse making a break which causes interference to other contending horses may be placed behind all offended horses; if there has been no failure on the part of the driver of the breaking horse in complying with subparagraph (2) above, no fine or suspension shall be imposed on the driver as a consequence of the interference.

(5) The stewards may set any horse back one or more places if in their judgment any of the above violations have been committed.

n. If, in the opinion of the stewards, a driver allows the horse to break for the purpose of fraudulently losing a heat, then it shall be liable to the penalties elsewhere provided for fraud and fouls.

o. To assist in determining the matters contained in paragraphs *"m"* and *"n,"* it shall be the duty of one of the stewards to call out every break made, and the clerk shall at once note the break and character of it in writing.

p. The time between separate heats of a single race shall be no less than 40 minutes. The time between the heats shall not exceed one hour and 30 minutes. No heat shall be called after sunset where the track is not lighted for night racing.

q. Horses called for a race shall have the exclusive right of the course, and all other horses shall vacate the track at once, unless permitted to remain by the stewards.

r. In the case of accidents, only so much time shall be allowed as the stewards may deem necessary and proper.

s. A driver must be mounted in the sulky at the finish of the race or the horse must be placed as not finishing.

t. It shall be the responsibility of the owner and trainer to provide every sulky used in a race with unicolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission. In their discretion, the stewards may order the use of mudguards at pari-mutuel tracks.

u. Sulky. Only sulkies of the conventional dual shaft and dual-hitch type described below shall be permitted to be used in any races. A conventional type sulky is one having two shafts that must be parallel to and securely hitched on each side of the horse. No point of hitch or any part of a shaft shall be above a horizontal level equal to the lowest point of the horse's back.

v. Excessive or unnecessary conversation, or both, between and among drivers while on the racetrack during the time when colors are required is prohibited. Any violation of this rule may be punished by a fine, suspension, or combination thereof.

w. If, at any racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse sulky leaves the course by going inside the hub rail or other demarcation which constitutes the inside limits of the course, the offending horse shall be placed one or more positions where, in the opinion of the stewards, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

9.4(21) *Protests.*

a. Protests may be made only by an owner, manager, trainer or driver of one of the contending horses, at any time before the winnings are paid over, and shall be reduced to writing, and sworn to, and shall contain at least one specific charge, which, if true, would prevent the horse from winning or competing in the race.

b. The stewards shall in every case of protest demand that the driver, and the owner or owners, if present, shall immediately testify under oath; and in case of their refusal to do so, the horse shall not be allowed to start or continue in the race, but shall be ruled out, with a forfeit of entrance money.

c. Unless the stewards find satisfactory evidence to warrant excluding the horse, they shall allow the horse to start or continue in the race under protest, and the premium, if any won by that horse, shall be forthwith transmitted to the commission to allow the parties interested an opportunity to sustain the allegation of the protest, or furnish information which will warrant an investigation of the matter. Where no action is taken to sustain the protest within 30 days, payment may be made as if such protest had not been filed.

d. Any person found guilty of protesting a horse falsely and without cause, or merely with intent to embarrass a race, shall be punished by a fine or by a suspension.

e. Nothing here contained shall affect the distribution of the pari-mutuel pools, when the distribution is made upon the official placing at the conclusion of the heat or dash.

f. In case of an appeal or protest, the purse money affected will be deposited with the commission in trust funds pending the decision of the appeal.

9.4(22) *Timing and records.*

a. Timing races. In every race, the time of each heat shall be accurately taken by three timers or an approved electric timing device, in which case there shall be one timer, and placed in the record in minutes, seconds, and fifths of seconds and, upon the decision of each heat, the time shall be publicly announced or posted. No unofficial timing shall be announced or admitted to the record and, when the timers fail to act, no time shall be announced or recorded for that heat.

b. Error in reported time. In any case of alleged error in the record, announcement or publication of the time made by a horse, the time so questioned shall not be changed to favor the horse or owner, except upon the sworn statement of the stewards and timers who officiated in the race.

c. Time, where lapped on. The leading horse shall be timed and time only shall be announced. No horse shall obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by photo finish or electronic timing.

d. Time for dead heat. In case of a dead heat, the time shall constitute a record for the horses making a dead heat and both shall be considered winners.

e. Timing procedure. The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

f. Fraudulent misrepresentation. Any person who shall be guilty of fraudulent misrepresentation of time or the alteration of the record in any public race shall be fined, suspended or expelled, and the time declared not a record.

9.4(23) *Matters not covered by rules.* Any situation not covered by the rules of this commission shall be decided by the board of stewards in their discretion.

9.4(24) *Post time; entry number.*

a. Post time. A delay in the first post of not more than ten minutes from the established post time may be taken without prior approval of the commission or board of stewards.

b. Heat number and saddle pads. Each competing horse shall be equipped with numbers of style, type and design approved by the commission or its representatives. Numbers shall be so arranged that coupled entries may be distinguished and also horses coupled in the field.

9.4(25) *Paddock rules.*

a. Every track shall:

(1) Provide a paddock or receiving barn which must be completely enclosed with a secure fence and each opening through the fence shall be policed by a person or persons licensed by this commission so as to exclude unauthorized personnel. A daily record of all persons entering or leaving the paddock from one hour prior to post time until all races of that program have been completed shall be maintained on forms approved by the commission.

(2) Horses must be in the paddock at the time prescribed by the steward, but in any event at least one hour prior to post time of the race in which the horse is to compete. Except for warm-up trips, no horse shall leave the paddock until called to the post.

(3) Persons entitled to admission to the paddock must be at least 16 years old and include:

1. Owners of horses competing on the date of the race.
2. Trainers of horses competing on the date of the race.
3. Drivers of horses competing on the date of the race.
4. Grooms and caretakers of horses competing on the date of the race.
5. Officials whose duties require their presence in the paddock or receiving barn.
6. Officials of the commission.
7. The designated representative of the horsemen.
8. Any person(s), not more than two, approved by the stewards who is a guest of an owner of a horse competing that day.

(4) No driver, trainer, groom or caretaker, once admitted to the paddock or receiving barn, shall leave it other than to warm up the horse until the race(s) for which it was admitted is contested.

(5) No person except an owner, who has another horse racing in a later race, or an official shall return to the paddock until all races of the program have been completed.

(6) All persons, except drivers in the driver's stand, must leave the paddock as soon as their duties are completed for the race or races for which they were admitted.

(7) All members of a registered stable, other than the driver, shall be entitled to admission to the paddock on any one racing day.

(8) During racing hours, each track shall provide the services of a blacksmith within the paddock.

(9) During racing hours, each track shall provide suitable extra equipment as may be necessary for the conduct of racing without unnecessary delay.

b. Head numbers and saddle pads. At all tracks, head numbers and saddle pads must be used on horses when warming up and racing. The saddle pads in use at the tracks conducting extended pari-mutuel meetings shall be standardized consistent with a format to be established by U.S.T.A.

c. Supervision of meeting. Although track licensees have the obligation of general supervision of their meeting, interference with the proper performance of duties of any official is prohibited.

9.4(26) *Other track conditions.*

a. Default in payment of purses. Any track that defaults in the payment of a premium that has been raced for shall stand suspended, together with its officers.

b. If, at a meeting of a licensed track, a race is contested which has been promoted by another party or parties, and the promoters default in the payment of the amount raced for, the same liability shall attach to the licensed track as if the race had been offered by it.

c. Removal of horses from the grounds. No horse shall be ordered off the grounds without at least 72 hours' notice (excluding Sunday) to the person in charge of the horse. Failure to remove the horses shall subject the owner or the trainer to suspension, revocation or a fine.

491—9.5(99D) Medication and administration, sample collection, chemists, and practicing veterinarian.

9.5(1) *Medication and administration.*

a. No horse, while participating in a race, shall carry in its body any medication, or drug, or foreign substance, or metabolic derivative, that is a narcotic, or that could serve as a local anesthetic, or tranquilizer, or that could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, affecting its speed. (See Iowa Code section 99D.25A.)

b. Also prohibited are any drugs or foreign substances that might mask or screen the presence of the prohibited drugs, or prevent or delay testing procedures.

c. Proof of detection by the commission chemist of the presence of a medication, or drug, or foreign substance, or metabolic derivative, prohibited by paragraph *"a"* or *"b"* in a saliva, urine or blood sample duly taken under the supervision of the commission veterinarian from a horse immediately prior to or promptly after running in a race, shall be prima facie evidence that the horse was administered with the intent that it would carry or that it did carry prohibited medication, drug, or foreign substance in its body while running in a race in violation of this rule.

d. Administration or possession of drugs.

(1) Prior to the race, no person shall administer, cause to be administered, participate, or attempt to participate, in any way in the administration of any medication, drug, foreign substance, or treatment by any route, to a horse registered for racing on the day of the race for which the horse is entered.

(2) No person except a veterinarian shall have in possession any prescription drug. However, a person may possess a noninjectable prescription drug for animal use if:

1. The person actually possesses, within the racetrack enclosure, documentary evidence that a prescription has been issued to the person for such a prescription drug.
2. The prescription contains a specific dosage for the particular horse or horses to be treated by the prescription drug.
3. The horse or horses named in the prescription are then in said person's care within the racetrack enclosure.

(3) No veterinarian or any other person shall have in possession or administer to any horse within any racetrack enclosure any chemical substance which:

1. Has not been approved for use on equines by the Food and Drug Administration pursuant to the federal Food, Drug and Cosmetic Act, 21 U.S.C. Section 301 et seq., and implementing regulations, without prior written approval from a commission veterinarian, after consultation with the board of stewards.
2. Is on any of the schedules of controlled substances as prepared by the Attorney General of the United States pursuant to 21 U.S.C. Sections 811 and 812, without the prior written approval from a commission veterinarian, after consultation with the board of stewards.

The commission veterinarian shall not give such approval unless the person seeking such approval can produce evidence in recognized veterinary journals or by recognized equine experts that such chemical substance has a beneficial, therapeutic use in horses.

(4) No veterinarian or any other person shall dispense, sell or furnish any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route to any person within the grounds of the association unless there is a label specifying the name of the substance dispensed, the name of the dispensing person, the name of the horse or horses for which the substance is dispensed, the purpose for which said substance is dispensed, the dispensing veterinarian's recommendations for withdrawal before racing (if applicable), and the name of the person to whom dispensed, or is otherwise labeled as required by law.

(5) No person shall have in possession or in areas under their responsibility on association grounds, any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route unless it complies with the labeling requirements in subparagraph (4) above.

e. Any person found to have administered a medication, drug, or foreign substance that caused or could have caused a violation of this rule, or caused or participated or attempted to participate in any way in the administration, shall be subject to disciplinary action.

f. The owner, trainer, groom or any other person having charge, custody or care of the horse is obligated to protect the horse properly and guard it against the administration or attempted administration and, if the stewards shall find that any person has failed to show proper protection and guarding of the horse or, if the stewards find that any owner, lessee or trainer is guilty of negligence, they shall impose punishment and take other action they deem proper under any of the rules including reference to the commission.

g. In order for a horse that is on a bleeder's list in another state to be granted reciprocity in Iowa and be placed on a bleeder's list in Iowa, the rules governing placement on the bleeder's list in that other state must equal or exceed those of Iowa.

9.5(2) *Sample collection.*

a. Urine, blood and other specimens shall be taken and tested from any horse that the stewards of the meeting, commission veterinarian, or the commission's representatives may designate. Tests are to be under the supervision of the commission. The samples shall be collected by the commission veterinarian or other person or persons the commission may designate.

b. A track shall have a detention barn under the supervision of the commission veterinarian for the purpose of collecting body fluid samples for any tests required by the commission. The building, location, arrangement, furnishings and facilities, including refrigeration and hot and cold running water, must be approved by the commission.

c. No unauthorized person shall be admitted at any time to the building or the area utilized for the purpose of collecting the required body fluid samples or the area designated for the retention of horses pending the obtaining of body fluid samples.

d. During the taking of samples from a horse, the owner or responsible trainer, or a representative designated by the owner or trainer, may be present and witness the taking of the sample and so signify in writing. Failure to be present and witness the collection of the samples constitutes a waiver by the trainer or representative of any objections to the source and documentation of the sample.

e. A security guard, approved by the commission, must be in attendance during the hours designated by the commission.

f. The commission veterinarian, the board of stewards, agents of the division of criminal investigation, or the authorized representative of the commission may take samples of any medicine or other materials suspected of containing improper medication, drugs, or other substance which could affect the racing condition of a horse in a race which may be found in barns or elsewhere on racetracks or in the possession of any person connected with racing, and shall be delivered to the official chemist for analysis.

g. Nothing in these rules shall be construed to prevent:

(1) Any horse in any race from being subjected by the order of a steward or the commission veterinarian to tests of body fluid samples for the purpose of determining the presence of any foreign substance.

(2) The state steward or the commission veterinarian from authorizing the splitting of any sample.

(3) The commission veterinarian from requiring body fluid samples to be stored in a frozen state for future analysis.

Administration of lasix and phenylbutazone shall be allowed only as permitted under Iowa Code section 99D.25A.

h. Before leaving the racing surface, the trainer shall ascertain the testing status of the horse under such trainer's care from the commission veterinarian or designated test barn representative.

9.5(3) *Chemists.*

a. The commission shall employ one or more chemists or contract with one or more qualified chemical laboratories to determine by chemical testing and analysis of body fluid samples whether a substance or drug is present which may affect the outcome of a race or which may interfere with the testing procedure as provided in Iowa Code section 99D.23(1).

b. All body fluid samples taken by or under direction of the commission veterinarian or authorized representative of the commission shall be delivered to the laboratory of the official chemist for analysis. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the horse from which the sample was taken or the identity of its owner(s) or trainer shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed thereon.

c. The commission chemist shall be responsible for safeguarding and testing each sample delivered to the laboratory by the commission veterinarian.

d. The commission chemist shall conduct individual tests on each sample, screening same for prohibited substances, and conducting other tests to detect and identify any suspected prohibited substance or metabolic derivative with specificity. Pooling of samples shall be permitted only with the knowledge and approval of the commission.

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, the tests shall be reconfirmed, and the remaining portion of the specimen, if available, shall be preserved and protected until the stewards rule it may be discarded.

f. The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating by sample tag identification number, whether the sample was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the state steward or a designated representative of the state steward.

(1) In the event the commission chemist should find a specimen suspicious for a prohibited medication, additional time for test analysis and confirmation may be requested.

(2) The racing association shall not make distribution of any purses until given clearance of chemical tests by the state steward.

g. In reporting to the state steward a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of the professional opinion as to the positive finding.

h. No action shall be taken by the state steward on the report of the official chemist unless and until the medication, drug or other substance has been properly identified, as well as the horse from which the sample was taken, nor until an official report signed by the chemist has been received by the state steward.

i. The cost of the testing and analysis shall then be reimbursed by each licensed association on a per sample basis so that each association shall bear only its proportion of the total cost of testing and analysis.

9.5(4) *Practicing veterinarian.*

a. Prohibited acts.

(1) Ownership. A licensed veterinarian practicing at any meeting is prohibited from any ownership, directly or indirectly, of any horse racing during the meeting.

(2) Wagering. Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other thing of value directly or indirectly on the outcome of any race conducted at the meeting at which the veterinarian is furnishing professional service.

(3) Prohibition of furnishing injectable materials. No veterinarian shall within the association grounds furnish, sell or loan any hypodermic syringe, needle, or other injection device, or any drug, narcotic or prohibited substance to any other person within the grounds of an association where race horses are stabled unless with written permission of the stewards.

b. Single-use syringes. The use of other than single-use disposable syringes and infusion tubes on association premises is prohibited. Whenever a veterinarian has used a hypodermic needle or syringe, the veterinarian shall destroy the needle and syringe and remove it from the association premises.

c. Veterinarians must submit daily to the commission veterinarian on a prescribed form a report of all medications and other substances which the veterinarian prescribed, administered or dispensed for horses registered at the current race meeting as provided in Iowa Code section 99D.25. Reports shall be submitted in a manner and at a time determined by the commission veterinarians not later than the day following the treatments being reported. Reports shall include the horse, trainer, medication or other substance, dosage or quantity, route of administration and time administered, dispensed or prescribed.

d. Report of illness. Each veterinarian shall report immediately to the stewards and the commission veterinarian any illness in a horse entrusted to the veterinarian's care presenting unusual or unknown symptoms.

e. Employees. Practicing veterinarians may have employees working under their direct supervision licensed as "veterinary assistants" or "veterinary technicians." Activities of these employees shall not include direct treatment or diagnosis of any racing animal. A practicing veterinarian must be present if an employee is to have access to injection devices or injectables.

f. Equine dentistry. Equine dentistry is considered a function of veterinary practice by the Iowa veterinary practice Act. Any dental procedures performed at the racetrack must be performed by a licensed veterinarian or a licensed veterinary assistant.

These rules are intended to implement Iowa Code chapter 99D.

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491—13.24(99D) Practicing veterinarians. Every veterinarian practicing on association premises must be licensed by the state veterinary regulatory authority and licensed by the commission.

491—13.25(99D) Jockeys.

13.25(1) *Eligibility.*

a. No person under 18 years of age shall be licensed by the commission as a jockey, except persons who have been licensed by this commission prior to January 1, 1995.

b. A jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming fitness to participate as a jockey. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

c. An applicant shall show competence by prior licensing, demonstration of riding ability or temporary participating in races. An applicant may participate in a race or races, with the stewards' prior approval for each race, not to exceed five races.

d. A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

e. A person whose weight exceeds 125 pounds at the time of application shall not be licensed as a jockey.

f. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey or apprentice jockey.

13.25(2) *Apprentice jockeys.*

a. The conditions of an apprentice jockey license do not apply to quarter-horse racing. A jockey's performances in quarter-horse racing do not apply to the conditions of an apprentice jockey license.

b. An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

c. An apprentice certificate may be obtained from the stewards on a form provided by the commission. A person shall not receive more than one apprentice certificate. In case of emergencies, a copy of the original may be obtained from the commission where it was issued. A copy of the certificate shall be filed with the stewards.

d. An apprentice jockey may claim the following weight allowance in all overnight races except stakes and handicaps: ten-pound allowances beginning with the first mount and continuing until the apprentice has ridden five winners; a seven-pound allowance until the apprentice has ridden an additional 25 winners; and, if an apprentice has ridden a total of 40 winners prior to the end of a period of one year from the date of the apprentice's fifth winner, the apprentice jockey shall have an allowance of five pounds until one year from the date of the fifth winning mount. If after one year from the date of the fifth winning mount the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year from the date of the fifth winning mount, or until the fortieth winner, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted under this paragraph *"d."* A contracted apprentice may claim an allowance of three pounds for an additional one year when riding horses owned or trained by the original contract employer.

The commission may extend the weight allowance of an apprentice jockey when, in the discretion of the commission, an apprentice jockey is unable to continue riding due to physical disablement or illness, military service, attendance in an institution of secondary or higher education, restriction on racing or any other valid reason. In order to qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance. Under exceptional circumstances, total days lost collectively will be given consideration. The commission currently licensing the apprentice jockey shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation verifying time lost as defined by this paragraph *"d."* An apprentice may petition one of the jurisdictions in which the apprentice is licensed and riding for an extension of the time for claiming apprentice weight allowances, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

e. The conditions set forth in subrule 13.22(1) shall also apply.

13.25(3) *Foreign jockeys.* Upon making application for license in this jurisdiction, jockeys from a foreign country shall declare that they are holders of valid licenses in their country and currently not under suspension, bound by these rules and the laws of this state. To facilitate this process, the jockeys shall present a declaration sheet in a language recognized in this jurisdiction to the commission.

491—13.26(99D) Jockey agents.

13.26(1) *Eligibility.* An applicant for a license as a jockey agent shall:

a. Provide written proof of agency with at least one jockey licensed by the commission;

b. Demonstrate to the stewards that they have a contract for agency with at least one jockey who has been licensed by the commission; and

c. Be qualified, as determined by the administrator's designee by reason of experience, background and knowledge. A jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

(1) A written examination or

(2) An interview or oral examination.

d. Applicants not previously licensed as a jockey agent shall be required to pass a written and oral examination.

13.26(2) *Limit on contracts.* A jockey agent may serve as agent for no more than two jockeys and one apprentice jockey.

491—13.27(99D) Driver.

13.27(1) *Eligibility.* In considering eligibility for a driver's license, the board of stewards shall consider:

a. Whether the applicant has obtained the required U.S.T.A. license, that type of the driver. All drivers hold a U.S.T.A. license.

b. Evidence of ability to drive in a race and driving experience.

c. Age of applicant (must be at least 18 years of age).

d. Evidence of physical and mental ability.

e. Results of a written examination to determine qualifications to drive and knowledge of racing and gaming commission rules.

f. Record of rule violations.

13.27(2) *Reserved.*

These rules are intended to implement Iowa Code chapters 99D, 99F and 252J.

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567—135.19(455B) Analyzing for methyl tertiary-butyl ether (MTBE) in soil and groundwater samples.

135.19(1) *General.* The objective of analyzing for MTBE is to determine its presence in soil and water samples collected as part of investigation and remediation of contamination at underground storage tank facilities.

135.19(2) *Required MTBE testing.* Soil and water samples must be analyzed for MTBE when collected for risk-based corrective action as required in rules 135.8(455B) through 135.12(455B). These sampling requirements include but are not limited to:

a. Risk-based corrective action (RBCA) evaluations required for Tier 1, Tier 2, and Tier 3 assessments and corrective action design reports.

b. Site monitoring.

c. Site remediation monitoring.

135.19(3) *MTBE testing not required.* Soil and water samples for the following actions are not required to be analyzed for MTBE:

a. Closure sampling under rule 135.15(455B) unless Tier 1 or Tier 2 sampling is being performed.

b. Site checks under subrule 135.7(3) unless Tier 1 or Tier 2 sampling is being performed.

135.19(4) *Reporting.* The analytical data must be submitted in a format prescribed by the department.

135.19(5) *Analytical methods for methyl tertiary-butyl ether (MTBE).* When having soil or water analyzed for MTBE from contamination caused by petroleum or hazardous substances, owners and operators of UST systems must use a laboratory certified under 567—Chapter 83 for petroleum analyses. In addition, the owners and operators must ensure all soil and water samples are properly preserved and shipped within 72 hours of collection to a laboratory certified under 567—Chapter 83 for petroleum analyses.

a. Sample preparation and analysis shall be by:

(1) GC/MS version of OA-1, "Method for Determination of Volatile Petroleum Hydrocarbons (gasoline)," revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa; or

(2) U.S. Environmental Protection Agency Method 8260B, SW-846, "Test Methods for Evaluating Solid Waste," Third Edition.

b. Laboratories performing the analyses must run standards for MTBE on a routine basis, and standards for other possible compounds like ethyl tertiary-butyl ether (ETBE), tertiary-amyl methyl ether (TAME), diisopropyl ether (DIPE), and tertiary-butyl alcohol (TBA) to be certain of their identification should they be detected.

c. Laboratories must run a method detection limit study and an initial demonstration of capability for MTBE. These records must be kept on file.

d. The minimum detection level for MTBE in soil is 15 ug/kg. The minimum detection level for MTBE in water is 15 ug/l.

These rules are intended to implement Iowa Code sections 455B.304, 455B.424 and 455B.474.

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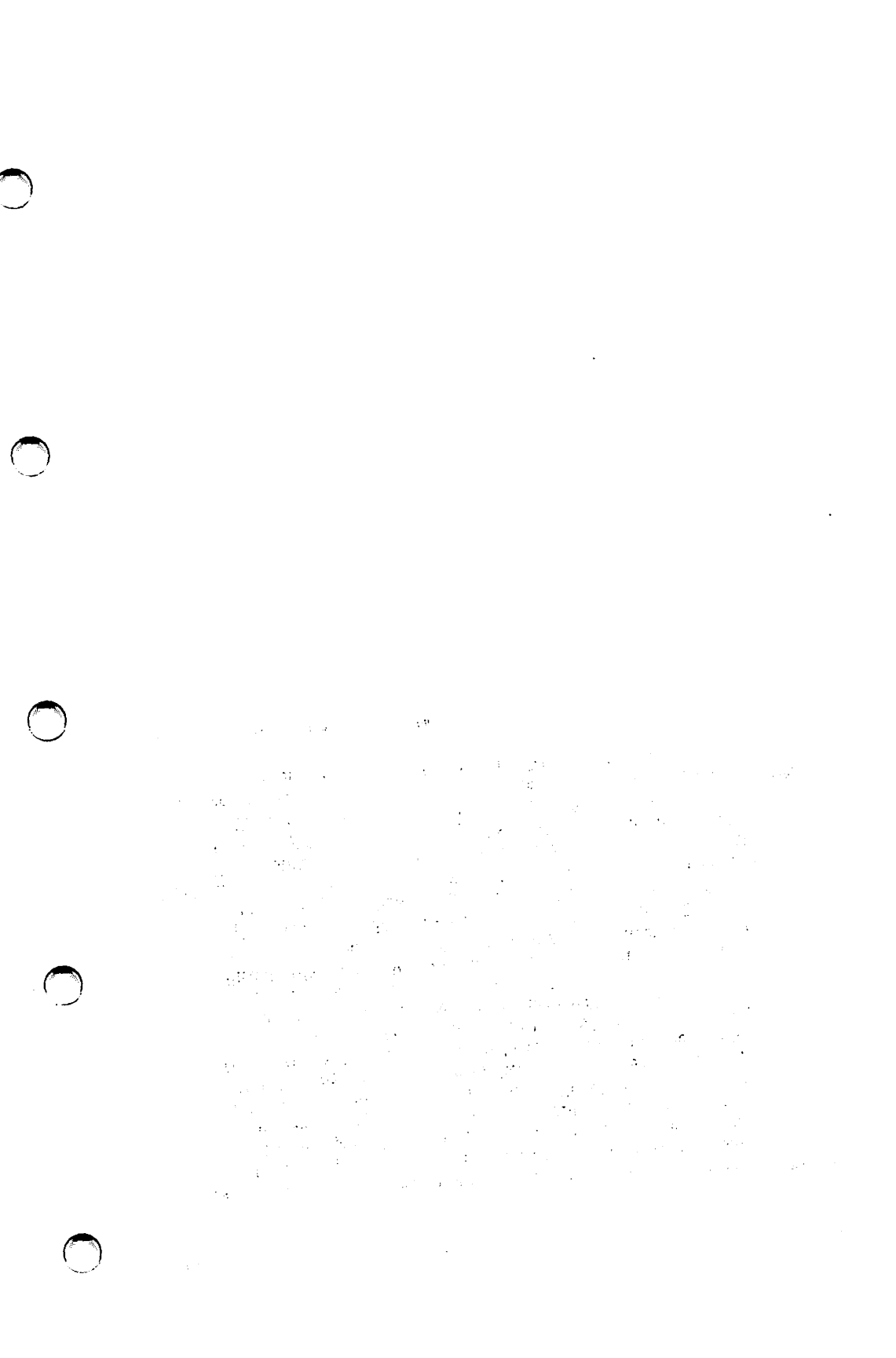

CHAPTER 41

SAFETY REQUIREMENTS FOR THE USE OF RADIATION MACHINES AND CERTAIN USES OF RADIOACTIVE MATERIALS

641—41.1(136C) X-rays in the healing arts.

41.1(1) *Scope.* This rule establishes requirements, for which a registrant is responsible, for use of X-ray equipment by or under the supervision of an individual authorized by and licensed in accordance with state statutes to engage in the healing arts or veterinary medicine. The provisions of this rule are in addition to, and not in substitution for, any other applicable provisions of these rules. The provisions of Chapter 41 are in addition to, and not in substitution for, any other applicable portions of 641—Chapters 38 to 42. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of July 1, 1999.

41.1(2) *Definitions.* For the purpose of this chapter, the definitions of 641—Chapter 38 may also apply. The following are specific to rule 41.1(136C).

"Accessible surface" means the external surface of the enclosure or housing of the radiation producing machine as provided by the manufacturer.

"Added filtration" means any filtration which is in addition to the inherent filtration.

"Aluminum equivalent" means the thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question.

"Attenuation block" means a block or stack, having dimensions 20 centimeters by 20 centimeters by 3.8 centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation.

"Automatic exposure control (AEC)" means a device which automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation (see also "Phototimer"). (Includes devices such as phototimers and ion chambers.)

"Barrier" (see "Protective barrier").

"Beam-limiting device" means a device which provides a means to restrict the dimensions of the X-ray field.

"Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

"C-arm X-ray system" means an X-ray system in which the image receptor and X-ray tube housing assembly are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

"Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

"Certified components" means components of X-ray systems which are subject to regulations promulgated under Public Law 90-602, the "Radiation Control for Health and Safety Act of 1968," the Food and Drug Administration.

"Certified system" means any X-ray system which has one or more certified component(s).

"Coefficient of variation" or *"C"* means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{x}} = \frac{1}{\bar{x}} \left[\sum_{i=1}^{n} \frac{(x_i - \bar{x})^2}{n-1} \right]^{1/2}$$

where:
s = Estimated standard deviation of the population.
X = Mean value of observations in sample.
X_i = i^{th} observation in sample.
n = Number of observations in sample.

"Computed tomography" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

"Control panel" (see X-ray control panel).

"Cooling curve" means the graphical relationship between heat units stored and cooling time.

"CT" (see "Computed tomography").

"Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

"Detector" (see "Radiation detector").

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Direct scattered radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam (see "Scattered radiation").

"Entrance exposure rate" means the exposure free in air per unit time at the point where the center of the useful beam enters the patient.

"Equipment" (see "X-ray equipment").

"Field emission equipment" means equipment which uses an X-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Filter" means material placed in the useful beam to preferentially absorb selected radiations.

"Fluoroscopic imaging assembly" means a subsystem in which X-ray photons produce a visual image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

"Focal spot (actual)" means the area projected on the anode of the X-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates.

"General purpose radiographic X-ray system" means any radiographic X-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

"Gonad shield" means a protective barrier for the testes or ovaries.

"Healing arts screening" means the testing of human beings using X-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by an individual authorized under 41.1(3)*"a"*(7).

"Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds, i.e., kVp × mA × second.

"Image intensifier" means a device, installed in its housing, which instantaneously converts an X-ray pattern into a corresponding light image of higher energy intensity.

(6) Gonad shielding of not less than 0.25 millimeter lead equivalent shall be used for human 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.

(7) Individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a licensed practitioner of the healing arts or a licensed registered nurse who is registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152. This provision specifically prohibits deliberate exposure for the following purposes:

1. Exposure of an individual for training, demonstration, or other non-healing arts purposes; and

2. Exposure of an individual for the purpose of healing arts screening except as authorized by 41.1(3)*"a"*(11).

(8) When a patient or film must be provided with auxiliary support during a radiation exposure:

1. Mechanical holding devices shall be used when the technique permits. The written safety procedures, required by 41.1(3)*"a"*(4), shall list individual projections where holding devices cannot be utilized;

2. Written safety procedures, as required by 41.1(3)*"a"*(4), shall indicate the requirements for selecting a holder and the procedure the holder shall follow;

3. The human holder shall be protected as required by 41.1(3)*"a"*(5)"2";

4. No individual shall be used routinely to hold film or patients; and

5. In those cases where the human patient must hold the film, except during intraoral examinations, any portion of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 millimeter lead equivalent material.

6. Each facility shall have leaded aprons and gloves available in sufficient numbers to provide protection to all personnel who are involved with X-ray operations and who are otherwise not shielded.

(9) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

1. The speed of film or screen and film combinations shall be the fastest speed consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for any routine diagnostic radiological imaging, with the exception of veterinary radiography and standard film packets for intra-oral use in dental radiography.

2. The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

3. Portable or mobile X-ray equipment shall be used only for examinations where it is impractical to transfer the patient(s) to a stationary X-ray installation.

4. X-ray systems subject to 41.1(6) shall not be utilized in procedures where the source to human patient distance is less than 30 centimeters.

5. If grids are used between the patient and the image receptor to decrease scatter to the film and improve contrast, the grid shall:

- Be positioned properly, i.e., tube side facing the correct direction, and the grid centered to the central ray;
- If of the focused type, be at the proper focal distance for the SIDs being used.

(10) All individuals who are associated with the operation of an X-ray system are subject to the requirements of 641—subrule 40.36(3) and rules 641—40.15(136C) and 641—40.37(136C). In addition:

1. When protective clothing or devices are worn on portions of the body and a personnel monitoring device(s) is present, it (they) shall be worn in accordance with the recommendations found in Chapter 4 of the National Council of Radiation Protection and Measurements Report No. 57.

2. Exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited.

(11) Healing arts screening. Any person proposing to conduct a healing arts screening program shall not initiate such a program without prior approval of the agency. When requesting such approval, that person shall submit the information outlined in Appendix C of this chapter. If any information submitted to the agency becomes invalid or outdated, the agency shall be immediately notified.

(12) Fluoroscopic equipment shall be used only under the direct supervision of a licensed practitioner.

b. Information and maintenance record and associated information. The registrant shall maintain the following information for each X-ray system for inspection by the agency:

(1) Model and serial numbers of all major components and user's manual for those components;

(2) Tube rating charts and cooling curves;

(3) Records of surveys, calibrations, maintenance, and modifications performed on the X-ray system(s) with the names of persons who performed such services;

(4) A copy of all correspondence with this agency regarding that X-ray system.

c. X-ray utilization log. Except for veterinary facilities, each facility shall maintain an X-ray log containing the patient's name, the type of examinations, the dates the examinations were performed, the name of the individual performing the X-ray procedure, and the number of exposures and retakes involved. When the patient or film must be provided with human auxiliary support, the name of the human holder shall be recorded.

d. Plan review.

(1) Prior to construction of all new installations, or modifications of existing installations, or installation of equipment into existing facilities utilizing X-rays for diagnostic or therapeutic purposes, the floor plans and equipment arrangements shall be submitted to the agency for review and approval. The required information is denoted in Appendices A and B of this chapter.

(2) The agency may require the applicant to utilize the services of a qualified expert to determine the shielding requirements prior to the plan review and approval.

(3) The approval of such plans shall not preclude the requirement of additional modifications should a subsequent analysis of operating conditions indicate the possibility of an individual receiving a dose in excess of the limits prescribed in 641—Chapter 40.

e. Federal performance standards. All X-ray equipment shall comply with the applicable performance standards of 21 CFR 1020.30 to 1020.40 which were in effect at the time the unit was manufactured. All equipment manufactured before the effective date of 21 CFR 1020.30 to 1020.40 shall meet the requirements of the Iowa rules. Persons registered to possess the affected radiation-emitting equipment in Iowa shall be responsible for maintaining the equipment in compliance with the appropriate federal performance standards.

f. X-ray film processing facilities and practices (except for mammography). Each installation using a radiographic X-ray system and using analog image receptors (e.g., radiographic film) shall have available suitable equipment for handling and processing radiographic film in accordance with the following provisions:

(1) Manually developed film.

1. Processing tanks shall be constructed of mechanically rigid, corrosion-resistant material; and

2. The temperature of solutions in the tanks shall be maintained within the range of 60°F to 80°F (16°C to 27°C). Film shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer or, in the absence of such recommendations, with the time-temperature chart available from the agency.

3. Devices shall be utilized which will indicate the actual temperature of the developer and signal the passage of a preset time appropriate to the developing time required.

5. Recommended actions and the numerical results of all ballots; and
6. Document any reviews required in 41.2(7)*"c"* and 41.2(9)*"b."*

(5) The committee shall provide each member with a copy of the meeting minutes and retain one copy until the agency authorizes its disposition.

b. To oversee the use of licensed material, the committee shall:

(1) Be responsible for monitoring the institutional program to maintain occupational doses as low as reasonably achievable;

(2) Review:

1. Review, on the basis of safety and with regard to the training and experience standards of this rule, and approve or disapprove any individual who is to be listed as an authorized user, an authorized nuclear pharmacist, the radiation safety officer, or teletherapy physicist before submitting a license application or request for amendment or renewal;

2. Review, pursuant to 41.2(4)*"b"*(1) to 41.2(4)*"b"*(4), on the basis of the board certification, the license, or the permit identifying an individual, and approve or disapprove any individual prior to allowing that individual to work as an authorized user or authorized nuclear pharmacist.

(3) Review on the basis of safety and approve or disapprove each proposed method of use of radioactive material;

(4) Review on the basis of safety, and approve with the advice and consent of the radiation safety officer and the management representative, or disapprove procedures and radiation safety program changes prior to submittal to the agency for licensing action;

(5) Review quarterly, with the assistance of the radiation safety officer, occupational radiation exposure records of all personnel working with radioactive material;

(6) Review quarterly, with the assistance of the radiation safety officer, all incidents involving radioactive material with respect to cause and subsequent actions taken;

(7) Review annually, with the assistance of the radiation safety officer, the radioactive material program; and

(8) Establish a table of investigational levels for occupational dose that, when exceeded, will initiate investigations and considerations of action by the radiation safety officer.

41.2(10) *Statement of authorities and responsibilities.*

a. A licensee shall provide sufficient authority and organizational freedom to the radiation safety officer and the radiation safety committee to:

(1) Identify radiation safety problems;

(2) Initiate, recommend, or provide solutions; and

(3) Verify implementation of corrective actions.

b. A licensee shall establish in writing the authorities, duties, responsibilities, and radiation safety activities of the radiation safety officer and the radiation safety committee.

41.2(11) *Supervision.*

a. A licensee who permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by 41.2(3) shall:

(1) Instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of radioactive material;

(2) Review the supervised individual's use of radioactive material, provide reinstruction as needed and review records kept to reflect this use;

(3) Require the authorized user to be immediately available to communicate with the supervised individual;

(4) Require the authorized user to be able to be physically present and available to the supervised individual on one hour's notice (the supervising authorized user need not be present for each use of radioactive material); and

(5) Require that only those individuals specifically trained, and designated by the authorized user, shall be permitted to administer radionuclides or radiation to patients or human research subjects.

b. A license shall require the supervised individual receiving, possessing, using or transferring radioactive material under 41.2(3) to:

(1) Follow the instructions of the supervising authorized user;

(2) Follow the procedures established by the radiation safety officer; and

(3) Comply with these rules and the license conditions with respect to the use of radioactive material.

c. A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by 41.2(3)*"c,"* shall:

(1) Instruct the supervised individual in the preparation of radioactive material for medical use and the principles of and procedures for radiation safety and in the licensee's written quality management program, as appropriate to that individual's use of radioactive material;

(2) Require the supervised individual to follow the instructions given pursuant to 41.2(11)*"c"* and to comply with the regulations of this chapter and license conditions; and

(3) Require the supervising authorized nuclear pharmacist or physician who is an authorized user to periodically review the work of the supervised individual as it pertains to preparing radioactive material for medical use and the records kept to reflect that work.

d. A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual.

41.2(12) *Visiting authorized user and visiting authorized nuclear pharmacist.*

a. A licensee may permit any visiting authorized user or visiting authorized nuclear pharmacist to use licensed material for medical use under the terms of the licensee's license for 60 days each year if:

(1) The visiting authorized user or visiting authorized nuclear pharmacist has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's radiation safety committee;

(2) The licensee has a copy of an agency, agreement state, licensing state or U.S. Nuclear Regulatory Commission license that identifies the visiting authorized user or visiting authorized nuclear pharmacist by name as an authorized user for medical use; and

(3) Only those procedures for which the visiting authorized user or visiting authorized nuclear pharmacist is specifically authorized by an agency (agreement state, licensing state or U.S. Nuclear Regulatory Commission) license are performed by that individual.

b. A licensee need not apply for a license amendment in order to permit a visiting authorized user or visiting authorized nuclear pharmacist to use licensed material as described in 41.2(12)*"a."*

c. A licensee shall retain copies of the records specified in 41.2(12)*"a"* for five years from the date of the last visit.

41.2(13) *Mobile nuclear medicine service administrative requirements.*

a. The agency will only license mobile nuclear medicine services in accordance with this rule and other applicable requirements of these rules.

b. Mobile nuclear medicine service licensees shall retain for the duration of service a letter signed by the management of each location where services are rendered that authorizes use of radioactive material.

(3) To satisfy the requirement for a period of supervised clinical experience, training shall include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

1. Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment and any limitations or contraindications;
2. Selecting the proper dose and how it is to be administered;
3. Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and
4. Postadministration follow-up and review of case histories;

c. Be identified on a current Agreement State or NRC license as an authorized user for teletherapy.

41.2(74) *Training for teletherapy physicist.* The licensee shall require the teletherapy physicist to:

a. Be certified by:

(1) The American Board of Radiology in:

1. Therapeutic radiological physics;
2. Roentgen-ray and gamma-ray physics;
3. X-ray and radium physics; or
4. Radiological physics; or
5. The American Board of Medical Physics in radiation oncology physics; or

(2) Reserved; or

b. Hold a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and have completed one year of full-time training in therapeutic radiological physics and also one year of full-time work experience under the supervision of a teletherapy physicist at a medical institution. To meet this requirement, the individual shall have performed the tasks listed in 41.2(21), 41.2(58), 41.2(59), and 41.2(60) under the supervision of a teletherapy physicist during the year of work experience.

c. Be identified on a current Agreement State or NRC license as a teletherapy physicist.

41.2(75) *Training for experienced authorized users.* Rescinded IAB 8/3/94, effective 9/7/94.

41.2(76) *Physician training in a three-month program.* A physician who, before July 1, 1984, began a three-month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program, is exempted from the requirements of 41.2(67) or 41.2(68).

41.2(77) *Recentness of training.* The training and experience specified in 41.2(65) to 41.2(79) shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and continuing applicable experience since the required training and experience was completed.

41.2(78) *Training for an authorized nuclear pharmacist.* The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

a. Has current board certification as a nuclear pharmacist by the board of pharmaceutical specialties, or

b. Has completed:

(1) 700 hours in a structured educational program consisting of both:

1. Didactic training in the following areas:

- Radiation physics and instrumentation;
- Radiation protection;
- Mathematics pertaining to the use and measurement of radioactivity;
- Chemistry of radioactive material for medical use; and
- Radiation biology; and

2. Supervised experience in a nuclear pharmacy involving the following:

- Shipping, receiving, and performing related radiation surveys;
- Using and performing checks for proper operation of dose calibrators, survey meters, and if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;
- Calculating, assaying, and safely preparing dosages for patients or human research subjects;
- Using administrative controls to avoid mistakes in the administration of radioactive material;
- Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

(2) Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

41.2(79) *Training for experienced nuclear pharmacists.* A licensee may apply for and must receive a license amendment identifying an experienced nuclear pharmacist as an authorized nuclear pharmacist before it allows this individual to work as an authorized nuclear pharmacist. A pharmacist who has completed a structured educational program as specified in 41.2(78)*"b"* before December 2, 1994, and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist need not comply with the requirements on preceptor statement in 41.2(78)*"b"*(2) and recentness of training in 41.2(77) to qualify as an authorized nuclear pharmacist.

641—41.3(136C) Therapeutic use of radiation machines.

41.3(1) Scope and applicability.

a. This subrule establishes requirements, for which the registrant is responsible, for use of therapeutic radiation machines.

b. The use of therapeutic radiation machines shall be by, or under the supervision of, a physician who meets the training/experience criteria established by 41.3(4)*"c."*

c. Unless specifically required otherwise by 641—41.3(136C), all registrants are subject to the requirements of 641—Chapters 38 to 40.

41.3(2) Definitions. The following definitions are specific to 641—41.3(136C).

"Accessible surface" means surface of equipment or of an equipment part that can be easily or accidentally touched by persons without the use of a tool.

"Added filtration" means any filtration which is in addition to the inherent filtration.

"Beam axis" means the axis of rotation of the beam-limiting device.

"Beam-limiting device" means a field defining collimator, integral to the therapeutic radiation machine, which provides a means to restrict the dimensions of the useful beam.

"Beam-scattering foil" means a thin piece of material (usually metallic) placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam.

d. To satisfy the requirement for supervised work experience in 41.3(4)*"b"* above, training shall be under the supervision of an authorized user and shall include:

(1) Reviewing the full calibration measurements and periodic quality assurance checks;

(2) Evaluating prepared treatment plans and calculation of treatment times/patient treatment settings;

(3) Using administrative controls to prevent misadministrations;

(4) Implementing emergency procedures to be followed in the event of the abnormal operation of an external beam radiation therapy unit or console; and

(5) Checking and using radiation survey meters.

e. To satisfy the requirement for a period of supervised clinical experience, training shall include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user. The supervised clinical experience shall include:

(1) Examining individuals and reviewing their case histories to determine their suitability for external beam radiation therapy treatment, and any limitations/contraindications;

(2) Selecting proper dose and how it is to be administered;

(3) Calculating the external beam radiation therapy doses and collaborating with the authorized user in the review of patients' progress; consideration of the need to modify originally prescribed doses or treatment plans as warranted by patients' reaction to radiation; and

(4) Postadministration follow-up and review of case histories.

f. Notwithstanding the requirements of 41.3(5)*"b,"* the registrant for any therapeutic radiation machine subject to 41.3(17) and 41.3(18) may also submit the training of the prospective authorized user physician for agency review.

41.3(6) Training for radiation therapy physicist. The registrant for any therapeutic radiation machine subject to 41.3(17) or (18) shall require the radiation therapy physicist to:

a. Be registered with the agency, under the provisions of 641—subrule 39.3(3) of these regulations, as a provider of radiation services in the area of calibration and compliance surveys of external beam radiation therapy units; and

b. Be certified by the American Board of Radiology in:

(1) Therapeutic radiological physics; or

(2) Roentgen-ray and gamma-ray physics; or

(3) X-ray and radium physics; or

(4) Radiological physics; or

c. Be certified by the American Board of Medical Physics in radiation oncology physics; or

d. Be certified by the Canadian College of Medical Physics; or

e. Hold a master's or doctorate degree in physics, biophysics, radiological physics, or health physics, and have completed one year of full-time training in therapeutic radiological physics and also one year of full-time work experience under the supervision of a radiation therapy physicist at a medical institution. To meet this requirement, the individual shall have performed the tasks listed in 41.3(16)*"a"*(1), 41.3(17)*"c,"* 41.3(17)*"c"*(5), 41.3(18)*"e,"* and 41.3(18)*"f"* under the supervision of a radiation therapy physicist during the year of work experience.

f. Notwithstanding the provisions of 41.3(6)*"e,"* certification pursuant to 41.3(6)*"b,"* 41.3(6)*"c"* or 41.3(6)*"d"* shall be required on or before December 31, 1999, for all persons currently qualifying as a radiation therapy physicist pursuant to 41.3(6)*"e."*

41.3(7) Qualifications of operators.

a. Individuals who will be operating a therapeutic radiation machine for medical use shall be adequately instructed in the safe operating procedures and be competent in the safe use of the equipment in accordance with 641—Chapter 42 as applicable.

b. Each operator's permit to practice under 641—Chapter 42 shall be posted in the immediate vicinity of the general work area and visible to the public.

41.3(8) Written safety procedures and rules shall be developed by a radiation therapy physicist and shall be available in the control area of a therapeutic radiation machine, including any restrictions required for the safe operation of the particular therapeutic radiation machine.

41.3(9) Individuals shall not be exposed to the useful beam except for medical therapy purposes and unless such exposure has been ordered in writing by a physician. This provision specifically prohibits deliberate exposure of an individual for training, demonstration or other non-healing arts purposes.

41.3(10) Records of visiting authorized users. Notwithstanding the provisions of 41.3(5), a registrant may permit any physician to act as a visiting authorized user under the following conditions:

a. The authorized user has the prior written permission of the registrant's management if the use occurs on behalf of an institution, and

b. The registrant maintains copies of all records specified in 41.3(5) for five years from the date of the last visit.

41.3(11) Information and maintenance record and associated information. The registrant shall maintain the following information for each therapeutic radiation machine for inspection by the agency:

a. Report of acceptance testing;

b. Records of all surveys, calibrations, and periodic quality assurance checks of the therapeutic radiation machine required by 41.3(136C), as well as the name(s) of person(s) who performed such activities;

c. Records of maintenance or modifications, or both, performed on the therapeutic radiation machine after July 9, 1997, as well as the name(s) of person(s) who performed such services;

d. Signature of person authorizing the return of therapeutic radiation machine to clinical use after service, repair, or upgrade.

e. Records of training specified in 41.3(5) and 41.3(6).

41.3(12) Records retention. All records required by 641—41.3(136C) shall be retained until disposal is authorized by the agency unless another retention period is specifically authorized in 41.3(136C).

41.3(13) Form of records. Each record required by 41.3(136C) shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or microfilm, provided that the copy or microfilm is authenticated by authorized personnel and that the microfilm is capable of producing a clear copy throughout the required retention period, or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The registrant shall maintain adequate safeguards against tampering with and loss of records.

(2) If the software used to generate shielding requirements is not in the open literature, submit quality control sample calculations to verify the result obtained with the software.

III. Therapeutic radiation machines over 150 kV.

In addition to the requirements listed in Section I above, therapeutic radiation machine facilities which produce photons or electrons with a maximum energy in excess of 150 kV or electrons shall submit shielding plans which contain, as a minimum, the following additional information:

A. Equipment specifications including the manufacturer and model number of the therapeutic radiation machine, and gray (rad) at the isocenter and the energy(s) and type(s) of radiation produced (i.e., photon, electron). The target to isocenter distance shall be specified.

B. Maximum design workload for the facility including total weekly radiation output (expressed in gray (rad) at one meter), total beam-on time per day or week, the average treatment time per patient, along with the anticipated number of patients to be treated per day or week.

C. Facility blueprint/drawing (including both floor plan and elevation views) indicating relative orientation of the therapeutic radiation machine, scale (0.25 inch = 1 foot is typical), type(s), thickness and minimum density of shielding material(s), direction of north, the locations and size of all penetrations through each shielding barrier (ceiling, walls and floor), as well as details of the door(s) and maze.

D. The structural composition and thickness or concrete equivalent of all walls, doors, partitions, floor, and ceiling of the room(s) concerned.

E. The type of occupancy of all adjacent areas inclusive of space above and below the room(s) concerned. If there is an exterior wall, show distance to the closest area(s) where it is likely that individuals may be present.

F. Description of all assumptions that were in shielding calculations including, but not limited to, design energy (i.e., room may be designed for 6 MV unit although only a 4 MV unit is currently proposed), workload, presence of integral beam-stop in unit, occupancy and use(s) of adjacent areas, fraction of time that useful beam will intercept each permanent barrier (walls, floor and ceiling) and "allowed" radiation exposure in both restricted and unrestricted areas.

G. At least one example calculation which shows the methodology used to determine the amount of shielding required for each physical condition (i.e., primary and secondary leakage barriers, restricted and unrestricted areas, small angle scatter, entry door(s) and maze) and shielding material in the facility.

(1) If commercial software is used to generate shielding requirements, also identify the software used and the version/revision date.

(2) If the software used to generate shielding requirements is not in the open literature, submit quality control sample calculations to verify the result obtained with the software.

IV. Neutron shielding.

In addition to the requirements listed in Section III above, therapeutic radiation machine facilities which are capable of operating above 10 MV shall submit shielding plans which contain, as a minimum, the following additional information:

A. The structural composition, thickness, minimum density and location of all neutron shielding material.

B. Description of all assumptions that were used in neutron shielding calculations including, but not limited to, neutron spectra as a function of energy, neutron fluency rate, absorbed dose and dose equivalent (due to neutrons) in both restricted and unrestricted areas.

C. At least one example calculation which shows the methodology used to determine the amount of neutron shielding required for each physical condition (i.e., restricted and unrestricted areas, entry door(s) and maze) and neutron shielding material utilized in the facility.

(1) If commercial software is used to generate shielding requirements, also identify the software used and the version/revision date.

(2) If the software used to generate shielding requirements is not in the open literature, submit quality control sample calculations to verify the result obtained with the software.

D. The method(s) and instrumentation which will be used to verify the adequacy of all neutron shielding installed in the facility.

V. References.

A. NCRP Report 49, "Structural Shielding Design and Evaluation for Medical Use of X-Rays and Gamma Rays of Energies Up to 10 MeV" (1976).

B. NCRP Report 51, "Radiation Protection Design Guidelines for 0.1-100 MeV Particle Accelerator Facilities" (1977).

C. NCRP Report 79, "Neutron Contamination from Medical Electron Accelerator" (1984).

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◊Two ARCs

CHAPTER 42
MINIMUM CERTIFICATION STANDARDS FOR DIAGNOSTIC RADIOGRAPHERS, NUCLEAR MEDICINE TECHNOLOGISTS, AND RADIATION THERAPISTS

[Prior to 12/2/87, Health Department[470] Ch 42]

641—42.1(136C) Purpose and scope.

42.1(1) *Applicability.* Except as otherwise specifically provided, these rules apply to all individuals who operate as a diagnostic radiographer, nuclear medicine technologist, or radiation therapist as defined below.

The provisions of this chapter are in addition to, and not in substitution for, any other applicable portions of 641—Chapters 38 to 41.

42.1(2) *Definitions.* For the purpose of this chapter, the definitions of 641—Chapter 38 may also apply.

"Approved course of study" means a curriculum and associated training and testing materials which the department has determined are adequate to train students to meet the requirements of this chapter.

"Chest" is defined as the lung fields including the cardiac shadow, as taught in the approved limited radiography curriculum. Radiography of the shoulder, clavicle, scapula, ribs, thoracic spine and sternum for diagnostic evaluation of these body structures is not allowed under this body part classification for limited diagnostic radiographers.

"Clinical education" means the direct participation of the student in completion of diagnostic studies.

"Continuing education course" means a planned program of continuing education having sufficient scope and depth of a given subject area directly related to the field to form an educational unit that is planned, coordinated, administered, and evaluated in terms of educational objects and provides a defined level of knowledge or specific performance skill. This concept involves the organized presentation of a body of knowledge so that the subject matter is comprehensively covered in sufficient detail to meet the educational objectives of the course.

"Contrast media" means material intentionally administered to the human body to define a part(s) which is not normally visualized radiographically.

"Diagnostic radiographer" means an individual, other than a licensed practitioner or dental radiographer, who applies X-radiation to the human body for diagnostic purposes while under the supervision of a licensed practitioner or registered nurse registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152. The types are as follows:

1. "General diagnostic radiographer" applies X-radiation to any part of the human body.
2. "Limited diagnostic radiographer" applies X-radiation to not more than two body parts. Chest and extremity radiographic examinations are considered as one body part.
3. "Limited in-hospital radiographer" applies X-radiation as permitted in 42.3(1)*"c."*

"Diagnostic radiography" means the science and art of applying X-radiation to human beings for diagnostic purposes other than in dental radiography. It shall include adjustment or manipulation of X-ray equipment and appurtenances including image receptors, positioning of patients and processing of films so as to materially affect the radiation exposure of patients.

"In vitro" means a procedure in which the radioactive material is not administered to a human being.

"In vivo" means a procedure in which the radioactive material is administered to a human being.

"Lower extremities" refers to those body parts from the distal phalanges of the foot to the head of the femur and its articulation with the pelvic girdle as taught in the approved limited radiographer curriculum. True hip radiographs are prohibited under this category for limited diagnostic radiographers.

"Nuclear medicine procedure" means any procedure utilizing radiopharmaceuticals for diagnosis or treatment of disease in human beings and any duties performed by the technologist during sealed source procedures and includes, but is not limited to:

1. Administration of any radiopharmaceutical to human beings for diagnostic purposes.
2. Administration of radioactive material to human beings for therapeutic purposes.
3. Use of radioactive material for diagnostic purposes involving transmission or excitation.
4. Quality control and quality assurance.

"Nuclear medicine technologist" means an individual, other than a licensed physician, who performs nuclear medicine procedures while under the supervision of a physician who is authorized by NRC or Iowa to possess and use radioactive materials.

"Quality assurance" means all aspects of a nuclear medicine program that ensure the quality of imaging and therapy procedures.

"Quality control" means specific tests and measurements that ensure the purity, quantity, product identity, and biologic safety of radiopharmaceuticals.

"Radiation therapist" means a person, other than a licensed physician, who performs radiation therapy technology under the supervision of a radiation oncologist.

"Radiation therapy technology" means the science and art of performing simulation radiography or applying ionizing radiation emitted from X-ray machines, particle accelerators, or radioactive materials to human beings for therapeutic purposes.

"Radionuclide" means a radioactive element or a radioactive isotope.

"Radiopharmaceutical" means a substance defined by the Food and Drug Administration as a radioactive drug.

"Simulation radiography" means the science and art of applying X-radiation to human beings for the purpose of localizing treatment fields and isotopes and for treatment planning.

"Simulation therapist" means an individual, other than a physician, who applies X-radiation to human beings for the purpose of localizing treatment fields and isotopes and for treatment planning.

"Sinus" as used in the limited radiographer curriculum refers to the paranasal sinuses only.

"Special category course" means those programs still related to health care but indirectly related to diagnostic radiography, nuclear medicine technology, or radiation therapy. Such programs are: venipuncture, CPR, educator's programs, management programs, tumor boards, equipment training, personal improvement, for example.

"Spine" refers to the cervical, thoracic (dorsal), lumbar vertebrae and their articulations. It may also include the sacrum or coccyx and the sacral articulation with the pelvic girdle. True pelvis radiographs performed with the image receptor positioned perpendicular to the long axis of the torso are prohibited under this limited category. Lumbo-pelvic or full spine radiography may be performed if the long axis of the image receptor is positioned parallel with the long axis of the spine as taught in the approved limited radiographer curriculum.

"Student" means an individual enrolled in and participating in an approved course of study.

"Supervision" means responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.

"Upper extremities" refers to those body parts from the distal phalanges of the hand to the head of the humerus. These projections may include the acromioclavicular or glenoid-humeral areas as taught in the approved limited radiographer curriculum. True shoulder radiography that includes both distal and proximal ends of the clavicle is prohibited under this category for limited diagnostic radiographers.

"X-radiation" means penetrating electromagnetic radiation with energy greater than 0.1 kV produced by bombarding a metallic target with fast electrons in a high vacuum.

641—42.2(136C) General requirements.

42.2(1) *Minimum eligibility requirements.*

a. Graduation from high school or its equivalent.

b. Attainment of 18 years of age.

c. Ability to adequately perform necessary duties without constituting a hazard to the health or safety of patients or operators.

42.2(2) *Disciplinary grounds and actions.* The following shall be grounds for disciplinary action involving possible suspension or revocation of certification or levying of fines:

a. Operating as a diagnostic radiographer, nuclear medicine technologist, or radiation therapist without meeting the requirements of this chapter.

b. Allowing any individual excluding a licensed physician to operate as a diagnostic radiographer, nuclear medicine technologist, or radiation therapist if that individual cannot provide proof of certification by the department.

c. Failing to report to the department any individual whom the certificate holder knows is in violation of this rule.

d. Submitting false information in order to obtain certification or renewal certification as a diagnostic radiographer, nuclear medicine technologist, or radiation therapist.

e. Any action that the department determines may jeopardize the public, other staff, or certificate holder's health and safety.

42.2(3) *Continuing education.*

a. Each individual who is certified under these rules shall, during a two-year period, obtain continuing education credit as follows:

(1) General diagnostic radiographer: 24 clock hours, 1.0 hour must be in radiation protection.

(2) Limited in-hospital diagnostic radiographer: 24 clock hours, 1.0 hour must be in radiation protection.

(3) Limited diagnostic radiographer: 12 clock hours, 1.0 hour must be in radiation protection.

(4) General nuclear medicine technologist: 24 hours total.

1. One clock hour in principles of radiation protection and exposure each year, a total of two hours each two-year period.

2. One clock hour in quality assurance each year, a total of two hours each two-year period.

3. The remaining 20 clock hours of continuing education in each two-year period may be in any other subjects directly related to nuclear medicine and approved by the department.

(5) Limited nuclear medicine technologists: 12 hours total, 1.0 hour must be radiation protection and 1.0 hour must be in quality assurance.

(6) Radiation therapist: proof of 24.0 clock hours of continuing education courses in subjects directly related to radiation therapy.

(7) Simulation therapist: proof of 24.0 clock hours of continuing education courses with at least 12.0 hours directly related to radiation therapy. 12.0 hours may be in specified diagnostic radiography courses.

b. Continuing education course approval.

(1) Thirty days prior to conducting a continuing education course, the sponsoring individual must submit the following:

1. The course objectives.

2. An outline of the course which sets forth the subject, the course content, and the length of the course in clock hours.

3. The instructor's name and short résumé detailing qualifications.

(2) Following its review, the department may, in consultation with or under predetermined guidance of the technical advisory committee, approve, disapprove, or request additional information on the proposed course.

(3) The department may, from time to time, audit the continuing education course to verify the adequacy of program content and delivery.

(4) Courses must be at least one clock hour in length and if lasting more than one hour, will be assigned credit in half-hour increments to the closest half-hour.

c. Continuing education credit will be awarded under provisions of 42.2(3) by the department to individuals:

(1) Who have successfully completed a continuing education course which has been approved by the department.

(2) Who present a department-approved continuing education course to individuals certified in the presenter's field. Credit granted shall be at a rate of two times the amount of time it takes to present the course up to a maximum of 50 percent of the total hours required.

(3) Only once during a two-year period for the same continuing education course.

d. Continuing education must be directly related to the area of practice of the operator attending the program. Twenty-five percent of the total hours required may be in "special category."

e. It is required that proof of receiving continuing education be retained at each individual's place of employment for review by representatives of the department. Proof of continuing education must be maintained for at least three years.

f. All continuing education requirements shall be completed during the two-year period prior to the certification continuing education due date.

g. Late submission of continuing education requirements.

(1) For any individual who completes the required continuing education before the continuing education due date but fails to submit the required proof within 30 days after the continuing education due date, the certification shall be terminated and the renewal fee will not be refunded.

(2) Any individual who fails to complete the required continuing education before the continuing education due date but submits a written plan of correction to obtain the required hours shall be allowed no more than 60 days after the original continuing education due date to complete the plan of correction and submit the documentation of completion of continuing education requirements. After 60 days, the certification shall be terminated and the individual shall not function as a diagnostic radiographer, radiation therapist, or nuclear medicine technologist in Iowa.

(3) Once certification has been terminated, any individual who requests permission to reestablish certification within six months of the initial continuing education due date must submit proof of continuing education hours and shall submit a late fee as set forth in 641—paragraph 38.8(6)*"c"* in addition to the annual fee set forth in 641—paragraph 38.8(6)*"a"* in order to obtain reinstatement of certification.

42.2(4) *Recertification.*

a. If an individual allows the certification to expire for any reason or if any individual voluntarily terminates certification, the following will apply:

(1) Any individual who wishes to regain certification and makes application within six months of the termination date will be allowed to do so with no additional training or testing required.

(2) Any individual who wishes to regain certification after the six-month period will need to meet the current educational and testing requirements for that particular certification. Proof of possession of a previous certification may satisfy the training portion of this requirement.

d. Certification by the American Registry of Radiologic Technologists or the American Registry of Clinical Radiography Technologists meets the minimum requirements of 42.3(136C).

42.3(2) *School accreditation.*

a. Graduates of schools accredited by the Joint Review Committee on Education in Radiologic Technology who have successfully completed an appropriate course of study in diagnostic radiography will be considered to meet the requirements of 42.3(1)*"a."*

b. Graduates of programs recognized by the Iowa department of public health in consultation with the professional societies and boards of examiners for appropriate course of study in diagnostic radiography will be considered to meet the requirements of this rule.

42.3(3) *Examinations.*

a. All individuals seeking to perform diagnostic radiography must, in addition to subrule 42.3(1), take and satisfactorily pass a written examination within one year of the date of the initial certification. Examination must include the following subject matter for each category of radiographer:

(1) General diagnostic radiographer and limited in-hospital radiographer: radiation protection, radiation physics, radiographic and fluoroscopic techniques, special procedures, patient care, positioning, equipment maintenance, anatomy, contrast media, physiology, quality control, radiographic processing and clinical experience.

(2) Limited diagnostic radiographer: radiation protection, radiation physics, radiographic techniques, patient care, positioning, equipment maintenance, anatomy, physiology, quality control, and radiographic processing and clinical experience for the specific permit to practice requested.

(3) Contents of the examinations will be established and periodically revised by the department in consultation with the technical advisory committee.

b. Examinations will be given by the department at least annually, or as necessary, at course of study location or other location determined by the department.

c. The department may accept, in lieu of its own examination, evidence of satisfactory performance in an examination given by an appropriate organization or testing service provided that the department finds the organization or service to be competent to examine applicants in the discipline of radiography. For purposes of this subrule, individuals who are registered with the American Registry of Radiologic Technologists or American Registry of Clinical Radiography Technologists meet the testing requirements of 42.3(3).

d. Any individual certified under these rules and exempted from examination is exempted from examination requirements as long as the initial certification remains in effect.

42.3(4) *Exemptions.*

a. Students enrolled in and participating in an approved program or approved course of study for diagnostic radiography, or an approved school of medicine, osteopathy, podiatry, and chiropractic, who as a part of their course of study, apply ionizing radiation to a human being while under the supervision of a licensed practitioner. The projected completion date of the clinical portion of the program or course of study shall be within a time period equal to or less than twice that required for the original program or course of study.

b. Licensed practitioners as defined in 641—Chapter 38.

c. Individuals who operate processors only.

641—42.4(136C) Specific requirements for nuclear medicine technologists.

42.4(1) *Specific eligibility requirements.*

a. Any individual who is registered in nuclear medicine technology with the following organizations may meet the education and testing requirements of this rule.

(1) American Registry of Radiologic Technologists.

(2) Nuclear Medicine Technology Certification Board.

(3) American Society of Clinical Pathologists.

b. Any individual, other than a licensed physician, who has completed all educational requirements of this rule but has not yet successfully completed the required examination will be issued temporary certification valid for one year from completion of a training program approved by the department.

42.4(2) *Training requirements.*

a. General nuclear medicine technologist. Successful completion of a Joint Review Committee on Educational Programs in Nuclear Medicine approved course of study or equivalent designed to prepare the student to demonstrate competency in the following:

(1) Basic anatomy, physiology, and pathology.

(2) Intravenous injections and radiopharmaceutical chemistry.

(3) Radiation physics and mathematics.

(4) Nuclear instrumentation.

(5) Radiation biology.

(6) Radiation protection and radiation protection standards and codes.

(7) Laboratory procedures and techniques (in vivo and in vitro).

(8) Clinical application of radiopharmaceuticals used for diagnostic and therapeutic uses and duties performed by the technologist during sealed source procedures.

(9) Records and administrative procedures.

(10) Medical ethics.

(11) Patient care.

b. Limited nuclear medicine technologist. Successful completion of a department-approved training program that prepares the student to demonstrate competency in a specified area. Each program shall include the items in 42.4(2)*"a"* that are specific to the limited area. Included are laboratory technologists who perform nuclear medicine procedures unless the material handled is regulated under 641—paragraph 39.4(22)*"i."*

c. Graduates of programs recognized by the department in consultation with the professional societies and others as being adequate and appropriate courses of study in nuclear medicine technology may be considered to meet the requirements of this subrule.

42.4(3) *Examinations.*

a. Any individual, other than a licensed physician, seeking certification as a general nuclear medicine technologist shall, in addition to the requirements of 42.4(2) successfully complete a written examination including the subject matter specified in 42.4(2)*"a."* The following organizations offer approved general examinations:

(1) American Registry of Radiologic Technologists.

(2) Nuclear Medicine Technology Certification Board.

b. Any individual certified under these rules shall be exempt from the examination requirements as long as the original certification remains in effect.

c. Any individual, other than a licensed physician, seeking certification as a limited nuclear medicine technologist shall, in addition to the requirements of 42.4(2)*"b,"* successfully complete a written examination approved by the department which includes the subject matter specified in 42.4(2)*"b."*

d. Any individual holding temporary certification must successfully complete an approved examination within one year of the issuance date of the certification.

42.4(4) *Exemptions.*

a. Students enrolled in and participating in an approved program or approved course of study for nuclear medicine technology or an approved school of medicine, osteopathy, podiatry, or chiropractic who, as a part of their course of study, administer radioactive material to a human being while under the supervision of a licensed physician who appears as an authorized user on an Iowa or NRC radioactive materials license. Clinical experience must be directly supervised by a certified nuclear medicine technologist or by a physician who appears as an authorized user on an Iowa or NRC radioactive materials license.

b. A licensed physician who appears as an authorized user on an Iowa or NRC radioactive materials license.

641—42.5(136C) Specific requirements for radiation therapists.

42.5(1) *Specific eligibility requirements.* Each individual shall meet one of the following:

a. Any individual who is registered in radiation therapy with the American Registry of Radiological Technologists in radiation therapy meets the education and testing requirements of this rule.

b. Any individual, other than a licensed physician, who has completed all educational requirements of this rule but has not successfully completed the required examination will be issued temporary certification valid for one year from the date of completion of a training program approved by the department.

42.5(2) *Training requirements.*

a. General radiation therapist. Successful completion of a Joint Committee on Education in Radiologic Technology approved course of study or equivalent designed to prepare the student to demonstrate didactic and clinical competency in radiation therapy including, but not limited to, anatomy, physiology, radiation physics, radiation protection and exposure, quality assurance, radiation oncology treatment techniques, dosimetry, radiation oncology and pathology, radiology, oncologic patient care and management.

b. Limited radiation therapist. Successful completion of a training program approved by the department to prepare the student to demonstrate competency in a specified area only. This includes the simulation therapist. Each program shall include the items in 42.5(2)*"a"* that are specific to the limited area.

c. Graduates of programs recognized by the department in consultation with the professional societies and others as being adequate and appropriate courses of study in radiation therapy technology may be considered to meet the requirements of this subrule.

42.5(3) *Examinations.*

a. Any individual, other than licensed physicians, seeking certification as a radiation therapist shall, in addition to the requirements of 42.5(2), satisfactorily complete a written examination in radiation therapy technology approved by the department. An approved examination is offered by the American Registry of Radiologic Technologists.

b. Any individual certified under these rules and exempted from examination is exempt from examination requirements as long as the initial certification remains in effect.

c. Any individual seeking to perform simulation radiography only must successfully complete an approved examination in either diagnostic radiography or radiation therapy.

d. Any individual holding a temporary certification must successfully complete an approved examination within one year of the date of completion of the training.

42.5(4) *Exemptions.*

a. Students enrolled in and participating in an approved program or approved course of study for radiation therapy technology or an approved school of medicine, osteopathy, podiatry, or chiropractic who, as a part of their course of study, administer radiation therapy to a human being while under the supervision of a licensed physician in the state of Iowa. Clinical experience must be directly supervised by a radiation therapist or radiation oncologist who physically observes and critiques the actual radiation therapy procedure.

b. A licensed physician in the state of Iowa.

These rules are intended to implement Iowa Code chapter 136C.

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*Effective date of Ch 42 delayed 70 days by the administrative rules review committee. [Published IAC 6/23/82]
Effective date of Ch 42 delayed by the Administrative Rules Review Committee forty-five days after convening of the next General Assembly pursuant to §17A.8(9). [IAB 9/29/82]
**Subrule 42.1(4)"*b*"(4) is rescinded two years subsequent to the effective date of rule 42.1(136C).
◊Two or more ARCs.

641—45.3(136C) Radiation safety requirements for use of sealed sources of radiation in industrial radiography.

45.3(1) *Limits on external radiation levels from storage containers and source changers.* The maximum exposure rate limits for storage containers and source changers are 200 millirems (2 millisieverts) per hour at any surface, and 10 millirem (0.1 millisieverts) per hour at 1 meter from any exterior surface with the sealed source in the shielded position.

45.3(2) *Locking of sources of radiation.*

a. Each source of radiation shall be provided with a lock or lockable outer container designed to prevent unauthorized or accidental removal or exposure of a sealed source and shall be kept locked at all times except when under the direct surveillance of a radiographer or radiographer trainee, or as may be otherwise authorized pursuant to 45.3(6). Each storage container and source changer likewise shall be provided with a lock and shall be kept locked when containing sealed sources except when the container is under the direct surveillance of a radiographer or radiographer trainee.

b. Radiographic exposure devices, source changers, and storage containers, prior to being moved from one location to another and also prior to being secured at a given location, shall be locked and surveyed to ensure that the sealed source is in the shielded position.

c. The sealed source shall be secured in its shielded position by locking the exposure device or securing the remote control each time the sealed source is returned to its shielded position. Then a survey shall be performed to determine that the sealed source is in the shielded position pursuant to 45.3(7)*"b."*

45.3(3) *Storage precautions.*

a. Locked radiographic exposure devices, source changers, transport packages, and storage containers shall be physically secured to prevent tampering, accidental loss, or removal by unauthorized personnel and stored to minimize danger from explosion or fire.

b. Radiographic exposure devices, source changers, or storage containers that contain radioactive material shall not be stored in residential locations. This requirement does not apply to storage of radioactive material in a vehicle in transit for use at temporary job sites, if the licensee complies with 45.3(3)*"c,"* and if the vehicle does not constitute a permanent storage location as described in 45.1(9).

c. If a vehicle is to be used for storage of radioactive material, a vehicle survey shall be performed after securing radioactive material in the vehicle and before transport to ensure that radiation levels do not exceed the limits specified in 641—subrule 40.26(1) at the exterior surface of the vehicle.

d. A storage or use location is permanent if radioactive material is stored at the location for more than 90 days and any one or more of the following applies to the location:

(1) Telephone service is established by the licensee;

(2) Industrial radiographic services are advertised for or from the location;

(3) Industrial radiographic operations are conducted at other sites due to arrangements made from the location.

45.3(4) *Performance requirements for radiography equipment.* Equipment used in industrial radiographic operations must meet the following minimum criteria:

a. Each radiographic exposure device and all associated equipment must meet the requirements specified in American National Standard N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography" (published as NBS Handbook 136, issued January 1981). This publication has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, and from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, telephone (212)642-4900. Copies of the document are available for inspection at the Iowa Department of Public Health, Bureau of Radiological Health, Lucas State Office Building, Des Moines, Iowa 50319.

b. In addition to the requirements specified in paragraph *"a"* of this subrule, the following requirements apply to radiographic exposure devices and associated equipment.

(1) Each radiographic exposure device must have attached to it by the user a durable, legible, clearly visible label bearing the:

1. Chemical symbol and mass number of the radionuclide in the device;
2. Activity and the date on which this activity was measured;
3. Model number and serial number of the sealed source;
4. Manufacturer of the sealed source; and
5. Licensee's name, address, and telephone number.

(2) Radiographic exposure devices intended for use as Type B transport containers must meet the applicable requirements of 641—39.5(136C).

(3) Modification of any exposure devices and associated equipment is prohibited, unless the design of any replacement component, including source holder, source assembly, controls or guide tubes would not compromise the design safety features of the system.

c. In addition to the requirements specified in paragraphs *"a"* and *"b"* of this subrule, the following requirements apply to radiographic exposure devices and associated equipment that allow the source to be moved out of the device for radiographic operation or source changing:

(1) The coupling between the source assembly and the control cable must be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions;

CHAPTER 45—APPENDIX E

SUBJECTS TO BE INCLUDED IN TRAINING COURSES FOR LOGGING SUPERVISORS

I. Fundamentals of radiation safety.
- A. Characteristics of radiation.
- B. Units of radiation dose and quantity of radioactivity.
- C. Significance of radiation dose.
  1. Radiation protection standards.
  2. Biological effects of radiation dose.
- D. Levels of radiation from sources of radiation.
- E. Methods of minimizing radiation dose.
  1. Working time.
  2. Working distances.
  3. Shielding.
- F. Radiation safety practices including prevention of contamination and methods of decontamination.

II. Radiation detection instrumentation to be used.
- A. Use of radiation survey instruments.
  1. Operation.
  2. Calibration.
  3. Limitations.
- B. Survey techniques.
- C. Use of personnel monitoring equipment.

III. Equipment to be used.
- A. Handling equipment.
- B. Sources of radiation.
- C. Storage and control of equipment.
- D. Operation and control of equipment.

IV. The requirements of pertinent federal and state regulations.

V. The licensee's or registrant's written operating and emergency procedures.

VI. The licensee's or registrant's record-keeping procedures.

CHAPTER 45—APPENDIX F
EXAMPLE OF PLAQUE FOR IDENTIFYING WELLS CONTAINING SEALED SOURCES CONTAINING RADIOACTIVE MATERIAL ABANDONED DOWNHOLE

The size of the plaque should be convenient for use on active or inactive wells, e.g., a 7-inch square. Letter size of the word "CAUTION" should be approximately twice the letter size of the rest of the information, e.g., ½-inch and ¼-inch letter size, respectively.

These rules are intended to implement Iowa Code chapters 136B and 136C.

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NURSING HOME ADMINISTRATORS

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ADMINISTRATIVE AND REGULATORY AUTHORITY

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140.2(155) Severability
140.3(155) Description and organization of the board
140.4(155) Availability of forms

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LICENSURE OF NURSING HOME ADMINISTRATORS

141.1(155) Requirement for licensure
141.2(155) Minimum qualifications for licensure as a nursing home administrator prior to January 1, 1999
141.3(155) Minimum qualifications for licensure as a nursing home administrator beginning January 1, 1999
141.4(155) Practicum/internship
141.5(155) Application for licensure as a nursing home administrator
141.6(155) Examination
141.7(155) Provisional license
141.8(155) License cycle
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CHAPTER 301
SPEECH PATHOLOGY AND AUDIOLOGY CONTINUING EDUCATION AND DISCIPLINARY PROCEDURES

CHAPTER 302
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CHAPTER 131
CONTINUING EDUCATION AND DISCIPLINARY PROCEDURES

645—131.1(152C) Continuing education requirements.

131.1(1) It is the responsibility of each licensee to arrange for financing of costs of continuing education.

131.1(2) Each person licensed to practice massage therapy in this state shall complete during each continuing education compliance period a minimum of 12 hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal for each subsequent license renewal period.

131.1(3) The continuing education compliance period shall be run concurrently with each renewal period. During the continuing education compliance period, attendance at approved continuing education programs may be used as evidence of fulfilling the continuing education requirement for subsequent biennial license renewal period.

131.1(4) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which meets the requirements herein.

131.1(5) Carryover credit of continuing education hours into the next continuing education compliance period will not be permitted.

131.1(6) When an initial license is issued via examination, the new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license is originally issued.

131.1(7) Rescinded IAB 12/30/98, effective 2/3/99.

645—131.2(152C) Standards for approval. Continuing education is that education which is obtained by a licensee in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit.

131.2(1) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

131.2(2) It pertains to common subjects or other subject matters which integrally relate to the practice of the profession as defined in Iowa Code section 152C.1, paragraph 4; and

131.2(3) It is conducted by individuals who have 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 outline which substantively pertains to the subject matter of the program and reflects program schedule.

131.2(4) It fulfills stated program goals or objectives, or both.

131.2(5) It provides proof of attendance to licensees in attendance including:

a. Date, place, course title, presenter(s).

b. Number of program contact hours.

c. Official signature of program sponsor and primary presenter.

131.2(6) The board may monitor and review any continuing education program already approved. 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.

131.2(7) Procedures for approval of continuing education programs. An organization, educational institution, agency, individual, or licensee that desires approval of a continuing education program prior to its presentation shall apply for approval to the massage therapy office at least 60 days in advance of the commencement of the program on a form provided by the board, including a time schedule, outline, and the qualifications of the instructors. The massage therapy board shall approve or deny the application in writing within 30 days of receipt of the application.

645—131.3(152C) Reporting continuing education credits.

131.3(1) A report of continuing education activities shall be submitted on a department-approved form with the application for renewal.

131.3(2) Failure to receive a renewal application shall not relieve the licensee of the responsibility of meeting continuing education requirements and submitting renewal fee.

131.3(3) Audit of continuing education reports.

a. The board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

b. All renewal license applications that are submitted late shall be subject to audit of continuing education reports.

c. Any licensee against whom a complaint is filed may be subject to an audit of 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 and primary presenter indicating successful completion of course.

e. For auditing purposes, the licensee must retain the above information for four years.

645—131.4(152C) Hearings. In the event of denial, in whole or in 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 90 days after receipt of the request for hearing. The hearing shall be conducted by the board. The decision of the board shall be final.

645—131.5(152C) Disability or illness. The board, in individual cases involving disability or illness, may grant waivers of the minimum continuing 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 application is made on forms provided by the board and signed by the licensee and an 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. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of the waiver granted, the licensee must reapply for an extension 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.

645—131.6(152C) Complaint. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.7(152C) Report of malpractice claims or actions or disciplinary actions. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.8(152C) Investigation of complaints or malpractice claims. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.9(152C) Alternative procedure and settlement. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.10(152C) License denial. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.11(152C) Notice of hearing. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.12(152C) Hearings open to public. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.13(152C) Hearings. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.14(152C) Appeal. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.15(152C) Transcript. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.16(152C) Publications of decisions. Rescinded IAB 7/14/99, effective 8/18/99.

645—131.17(152C) 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:

131.17(1) All grounds listed in Iowa Code section 147.55 which are:

a. Fraud in procuring a license.

b. Professional incompetence.

(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.

(1) Violation of the rules promulgated by the board.

(2) Violation of the terms of a decision and order issued by the board.

(3) Violation of the terms of a settlement or agreement entered into and issued by the board.

(4) Personal disqualifications.

1. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

2. Involuntary commitment for the treatment of mental illness, drug addiction or alcoholism.

(5) Practicing the profession while the license is under suspension, lapsed or delinquent for any reason.

(6) Suspension or revocation of license by another state.

(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.

(8) Prohibited acts consisting of the following:

1. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.
2. Permitting another person to use the licensee's license for any other purpose.
3. Practicing outside the scope of a license.
4. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.
5. Verbally or physically abusing clients.
6. Making suggestive, lewd, lascivious, or improper remarks or advances to a client.
7. Engaging in sexual conduct with regard to a client, including but not limited to inappropriate physical conduct or any behavior that is seductive, demeaning, or exploitive.
8. Engaging in any sexual intimidation or sexual relationship involving a client.
9. Being adjudged mentally incompetent by a court of competent jurisdiction.
10. Permitting a licensed person under the licensee's control to practice outside the scope of the person's license.

131.17(2) 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).
d. Failure to report a change of name or mailing address.
e. Failure to submit continuing education certificate with license renewal by date due for the renewal year.
f. Failure to complete the required continuing education within the compliance period.
g. Submission of a false report of continuing education, or failure to submit the annual report of continuing education.
h. Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.
i. Failure to comply with a subpoena issued by the board.
j. Failure to report to the board any violation of the reasons for a disciplinary action as listed in this rule by another licensee.
k. Failure to pay any civil penalties assessed pursuant to rule 131.18(152C) or 131.19(152C).
l. Failure to submit curriculum changes.

645—131.18(152C) Civil penalty for employment of person not licensed.

131.18(1) A person who employs, to provide services to other persons, a person who is not licensed as a massage therapist shall not use the initials "L.M.T." or the words "licensed massage therapist," "massage therapist," "masseur," or "masseuse," or any other words or titles which imply or represent that the person employed practices massage therapy.

131.18(2) The board may impose a civil penalty not to exceed $1000 on a person who violates this rule.

131.18(3) Each violation of this rule is a separate offense.

131.18(4) Each day a violation occurs after citation by the board is a separate offense.

131.18(5) The board may inspect any facility which advertises or offers services purporting to be delivered by massage therapists.

131.18(6) The citation will be sent to the alleged violator by certified mail, return receipt requested.

645—131.19(152C) Civil penalty for use of title.

131.19(1) A person who is not licensed as a massage therapist shall not use the initials "L.M.T." or the words "licensed massage therapist," "massage therapist," "masseur," or "masseuse," or any other words or titles which imply or represent that the person practices massage therapy.

131.19(2) The board may impose a civil penalty not to exceed $500 on a person who violates this rule.

131.19(3) Each violation of this rule is a separate offense.

131.19(4) Each day a violation of this rule occurs after citation by the board is a separate offense.

131.19(5) A person is not in violation of the statute or rules if that person practices massage therapy for compensation while in attendance at a school offering a curriculum meeting the requirements of 645—130.5(152C), and under the supervision of a member of the school's faculty.

131.19(6) The board may inspect any facility which advertises or offers services purporting to be delivered by massage therapists.

131.19(7) The citation will be sent to the alleged violator by certified mail, return receipt requested.

These rules are intended to implement Iowa Code chapter 152C and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTERS 132 to 135
Reserved

CHAPTER 136
PETITIONS FOR RULE MAKING
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTER 137
DECLARATORY RULINGS
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTER 138
AGENCY PROCEDURE FOR RULE MAKING
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTER 139
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 7/14/99, effective 8/18/99

PSYCHOLOGY

CHAPTER 240
BOARD OF PSYCHOLOGY EXAMINERS
[Prior to 8/24/88, Health Department[470], Ch 140]

645—240.1(154B) General definitions.

"Board" means the board of psychology examiners.

"Law" means chapters 147 and 154B of the Code of Iowa.

"Original license" means, when used relative to renewal of lapsed license, the license which has lapsed.

"Waiver" means, the granting of a license without examination, conditions for which are defined in the law.

"Year" means, when used in connection with fees for a license, the fiscal year commencing on July 1 and ending on the following June 30.

645—240.2(154B) Availability of information.

240.2(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, record of hearings, and examination results are available to the public between the hours of 8 a.m. and 4:30 p.m., Monday to Friday, except holidays.

240.2(2) Information may be obtained by writing to the Board of Psychology Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All official correspondence shall be in writing and directed to the board at this address.

645—240.3(154B) Organization and proceedings.

240.3(1) A chairperson, vice-chairperson, and secretary shall be elected at the first meeting of each fiscal year.

240.3(2) Four board members actually present constitute a quorum.

240.3(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. Meetings shall be scheduled so as to enable applicants to meet the requirements of subrule 240.4(4). The chairperson shall designate the date, place, and time prior to each meeting of the board. Notice of time and place of all meetings shall be given to board members by the secretary at least 14 days before the meeting is to be held. However, in case of emergency requiring the board to meet before such notice can be given, verbal or telephone notification may be given no later than three days before the meeting. 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.

240.3(4) All issues, requests, or submissions to the board will be considered. However, official action will be taken only in response to written requests.

240.3(5) The board shall have both formal and informal procedures for use where appropriate in conducting the business of the board. Procedures may involve, but are not limited to, hearings for individuals, questions of legal policy, inquiries concerning board policies or decisions, or other board business. Informal procedures shall be preferred unless either the board or requesting party requests a formal procedure. When a formal procedure is elected, a full transcript or audio tape recording of the procedure shall be made.

240.3(6) Any interested person may petition the board requesting the promulgation, amendment, or repeal of a rule.

240.3(7) 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 IOWA BOARD OF PSYCHOLOGY 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 behest of any entity mentioned in subrule 240.3(7), 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, decisions, 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.

(6) A brief may be attached thereto.

d. The petition shall be filed either by serving it personally to the Director, Professional Licensure, or by mailing it to the Director, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

e. The director shall acknowledge receipt of petitions or return petitions not in substantial conformity with the above rules.

f. The board may decline to issue a declaratory ruling for the following reasons:

(1) A lack of jurisdiction.

(2) A lack of clarity of the issue and facts presented.

(3) The issue or issues presented are pending resolution by a court of Iowa or by the attorney general.

(4) The issue or issues presented have been resolved by a change in circumstances or by other means.

(5) The issue or issues are under investigation for purposes of formal adjudication.

(6) The petition does not comply with the requirements imposed by this subrule.

(7) Where 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 director 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 director. Rulings shall be indexed and available for public inspection.

j. A declaratory ruling by the board shall have a binding effect upon subsequent board decisions and orders which pertain to the party requesting the ruling and in which the factual situation and applicable law are indistinguishable from that presented in the petition for declaratory ruling. To all other parties and in factual situations which are distinguishable from that presented in the petition, a declaratory ruling shall serve merely as precedent.

This rule is intended to implement Iowa Code section 17A.9.

645—240.4(154B) Application.

240.4(1) Any person seeking a license must complete and submit to the board the approved application form not later than 60 days prior to the date of the written examination.

240.4(2) The application form must be completed in accordance with instructions contained in the application.

240.4(3) Each application must be accompanied by a check or money order in the amount provided in rule 645—240.10(154B), payable to the Iowa state board of psychology examiners.

240.4(4) Applicants shall be notified in writing of deficiencies. If the requested information to remedy such deficiencies is not received 30 days before the date of the scheduled written examination and found acceptable by the board, the application may be held until the next examination.

240.4(5) No application will be considered by the board until certified copies of academic transcripts have been received by the board, and satisfactory evidence of the candidate's qualifications has been supplied in writing on the prescribed forms by the candidate's supervisors.

240.4(6) An applicant whose licensing application has been denied may reapply for licensing when the applicant believes the conditions stated by the board as requirements have been met.

240.4(7) The board will review each application for licensing to determine that the candidate meets all requirements as provided in the law and these rules.

240.4(8) Since a license to practice a profession may be refused on any of the grounds for which a license may be revoked by the district court in Iowa Code section 147.4, the board will make special inquiries whenever a question arises concerning Iowa Code section 147.55. In considering unethical practices, the board will be guided by the code of ethics.

240.4(9) Psychologists residing outside the state of Iowa and intending to practice in Iowa under the provisions of Iowa Code section 154B.3(5) shall file an application for a limited permit to practice at least 60 days in advance of such practice on a form provided by the board. The limited permit expires one year after issuance and may be renewed only once for an additional 12-month period.

The following fees, which are nonrefundable, shall be submitted payable to the state board of psychology examiners:

a. The application for a limited permit to practice shall be accompanied by a check or money order as provided in rule 645—240.10(154B).

b. The renewal fee as provided in rule 645—240.10(154B) by check or money order shall be submitted at least 30 days prior to the expiration of the initial limited permit if the person intends to continue to practice in Iowa under the provisions of Iowa Code section 154B.3(5).

This rule is intended to implement Iowa Code section 147.80.

645—240.5(154B) Educational qualifications for licensing.

240.5(1) The doctorate degree in psychology shall mean a doctorate degree granted by a department of psychology in an institution accredited by the North Central Association of Colleges and Secondary Schools or an equivalent accrediting association in other regions of the United States.

240.5(2) The board shall consider a doctorate degree offered by an academic unit other than a department of psychology provided:

a. The aforementioned academic unit is in, or formally connected with, an institution accredited as specified in this rule to offer the doctorate degree, and

b. The dissertation for the degree is psychological in method and content, and

c. At least 50 semester hours (or 75 quarter hours) of the course credits required for the degree, have successfully been earned in graduate courses which are predominantly psychological in content and cover such areas as: developmental psychology, social psychology, psychology of personality, abnormal psychology, psychological diagnosis and assessment, psychological research methodology, and psychological statistics. Such credits may, in part, be earned in postdoctoral course work from an institution meeting the requirements of subrule 240.5(1) or 240.5(2)*"a."*

240.5(3) Equivalence of course work taken outside departments of psychology to course work in departments of psychology shall be determined, in part, by the psychological content of the courses taken irrespective of title and the professional qualifications of the instructor. The burden of proof for equivalency is upon the applicant.

240.5(4) The master's degree in psychology is defined as the master of arts or science offered by a department of psychology in an institution accredited as in subrule 240.5(1) to offer the master's degree.

240.5(5) The board shall consider a master's degree offered by an academic unit other than a department of psychology provided:

a. The degree is from an academic unit in an institution as specified in subrule 240.5(1) and is from an academic unit that is similar to a department of psychology with respect to its faculty, degree programs, and curriculum. In either case, it shall be further required that:

b. At least 30 semester hours (45 quarter hours) of the credits required for the degree shall have been successfully earned in graduate courses which are predominantly psychological in content and include the areas of psychology and equivalence guidelines mentioned in subrule 240.5(2)*"c."* Such credits may, in part, be earned in post-master's degree coursework from an institution meeting the requirements of subrule 240.5(1).

240.5(6) The accreditation of the degree-granting institution(s) shall be evaluated by the board with respect to the time of the applicant's affiliation with such institution(s). The same shall apply to other institutional aspects stipulated in this rule.

240.5(7) A degree from a foreign university will be accepted provided that the institution meets standards equivalent to those held by approved domestic institutions.

240.5(8) An applicant who has received a doctorate meeting the requirements of subrule 240.5(1) or 240.5(2) in a doctoral program that does not offer the master's degree shall be considered to have received a master's degree at the time the applicant has met the requirements of subrule 240.5(5).

240.5(9) An applicant who has received a specialist degree in psychology shall be considered to have met the requirements for a master's degree in psychology provided the specialist degree program has met the requirements of subrule 240.5(5).

Educational Qualifications From and After July 1, 1985

240.5(10) From and after July 1, 1985, a new applicant for licensure to practice as a psychologist shall possess a doctoral degree in psychology. The doctoral degree in psychology shall mean a doctoral degree granted by an institution accredited by the North Central Association of Colleges and Secondary Schools or an equivalent accrediting association or entity in other regions of the United States. The doctoral degree shall also be granted through a professional psychology program. A "professional psychology program" means a program identified in paragraph *"a,"* or in the alternative, a program which the applicant can establish satisfies all of the criteria of paragraphs *"b"* through *"i."*

a. Programs that are accredited by the American Psychological Association are recognized as meeting the requirement of a professional psychology program.

b. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. A program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

c. The psychology program must stand as a recognizable, coherent organizational entity within the institution.

d. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

e. The program must be an integrated, organized sequence of study.

f. There must be an identifiable psychology faculty on-site sufficient in size to ensure that the ratio of faculty to students is adequate for instruction. The faculty must also have sufficient breadth in order to ensure that the scope of knowledge in psychology provides for adequate instruction. There must be a psychologist responsible for the program.

g. The program must have an identifiable body of students who are matriculated in that program for a degree.

h. The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

i. The curriculum shall encompass a minimum of three academic years of graduate study. Because a significant residency experience is necessary to ensure adequate socialization experiences and acquisition of professional-technical skills, at least a minimum of one year's residency at the educational institution granting the doctoral degree is required. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas:

(1) Biological bases of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

(2) Cognitive-affective bases of behavior: learning, thinking, motivation, emotion.

(3) Social bases of behavior: social psychology, group processes, organizational and systems theory.

(4) Individual differences: personality theory, human development, abnormal psychology.

In addition, all professional education programs in psychology will include course requirements in specialty areas.

240.5(11) The accreditation of the degree-granting institution(s) shall be evaluated by the board with respect to the time of the applicant's affiliation with such institution(s). The same shall apply to other institutional aspects stipulated in this rule.

240.5(12) A degree from a foreign university will be accepted provided that the institution meets standards equivalent to those held by approved domestic institutions.

This rule is intended to implement Iowa Code section 154B.6(1).

645—240.6(154B) Professional employment experience.

240.6(1) To meet the requirements for "professional employment experience," an applicant's employment experience must:

a. Have involved the application of psychological principles such as defined in the "Practice of Psychology," (chapter 154B), and

b. Have been performed competently at a professional level, and

c. Have been appropriately supervised as is specified in subrule 240.6(9).

240.6(2) As a general criterion, such employment experience will include tasks and judgments which depend upon the application of skill or knowledge made available to the applicant during formal education in psychology.

240.6(3) Employment experience which is offered to satisfy one provision of the law may not be simultaneously offered to satisfy the educational provisions of the law. For example, employment experiences which are part of the required preparation for the doctor of philosophy degree will be applicable only to the "doctorate degree requirements" and may not be simultaneously offered to satisfy the "employment experience" requirement.

240.6(4) Professional employment experience acquired by the applicant between the time all requirements were fulfilled for the graduate degree and the time of the actual conferral of the degree may be credited toward the employment experience requirements for licensing, provided that the date of completion of all degree requirements is verified in writing by an appropriate academic official. Verification must come directly to the board from the academic official.

240.6(5) Employment experience of any kind gained prior to meeting the educational qualifications for licensing found in rule 645—240.5(154B) will not apply to the provisions of the law concerning professional employment experience.

240.6(6) Predoctoral employment experience that meets the requirements of subrules 240.6(5) and 240.6(7) will be considered "professional employment experience" unless the employment experience was part of a doctoral training program such as an internship, assistantship, practicum, or personal therapy.

240.6(7) In the event that the employment experience being offered can be considered the performance of some other profession or discipline as well as psychology, the board will consider such employment experience acceptable if it meets such criteria as listed in subrule 240.6(1).

240.6(8) "A year of professional employment experience" shall mean 12 months, including regularly scheduled vacation periods, during which the applicant was employed on a full-time basis.

a. In the case of academic employment, "year" shall mean the period normally associated with the full-time employment at the employing institution.

b. Full-time employment for self-employed applicants shall mean at least 1800 hours during a 12-month period.

c. Part-time employment experience credit shall be determined by the board on a prorated basis.

240.6(9) Supervisors must be licensed psychologists in the state of Iowa or licensed in another state having comparable licensing requirements at the time of supervision. The supervision must meet the following criteria:

a. The supervisor regularly reviewed the psychological practice of the supervisee.

b. The supervisor and the supervisee met on a face-to-face basis and discussed matters pertinent to the psychological practice for a minimum of one hour on at least a biweekly basis. From and after January 1, 1980, the supervisor and the applicant shall meet for a minimum of one hour at each meeting and averaging at least one meeting per week. Group supervision is not acceptable to fulfill this requirement for supervised professional experience.

c. Documentation acceptable to the board indicating that the applicant has met the requirements of this rule and has performed in a professional, competent, and ethical manner must be submitted.

240.6(10) All applicants for a license to practice psychology who make application for a license from and after July 1, 1985, and all other persons providing psychological services who are not licensed by the board of psychology examiners shall comply with the following conditions relating to supervision:

a. Supervising psychologists shall be licensed or certified for the practice of psychology and have adequate training, knowledge, and skill to render competently any psychological service which their supervisee undertakes. They shall not supervise nor permit their supervisee to engage in any psychological practice which they cannot perform competently themselves.

b. The supervisee shall have the background, training, and experience that is appropriate to the functions performed. The supervising psychologist is responsible for determining the adequacy of preparation of the supervisee and the designation of the title of the supervisee.

c. The supervising psychologist shall register the following information in writing with the board of psychology examiners:

(1) The name of the person being supervised.

(2) The nature of the services rendered by the person being supervised.

(3) The qualifying academic training and experience of the person being supervised.

(4) The nature of the continuing supervision provided by the psychologist.

d. Persons providing psychological services who are not licensed by the board of psychology examiners, shall be under the direct and continuing administrative and professional direction of a psychologist licensed by the board.

e. The supervising psychologist shall be vested with administrative control over the functioning of assistants in order to maintain ultimate responsibility for the welfare of every client. When the employer is other than the supervising psychologist, the supervising psychologist must have direct input into administrative matters.

f. The supervising psychologist shall have sufficient knowledge of all clients, including face-to-face contact when necessary, in order to plan effective service delivery procedures. The progress of the work shall be monitored through such means as will ensure that full legal and professional responsibility can be accepted by the supervisor for all services rendered. Supervisors shall also be available for emergency consultation and intervention.

g. Work assignments shall be commensurate with the skills of the supervisee. All procedures shall be planned in consultation with the supervisor.

h. A supervised employee of the supervising psychologist shall work in the same physical setting as the supervisor, unless other individual arrangements are approved by the board of psychology examiners.

i. Public announcement of services and fees, and contact with the lay or professional community shall be offered only by or in the name of the supervising psychologist. Titles of supervisees must clearly indicate their supervised status.

j. Users of the supervisee's services shall be informed as to the person's status, and shall be given specific information as to the supervisee's qualifications and functions.

k. Clients shall be informed of the possibility of periodic meetings with the supervising psychologist at their, the service provider's, or the supervisor's request.

l. Setting and receipt of payment shall remain the sole domain of the employing agency or supervising psychologist.

m. The supervisor shall establish and maintain a level of supervisory contact consistent with established professional standards, and be fully accountable in the event that professional, ethical or legal issues are raised.

n. No more than the equivalent of three full-time persons may be registered for any one supervisor.

o. It is recognized that the variability in the preparation for practice of all personnel will require individually tailored supervision. The range and content of supervision will have to be worked out between the individual supervisor and the supervisee. A detailed job description in which functions are designated at varying levels of difficulty, requiring increasing levels of training, skill and experience shall be available. This job description shall be made available to representatives of the board and service recipients upon request.

p. Employment of persons who provide psychological services and who are not licensed or certified by the board of psychology examiners requires the supervision of a licensed psychologist.

q. Other than for purposes of providing supervision, the psychologist may not be in the employ of a supervisee.

r. The supervisor is responsible for the planning, course, and outcome of the work. The conduct of supervision shall ensure the professional, ethical, and legal protection of the client and of the supervisee.

s. An ongoing record of supervision shall be maintained which details the types of activities in which the supervisee is engaged, the level of competence in each, and the type and outcome of all procedures.

t. All written reports and communications shall be countersigned as "Reviewed and Approved" by the supervising psychologist.

240.6(11) Designation of uncredentialed persons prior to licensure.

a. Applicants for licensure who have met educational requirements, but have not yet passed the written examination for the practice of psychology, may be designated "psychology associate" or "associate in psychology." The title "psychology associate" or "associate in psychology" shall not be used except as the person's employment and supervision meet the requirements of subrules 240.6(9) and 240.6(10).

b. Applicants for licensure who have passed the written examination for the practice of psychology, and who are fulfilling the experience requirements specified herein for licensure, may be designated "psychology resident" or "resident in psychology." The designation of "resident" shall not be used except as the employment and supervised experience meet the requirements of subrules 240.6(9) and 240.6(10).

c. Notwithstanding other provisions of these rules, applicants for licensure who are engaged in organized health service training programs as specified in subrule 240.11(3) and subrule 240.11(4) may be designated "psychology intern" or "intern in psychology" during their time in such training status.

d. Persons licensed in another state who are in the process of seeking licensure in Iowa and who are being supervised until obtaining an Iowa license may use the designation "License Transfer in Process, Licensed Psychologist (name of state)", for a period up to one year from the date of application.

240.6(12) All applicants for licensure shall, on July 1, 1985, or at the time of first application and on July 1 of each year subsequent to application and prior to full licensure or withdrawal of candidacy, register with the board on a form provided, attesting to employment and supervision status. Registration shall expire on the thirtieth day of June following the date of registration and may be renewed at the discretion of the board of psychology examiners at a fee of $20. Failure to renew registration shall constitute automatic withdrawal of candidacy for licensure.

This rule is intended to implement Iowa Code sections 154B.3 and 154B.6.

645—240.7(154B) Waiver of examinations.

240.7(1) Persons applying for licensing under the waiver provisions of the law must so specify in their application and need not meet the application deadlines specified in rule 240.4(154B).

240.7(2) Determination of psychological practice will be based on the professional experience requirements aforementioned in rule 240.6(154B).

645—240.8(154B) Examinations.

240.8(1) The examination may be composed of three sections:

a. A written, objective section.

b. A written, essay examination.

c. An oral examination conducted by the board or its duly constituted representative(s).

240.8(2) In order to qualify for licensing, the applicant will be required to perform satisfactorily on all required sections of the examination.

240.8(3) Examination dates will be announced by the board. The schedule for the written examination will establish the time, place, the final date by which the board must receive the applicant's written intention to be examined, and other pertinent information or instructions. The examination fee as provided in rule 645—240.10(154B) shall be paid by check or money order to the Iowa state board of psychology examiners.

240.8(4) An applicant who fails to appear for the scheduled examination will forfeit the examination fee unless an explanation acceptable to the board is provided in writing not later than 15 days after the examination. From and after July 1, 1989, an applicant approved by the board to sit for the written examination must take one of the next three written examinations administered by the board from the date of the board's initial approval. If the applicant has not taken the written examination, the initial board review to sit for the examination shall then become invalid. In order to be considered for examination later, the applicant shall file with the board a complete, new application including the nonrefundable application fee and must meet the requirements for licensure at the time such application is filed. Upon approval to sit for the written examination, the examination fee will be required.

240.8(5) Application for any required examination will be denied or deferred if the applicant lacks the required education or supervised experience.

240.8(6) An oral examination, if required, will be scheduled only for those applicants who pass the written examination(s).

240.8(7) The board will notify the applicant in writing of examination results. An applicant will be deemed to have passed the written examination if the score obtained on the examination is equal to or greater than 70 percent of the total items.

240.8(8) Beginning January 1, 1984, persons determined by the board not to have performed satisfactorily may apply for reexamination no more than three times. Any applicant who has taken and failed the examination a combined total of four times in this state or in any other state or jurisdiction shall not be permitted to sit for the examination in this state.

This rule is intended to implement Iowa Code sections 147.36 and 147.80.

645—240.9(154B) License renewal.

240.9(1) At least two months before the renewal date, a renewal notice will be sent to each license holder at the last address in the board's file. Failure to receive the notice shall not relieve the license holder of the obligation to pay the renewal fee as provided in rule 645—240.10(154B) on or before the renewal date.

240.9(2) Renewal fees shall be received by the board on or before the end of the last month of the renewal period. Whenever renewal fees are not received as specified, the license lapses and the practice of psychology must cease until all renewal fees are received by the board. In addition thereto a penalty fee as provided in rule 645—240.10(154B) shall be paid.

240.9(3) If the renewal fees are not received by the board within 180 days after the end of the last month of the renewal period, an application for reinstatement must be filed with the board with a reinstatement fee as provided in rule 645—240.10(154B) in addition to the renewal fee and the penalty.

240.9(4) A duplicate license to practice psychology issued to be displayed in a branch office shall be renewed at the same time as the original license.

This rule is intended to implement Iowa Code sections 147.11 and 147.80.

645—240.10(154B) Licensure fees. All fees are nonrefundable. Checks should be made payable to the Iowa State Board of Psychology Examiners.

240.10(1) Application fee for license to practice psychology is $100. Fee for application for psychology license by reciprocity is $250.

240.10(2) Examination fee for a license to practice psychology is $150. Effective May 1, 1993, the examination fee for a license to practice is $275.

240.10(3) Application fee for a limited permit is $100.

240.10(4) Biennial renewal fee for a license to practice psychology is $140. Biennial renewal fee for a duplicate license to practice psychology for a branch office is $20.

240.10(5) Renewal fee for a limited permit is $70.

240.10(6) Penalty fee for failure to submit renewal fee as required by subrule 240.9(2) is $50.

240.10(7) Reinstatement fee as required by subrule 240.9(3) is $70.

240.10(8) Delinquent penalty fee for failure to complete continuing education as provided in subrule 240.101(6) is $25.

240.10(9) Fee for a duplicate license if the original is lost or stolen is $10. Fee for a duplicate license for a branch office is $10.

240.10(10) Fee for a certified statement that a licensee is licensed in this state is $10.

240.10(11) Fee for registration of an applicant and for annual renewal of registration of an applicant as provided by subrule 240.6(12) is $20.

240.10(12) Delinquent penalty fee for failure to file continuing education report as provided in rule 240.105(272C) is $25.

This rule is intended to implement Iowa Code section 147.80.

SPECIALTY CERTIFICATION

645—240.11(154B) Definitions.

240.11(1) *"Certified health service provider in psychology"* means a person licensed to practice psychology who has a doctoral degree in psychology, or prior to July 1, 1984, was licensed at the doctoral level with a degree in psychology or its equivalent, or was prior to January 1, 1984, licensed as a psychologist in this state and prior to January 1, 1985, receives a doctoral degree equivalent to a doctoral degree in psychology, and who has at least two years of clinical experience in a recognized health service setting or meets the standards of a national register of health service providers in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders, and to treat mental illnesses and nervous disorders, excluding those mental illnesses and nervous disorders which are established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illnesses and nervous disorders.

The board of examiners for psychology after determining a person meets the qualifications for certification may issue a certificate designating the person as a health service provider in psychology.

240.11(2) *"Doctoral degree in psychology"* means a doctoral degree in any program which meets the following criteria:

a. Programs that are accredited by the American psychological association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serve as a model for professional psychology training, or all of the following criteria, *"b"* through *"j."*

b. Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

c. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. A program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

d. The psychology program must stand as a recognizable, coherent organizational entity within the institution.

e. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

f. The program must be an integrated, organized sequence of study.

g. There must be an identifiable psychology faculty on-site sufficient in size to ensure that the ratio of faculty to students is adequate for instruction. The faculty must also have sufficient breadth in order to ensure that the scope of knowledge in psychology is sufficiently broad for adequate instruction. There must be a psychologist responsible for the program.

h. The program must have an identifiable body of students who are matriculated in that program for a degree.

i. The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

j. The curriculum shall encompass a minimum of three academic years of graduate study. Because a significant residency experience is necessary to ensure adequate professional-technical skills, at least a minimum of one year's residency at the educational institution granting the doctoral degree is required. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas:

(1) Biological bases of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

(2) Cognitive-affective bases of behavior: learning, thinking, motivation, emotion.

(3) Social bases of behavior: social psychology, group processes, organizational and systems theory.

(4) Individual differences: personality theory, human development, abnormal psychology.

In addition, all professional education programs in psychology will include course requirements in specialty areas.

240.11(3) *"Two years of clinical experience"* means two years of supervised experience in health service in psychology, of which at least one year is in an organized health service training program as defined in subrule 240.11(4) and one year is postdoctoral or for a person who prior to July 1, 1984, was licensed as a psychologist in this state means two years of experience in health service in psychology supervised by a licensed psychologist.

Those psychologists licensed at the subdoctorate level prior to January 1, 1985, who then seek licensure recognition at the doctorate level may be allowed credit for licensure supervision and experience that was done at the subdoctorate level.

240.11(4) *Health service training program.* An organized health service training program shall meet the following criteria:

a. An organized health service training program is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose is assuring breadth and quality of training.

b. The organized health service training program has a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed or certified by the state board of examiners in psychology in the state in which the program exists.

c. The organized health service training program has two or more psychologists on the staff as supervisors, at least one of whom is actively licensed as a psychologist by the state board of examiners in psychology in the state in which the program exists.

d. Supervision is provided by a staff member of the organized health service training program or by an affiliate of the organized health service training program who carries clinical responsibility for the cases being supervised. At least half of the internship supervision is provided by one or more psychologists.

e. The organized health service training program provides training in a range of assessment and treatment activities conducted directly with patients seeking psychological services.

f. At least 25 percent of trainees' time is in direct patient contact (minimum 375 hours).

g. The organized health service training program includes a minimum of two hours per week (regardless of whether the internship is completed in one year or two) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern is actively involved; seminars dealing with clinical issues; cotherapy with a staff person including discussion; group supervision; additional individual supervision.

h. Training is postclerkship, postpracticum, and postexternship level.

i. The organized health service training program has a minimum of two interns at the internship level of training during any period of training.

j. The internship level trainees have a title such as "intern," "resident," "fellow," or other designation of trainee status.

k. The organized health service training program has a written statement or brochure which describes the goals and content of the internship, states clear expectations for quantity and quality of trainee's work and is made available to prospective interns.

l. The training experience (minimum 1800 hours) shall be completed within 24 consecutive months and no less than 12 months.

240.11(5) *"Recognized health service setting"* means a setting in which the delivery of direct preventive, assessment, and therapeutic intervention services are provided to individuals whose growth, adjustment or functioning is actually impaired or is demonstrably at high risk of impairment; delivery of the aforementioned services includes, but is not limited to, the diagnosis or evaluation and treatment of mental illness and nervous disorders, excluding those mental illnesses and nervous disorders which are established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illnesses and nervous disorders.

This rule is intended to implement Iowa Code section 154B.7.

645—240.12(154B) Requirements for certification.

240.12(1) Any person currently licensed as a psychologist in the state of Iowa and listed in the 1983 National Register of Health Service Providers in Psychology as published by the Council for Health Service Providers in Psychology or the Cumulative Summer 1984 Supplement to the National Register of Health Service Providers in Psychology is eligible for certification as a health service provider in psychology upon making application and payment of the required certification fee.

240.12(2) Any person, who is not listed in the 1983 National Register of Health Service Providers in Psychology or Cumulative Summer 1984 Supplement, making application for certification as a health service provider in psychology shall comply with the following requirement:

a. Current licensure to practice psychology in the state of Iowa; and

b. Doctoral degree in psychology or prior to July 1, 1984, was licensed at the doctoral level with a degree in psychology or its equivalent, or was licensed as a psychologist in Iowa prior to January 1, 1984, and prior to January 1, 1985, receives a doctoral degree equivalent to a doctoral degree in psychology; and

c. Completion of at least two years of clinical experience in a recognized health service setting.

240.12(3) Applications. All applications shall be made upon a form furnished by the board.

240.12(4) Fees. All fees are nonrefundable:

a. Application fee for a person who is listed in the 1983 National Register of Health Service Providers in Psychology or Cumulative Summer 1984 Supplement is $30.

b. Application fee for a person who is not listed in the 1983 National Register of Health Service Providers or the Cumulative Summer 1984 Supplement is $140.

c. Biennial renewal fee for certification as a certified health service provider in psychology is $40, which shall be paid at the same time as the psychology license renewal fees are due.

d. Fee for a duplicate certificate if the original is lost or stolen is $10.

e. Fee for a certified statement that a licensee is certified in this state is $10.

This rule is intended to implement Iowa Code section 154B.7.

645—240.13 to **240.99** Reserved.

PSYCHOLOGY CONTINUING EDUCATION

645—240.100(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 as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an accredited sponsor, all continuing education activities of such person or organization may be deemed automatically approved.

"Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

"Board" means the board of examiners for psychology.

"Hour" of continuing education means a clock-hour spent after December 31, 1978, by a licensee in actual attendance at and completion of an approved continuing education activity. Graduate level psychology courses offered by a department of psychology in a regionally accredited university are defined as the equivalent of 15 continuing education hours for 1 semester-hour credit or 10 continuing education hours for 1 quarter-hour credit.

"Licensee" means any person licensed to practice psychology in the state of Iowa.

"Practice of psychology" means the application of established principles of learning, motivation, perception, thinking, and emotional relations to problems of behavior adjustment, group relations, and behavior modification, by persons trained in psychology for compensation or other personal gain. The application of principles includes, but is not limited to: Counseling and the use of psychological remedial measures with persons, in groups or individually, with adjustment or emotional problems in the areas of work, family, school and personal relationships; measuring and testing personality, intelligence, aptitudes, public opinion, attitudes, and skills; and the teaching of such subject matter, and the conducting of research on the problems relating to human behavior.

645—240.101(272C) Continuing education requirements.

240.101(1) Beginning January 1, 1979, each person licensed to practice psychology in this state shall complete during each calendar year a minimum of 20 hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent license renewal year.

Beginning January 1, 1982, each person licensed to practice psychology in this state shall complete during the biennium ending December 31, 1983, and each biennium thereafter ending on an odd-numbered year a minimum of 40 hours of continuing education approved by the board.

240.101(2) The continuing education compliance year shall extend from January 1 to December 31, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent license renewal year beginning July 1 and expiring June 30. Beginning January 1, 1982, the continuing education compliance period shall extend from January 1, 1982, to December 31, 1983, and each biennium thereafter with the periods ending on December 31 of the odd-numbered years, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent biennial license renewal period beginning July 1 of the even-numbered years.

240.101(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously accredited by the board or which otherwise meets the requirement herein and is approved by the board pursuant to rule 240.103(272C).

240.101(4) A licensee desiring to obtain credit for one succeeding calendar year, for completing more than 20 hours of approved continuing education during any one calendar year shall report such carry-over credit at the time of filing the annual report to the board following the calendar year during which the claimed additional continuing education hours were completed. Carry-over credit of continuing education shall not be permitted after December 31, 1982.

240.101(5) It is the responsibility of each licensee to finance the costs of continuing education.

240.101(6) If a licensee fails to complete the continuing education requirements during the continuing education period, the licensee shall pay a penalty as provided in rule 645—240.10(154B) unless the failure is because of disability or illness documented by a statement from an appropriately licensed health care professional and is acceptable to the board.

240.101(7) If a new license holder is licensed during the first year of the biennial continuing education period, the licensee is only required to complete 20 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 will be exempt from meeting the continuing education requirement for the first license renewal. The new license holder will be required to obtain 40 hours of continuing education for the second license renewal.

This rule is intended to implement Iowa Code section 272C.2.

645—240.102(272C) Standards for approval. A continuing education activity shall be qualified for approval if the board determines that:

240.102(1) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

240.102(2) It pertains to common subjects or other subject matters which integrally relate to the practice of psychology; and

240.102(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.

645—240.103(272C) Approval of sponsors, programs, and activities.

240.103(1) *Accreditation of sponsors.* An organization or person not previously accredited by the board, which desires accreditation as a sponsor of courses, programs, or other continuing education activities including individually designed programs, shall apply for accreditation to the board stating its education history, subjects offered, total hours of instruction presented, and the names and qualifications of instructors. By January 31 of each year, commencing January 31, 1980, all accredited sponsors shall report to the board in writing the education programs conducted during the preceding calendar year on a form approved by the board.

Individually designed programs shall be cosponsored by at least two licensed psychologists and bear their signatures attesting that the program is acceptable. Not more than one-half of the continuing education may be acquired by means of individually designed programs.

The board may at any time reevaluate an accredited sponsor. If, after 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 possible revocation at least 30 days prior to the hearing. The decision of the board after the hearing shall be final.

240.103(2) *Prior approval of activities.* An organization other than an accredited sponsor, which desires prior approval of a course, program or other continuing education activity, shall apply for approval to the board at least 60 days in advance of the commencement of the activity on a form provided by the board. The board shall approve or deny such application in writing. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers and other pertinent information.

240.103(3) Reserved.

240.103(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 the program.

645—240.104 Rescinded IAB 6/28/89, effective 8/2/89.

645—240.105(272C) Report of licensee. Each licensee shall file a report of continuing education on a form provided by the board once each licensure biennium by January 31 of the calendar year following the most recent continuing education compliance period. This continuing education report will be used as evidence for fulfillment of continuing education requirements for the subsequent biennial licensure renewal period beginning July 1. The licensee will be required to maintain appropriate records including evidence of attendance and completion of the continuing education activities reported and may be asked by the board to produce continuing education activity attendance and completion records. Failure to report continuing education by the specified date will result in a penalty fee as provided in rule 645—240.10(154B). Failure to report continuing education activity and attendance records or failure to produce upon board request continuing education attendance and completion records satisfactory to the board will result in nonrenewal of licensure for the subsequent licensure biennium unless such a failure is the result of a disability or illness documented by a statement from an appropriately licensed health care professional and is acceptable to the board.

645—240.106(272C) Attendance record report. The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance and send a signed copy of such attendance record to the secretary of the board upon completion of the educational activity, but in no case later than February 1 of the following calendar year. The report shall be sent to the Iowa Department of Public Health, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075.

645—240.107(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 therefor shall be made on forms provided by the board and signed by the licensee and an appropriately licensed health care professional, and the waiver is acceptable to the board. 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 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 methods as may be prescribed by the board.

645—240.108(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 psychology 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—240.109(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 psychology in the state of Iowa satisfy the following requirements for reinstatement:

240.109(1) Submit written application for reinstatement to the board upon forms provided by the board; and

240.109(2) Furnish in the application evidence of one of the following:

a. The full-time practice of psychology 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 hours of accredited continuing education computed by multiplying 20 by the number of years a certificate of exemption shall have been in effect for such applicant; or

c. Successful completion of the Iowa state license examination conducted within one year immediately prior to the submission of an application for reinstatement.

240.109(3) Submit payment of the current renewal fee and reinstatement fee.

Rules 240.100 to 240.109 are intended to implement Iowa Code sections 147.80 and 272C.2.

645—240.110 to **240.199** Reserved.

DISCIPLINARY PROCEDURES FOR PSYCHOLOGISTS

645—240.200(272C) Definitions. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.201(272C) Complaint. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.202(272C) Report of malpractice claims or actions. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.203(272C) Investigation of complaints or malpractice claims. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.204(272C) Alternative procedure and settlement. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.205 Rescinded IAB 6/28/89, effective 8/2/89.

645—240.206(272C) Notice of hearing. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.207(272C) Hearings open to the public. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.208(272C) Hearings. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.209(272C) Appeal. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.210(272C) Transcript. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.211(272C) Publication of decisions. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.212(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:

240.212(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 or occupation of the licensee or the conviction of any felony that would affect that 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.

240.212(2) Violation of the rules promulgated by the board.

240.212(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.

240.212(4) Practicing the profession while the license is suspended.

240.212(5) 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 psychology examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

240.212(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.

240.212(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.

e. Verbally or physically abusing clients.

f. Any sexual intimidation or sexual relationship between a psychologist and a client.

240.212(8) 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.

240.212(9) Failure to report a change of name or address within 30 days after it occurs.

240.212(10) Submission of a false report of continuing education or failure to submit the annual report of continuing education.

240.212(11) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

240.212(12) Failure to comply with a subpoena issued by the board.

240.212(13) Failure to report to the board as provided in rule 645—240.201(272C) any violation by another licensee of the reasons for disciplinary action as listed in this rule.

240.212(14) Failure to comply with the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association, as published in the December 1992 edition of *American Psychologist*, effective December 1, 1992, which is hereby adopted by reference. Later amendments or editions of the Principles are not included in this rule. Copies of the Principles may be obtained at cost from the board, or may be obtained by contacting the Director, Office of Ethics, American Psychological Association, 750 First Street N.E., Washington, D.C. 20002-4242.

These rules are intended to implement Iowa Code sections 147.76, 147.55(3), 272C.4 and 272C.10.

645—240.213(272C) Peer review committees. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.214(272C) Immunity. Rescinded IAB 7/14/99, effective 8/18/99.

645—240.215 to **240.299** Reserved.

PROCEDURES FOR USE OF CAMERAS
AND RECORDING DEVICES
AT OPEN MEETINGS

645—240.300(21) Conduct of persons attending meetings. Rescinded IAB 7/14/99, effective 8/18/99.

These rules are intended to implement Iowa Code section 21.7 and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 241
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTER 242
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 243 to 248
Reserved

CHAPTER 249
PUBLIC RECORDS AND FAIR INFORMATON PRACTICES
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 250 to 259
Reserved

645—260.18(152B) Complaint. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.19(152B) Report of malpractice claims or actions. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.20(152B) Investigation of complaints or malpractice claims. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.21(152B) Alternative procedures. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.22(152B) Notice of hearing. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.23(152B) Hearings open to the public. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.24(152B) Hearings. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.25(152B) Appeal. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.26(152B,272C) Method of discipline. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.27(152B,272C) Discretion of board. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.28(152A,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 the licensee is guilty of any of the following acts or offenses:

1. The grounds listed in Iowa Code section 272C.10.
2. Violations of 645—Chapter 260.
3. Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, false representations of a material fact, whether by word or conduct, false or misleading allegations, or 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 any false or forged diploma, or certificate, affidavit, identification, or qualification in making application for licensure in this state.
4. Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a respiratory care practitioner having made misleading, deceptive, or untrue representations as to the practitioner's competency to perform professional services which the respiratory care practitioner is not qualified to perform.
5. Professional incompetence. Professional incompetence includes but is not limited to:

- A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice;
- A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other respiratory care practitioners in the state of Iowa acting in the same or similar circumstances;
- A failure by a respiratory care practitioner to exercise in a substantial respect that degree of care which is ordinarily exercised by the average respiratory care practitioner acting in the same or similar circumstances;
- A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of respiratory care in the state of Iowa.

6. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

7. Habitual intoxication or addiction to the use of drugs. The inability of a respiratory care practitioner to practice respiratory care with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals, or other material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals, or other material which may impair a respiratory care practitioner's ability to practice the profession with reasonable skill and safety.

8. Involuntary commitment for treatment of mental illness, drug addiction, or alcoholism.

9. Being adjudged mentally incompetent by a court of competent jurisdiction.

10. Making suggestive, lewd, lascivious, or improper remarks or advances to a patient.

11. Verbally, physically, or sexually abusing a patient.

12. Any sexual intimidation or sexual relationship between a respiratory care practitioner and a patient.

13. Unethical practices, including:

- Betraying a professional confidence;
- Falsifying patient records;
- Engaging in a professional conflict of interest;
- Misappropriation of funds.

14. Use of untruthful or improbable statements in advertising. Use of untruthful or improbable statements in advertising includes, but is not limited to, an action by a respiratory care practitioner 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, the following:

- Inflated or unjustified expectations of favorable results.
- Self-laudatory claims that imply that the respiratory care practitioner is skilled in a field or specialty of practice for which the practitioner is not qualified.
- Extravagant claims or proclaiming extraordinary skills not recognized by the respiratory care profession.

15. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice respiratory care.

16. Failing to exercise due care in the delegation of respiratory care services to or supervision of assistants, employees, or other individuals, whether or not injury results.

17. Permitting another person to use one's license.

18. Practicing outside the scope of the license.

19. Obtaining any fee by fraud or misrepresentation.

20. Willful or repeated gross malpractice or willful or gross negligence.

21. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority; or selling, prescribing, or giving away controlled substances.

22. Violating a lawful order of the board, previously entered into by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

23. 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 respiratory care.

24. Conviction of a felony related to the profession, or the conviction of any felony which would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

25. Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country.

26. Failure to report a license revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country, within 30 days of the final action by the licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

27. Failure of a licensee or an applicant for licensure in this state to report any voluntary agreement to restrict the practice of respiratory care entered into in another state, district, territory, or country.

28. Knowingly submitting a false report of continuing education or failure to submit the annual report of continuing education.

29. Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

30. Failure to report a change of name or address to the office of the board within 30 days after occurrence.

31. Failure to comply with a subpoena issued by the board.

32. Rescinded IAB 7/14/99, effective 8/18/99.

33. Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code chapter 252J.

645—260.29(152B,272C) Code of ethics.

260.29(1) The respiratory care practitioner shall practice acceptable methods of treatment, and shall not practice beyond the competence or exceed the authority vested in the practitioner by physicians.

260.29(2) The respiratory care practitioner shall continually strive to increase and improve knowledge and skill, and render to each patient the full measure of the practitioner's ability. All services shall be provided with respect to the dignity of the patient, regardless of social or economic status, personal attributes or the nature of the patient's health problems.

260.29(3) The respiratory care practitioner shall be responsible for the competent and efficient performance of assigned duties, and shall expose incompetent, illegal or unethical conduct of members of the profession.

260.29(4) The respiratory care practitioner shall hold in confidence all privileged information concerning the patient and refer all inquiries regarding the patient to the patient's physician.

260.29(5) The respiratory care practitioner shall not accept gratuities and shall guard against conflict of interest.

260.29(6) The respiratory care practitioner shall uphold the dignity and honor of the profession and abide by its ethical principles.

260.29(7) The respiratory care practitioner shall have knowledge of existing state and federal laws governing the practice of respiratory therapy and shall comply with those laws.

260.29(8) The respiratory care practitioner shall cooperate with other health care professionals and participate in activities to promote community, state, and national efforts to meet the health needs of the public.

645—260.30(152B,272C) Reporting of judgments or settlements. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.31(152B,272C) Investigation of reports of judgments and settlements. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.32(152B,272C) Reporting of acts or omissions. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.33(152B,272C) Failure to report licensee. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.34(152B,272C) Immunities. Rescinded IAB 7/14/99, effective 8/18/99.

These rules are intended to implement Iowa Code chapter 152B and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 261
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTER 262
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 263 to 268
Reserved

CHAPTER 269
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 270 to 279
Reserved

645—350.20(272C) Reinstatement of inactive license. The board may reinstate an inactive license upon completion of all of the following:

1. A written request for reinstatement;
2. Payment of the current renewal fee; and
3. Completion of continuing education requirements for the period of time the license was inactive.

645—350.21(272C) Reinstatement of lapsed license.

350.21(1) A license shall be considered lapsed if not renewed within 30 days of renewal date. If the license lapses, the practice of holding oneself out as licensed to practice athletic training must cease until a license is reinstated by the board.

350.21(2) A licensee who wishes to reinstate a lapsed license shall pay past due renewal fee to a maximum of four years, a reinstatement fee, and penalty fees.

350.21(3) Continuing education requirements for the period of time the license was lapsed are not waived.

350.21(4) Application for reinstatement shall be made on a form provided by the board.

645—350.22(272C) Complaints. Rescinded IAB 7/14/99, effective 8/18/99.

645—350.23(272C) Report of malpractice claims or actions. Rescinded IAB 7/14/99, effective 8/18/99.

645—350.24(272C) Investigation of complaints or malpractice claims. Rescinded IAB 7/14/99, effective 8/18/99.

645—350.25(272C) Methods of discipline. Rescinded IAB 7/14/99, effective 8/18/99.

645—350.26(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—13.1(272C), including civil penalities in an amount not to exceed $1000, when the board determines that the licensee is guilty of any of the following acts or offenses:

350.26(1) Fraud in procuring a license.

350.26(2) Professional incompetency.

350.26(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

350.26(4) Habitual intoxication or addiction to the use of drugs.

350.26(5) Conviction of a felony related to the profession or occupation of the licensee. A copy of record of conviction or plea of guilty shall be conclusive evidence.

350.26(6) Fraud in representations as to skill or ability.

350.26(7) Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

350.26(8) Involuntary commitment for treatment of mental illness or substance abuse.

350.26(9) Representing oneself as a licensed athletic trainer when the license has been suspended or revoked.

350.26(10) Revocation, suspension, or other disciplinary action taken by a certification/licensure authority of another state, territory, or country; or failure of the licensee to report such action in writing to the administrator of the board of athletic training.

350.26(11) Negligence by the licensee:

a. Failure to exercise due care.

b. Improper delegation of duties or inadequate supervision of employees or other individuals, whether or not injury results.

c. Conduct, practice, or conditions which impair the ability to safely and skillfully practice the profession.

350.26(12) Prohibited acts:

a. Permitting another person to use one's license.

b. Practicing outside the scope of the profession.

c. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

d. Verbally, physically, or sexually abusing clients/patients.

e. Any sexual intimidation between an athletic trainer and a client/patient.

350.26(13) Unethical business practices:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying client/patient records.

d. Professional conflict of interest.

e. Misappropriation of funds.

350.26(14) Failure to report a change of name or address to the Administrator, Athletic Trainer Advisory Board, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 30 days.

350.26(15) Falsification of a continuing education record.

350.26(16) Failure to report any judgment or settlement of malpractice claim or action to the Administrator, Athletic Trainer Advisory Board, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 30 days of occurrence.

350.26(17) Failure to comply with a subpoena issued by the department.

350.26(18) Failure to report to the board any violation by another licensee of the grounds for discipline as listed in this rule.

350.26(19) Failure to respond to a request from the board within 30 days of certified mail notice of the request for response.

350.26(20) Failure to maintain timely and adequate records.

350.26(21) An athletic trainer shall not engage in sexual misconduct. Sexual misconduct includes the following:

a. Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient.

b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

350.26(22) Failure to adequately supervise personnel.

350.26(23) Violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

350.26(24) 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.

350.26(25) Violation of any board statute or administrative rule.

645—350.27(272C) Alternative procedures and settlement. Rescinded IAB 7/14/99, effective 8/18/99.

645—350.28(272C) Disciplinary hearings. Rescinded IAB 7/14/99, effective 8/18/99.

645—350.29(272C) Discretion of board. Rescinded IAB 7/14/99, effective 8/18/99.

645—350.30(272C) Peer review committees. Rescinded IAB 7/14/99, effective 8/18/99.

645—350.31(272C) Disciplinary hearings—fees and costs.

350.31(1) The board may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the professional licensure division as provided for in subrule 350.31(8).

350.31(2) In addition to this fee, the board may also recover from the licensee the cost for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable.

350.31(3) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

350.31(4) Witness fees and expenses.

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

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

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

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

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

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

350.31(5) Depositions.

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

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

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

350.31(6) Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the designated staff person shall certify any reimbursable costs to the board. The designated staff person shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of filing.

350.31(7) A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed $75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

350.31(8) All fees and costs assessed pursuant to this chapter shall be in the form of a check or money order made payable to the State of Iowa and delivered by the licensee to the professional licensure division.

350.31(9) Failure of a licensee to pay a fee and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

645—350.32(272C) Publication of decisions. Rescinded IAB 10/7/98, effective 11/11/98.

These rules are intended to implement Iowa Code chapters 152D and 272C.

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CHAPTERS 351 to 354
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CHAPTER 355
PETITIONS FOR RULE MAKING
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTER 356
DECLARATORY RULINGS
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTER 357
AGENCY PROCEDURE FOR RULE MAKING
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTER 358
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 7/14/99, effective 8/18/99

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81.15 Reserved
81.16(453A) Inventory tax

f. The gross receipts from the installation or repair of any inside wire which provides electrical current that allows an electronics device to function shall be subject to tax. Such gross receipts are from the enumerated service of electrical repair or installation, and are thus subject to tax. The gross receipts from "inside wire maintenance charges" for services performed under a service or warranty contract shall also be subject to tax. Depending on circumstances, such receipts are for the enumerated service of "electrical repair" or are incurred under an "optional service or warranty contract" for an enumerated service. In either event, the receipts are subject to tax. See rule 701—18.25(422,423).

g. The gross receipts from the rental of any device for home or office use or to provide a communication service to others shall be fully taxable; such receipts are for the enumerated service of "rental of tangible personal property." The gross receipts from rental include rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device shall also be subject to tax.

h. The sale of any device, new or used, in place at the time of sale on the customer's premises or sold to the customer elsewhere is the sale of tangible personal property, and thus a sale subject to tax. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it does or does not come within the purview of the casual sales exemption, see Iowa Code section 422.42(2) and subrule 18.28(3). Other exemptions may be applicable as well. See Iowa Code section 422.45 and 701—Chapter 17.

i. The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment shall, as a general rule, be subject to tax whether the customer or purchaser is billed by way of a flat fee or flat hourly charge covering all costs including labor and materials, or by way of a premises visit or trip charge, or by a single charge covering and not distinguishing between charges for labor and materials, or is billed by a charge with labor and material segregated, or is billed for labor only. An exception is this: If the gross receipts are for services on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, the gross receipts shall not be subject to tax. For further information concerning the conditions under which such gross receipts for repair or installation would not be subject to tax, see rule 701—19.1(422,423) and 701—subrule 26.2(1).

j. If a company bills a handling charge to a customer for sending the customer an electronic device by mail or by a delivery service, this charge shall constitute a part of the gross receipts from the sale of the device and shall be subject to tax. The gross receipts of a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and thus subject to tax.

k. The purchase or rental of tangible personal property by companies providing communication services shall be subject to tax.

l. The amount of any deposit paid by a customer to a company providing communication service if returned to the customer shall not be subject to tax. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service shall be included in gross receipts or gross taxable services and shall be subject to tax.

m. On and after July 1, 1997, the gross receipts from sales of prepaid telephone calling cards and prepaid authorization numbers are subject to tax as sales of tangible personal property.

18.20(4) When one commercial communication company furnishes another commercial communication company services or facilities which are used by the second company in furnishing communication service to its customers, such services or facilities furnished to the second company are in the nature of a sale for resale; and the charges, including any carrier access charges, shall be exempt from sales tax. The charges for services or facilities initially purchased for resale and subsequently used or consumed by the second company shall be subject to tax, and the tax shall be collected and paid by the seller unless the seller has taken a valid exemption certificate in good faith from the purchaser and other requirements of 701—subrule 15.3(2) are met.

18.20(5) Prior to July 1, 1999, charges for access to or use of what is commonly referred to as the "Internet" or charges for other contracted on-line services are the gross receipts from the performance of a taxable service if access is by way of a local or in-state long distance telephone number and if the predominant service offered is two-way transmission and receipt of information from one site to another as described in paragraph *"a"* of subrule 18.20(1). If a user's billing address is located in Iowa, a service provider should assume that Internet access or contracted on-line service is provided to that user in Iowa unless the user presents suitable evidence that the site or sites at which these services are furnished are located outside this state.

On and after July 1, 1999, gross receipts from charges paid to a provider for access to an on-line computer service are exempt from tax. An "on-line computer service" is one which provides for or enables multiple users to have computer access to the Internet. Charges paid to a provider for other contracted on-line services which do not provide access to the Internet and which are communication services remain subject to Iowa tax.

***18.20(6)** The gross receipts paid for the performance of the service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state are subject to sales tax. See 18.20(1)*"a."* Gross receipts paid for the service of providing a telephone line or other transmission path for the use of what is commonly called a "fax" machine are the gross receipts from the performance of a taxable service if the points of transmission and receipt of a fax are in this state. See 18.20(1)*"a"* and *"b."*

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer $2 to transmit a fax (via its machine) to Dubuque, Iowa. The $2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy $500 per month for the intrastate communications on Klear Kopy's dedicated fax line. The $500 is also gross receipts from a taxable communication service.

EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, break out the amount of a billing which is attributable to expenses for faxing. For example, "bill to John Smith for August, 1997, $1,000 for legal services performed, fax expenses which are part of this billing—$30." The $30 is not gross receipts for the performance of any taxable service, the faxing service performed being only incidental to the performance of the nontaxable legal services.

EXAMPLE C. The TUV Hospital is located in Cedar Rapids, Iowa. The surgeons successfully perform delicate brain surgery on patient W. To perform that surgery it was necessary for the surgeons to consult with a number of colleagues; the consultation was via E-mail. After the operation, the TUV Hospital sent patient W a bill for $10,000 of nontaxable hospital services. Listed as an expense is "E-mail—$200." The E-mail services are performed incidentally to the nontaxable hospital services; therefore, the $200 is not taxable gross receipts.

*Effective date of 2/19/97 delayed 70 days by the Administrative Rules Review Committee at its meeting held 2/10/97.

EXAMPLE D. D is a dentist practicing in Mason City, Iowa. D subscribes to an on-line service which, in return for a monthly fee, informs its subscribers of the latest dental surgery techniques and advises them about how these techniques can be applied to individual patients. After consultation on patient E's problem through the on-line service, D performs complex surgery on patient E. D's bill to patient E reads as follows: "dental reconstruction—$2,750; on-line consultation portion—$240." The $240 is not taxable gross receipts, this charge being incidental to the nontaxable charge for dental work.

This rule is intended to implement Iowa Code sections 34A.7(1)"*c*"(2), 422.42(2), 422.42(3), 422.43(9), 422.45(5), 422.45(8), 422.45 as amended by 1999 Iowa Acts, House File 748, and 422.51(1).

701—18.21(422,423) Morticians or funeral directors. A mortician or funeral director is engaged in the business of selling both tangible personal property and funeral services. Examples of the former are caskets, other burial containers, flowers, and grave clothing. Examples of the latter are cremation, transportation by hearse and embalming. Tax is due only upon gross receipts from the sale of tangible personal property and taxable services, and not upon gross receipts from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, taxable services and nontaxable services, as required by the rules of the Federal Trade Commission, or Iowa Code section 523A.8(1)"*b,*" whichever is applicable, tax is due only upon the gross receipts from the sales of tangible personal property and taxable services. If contrary to the rules or the statute, or if the applicable rules are rescinded or the statute repealed, and the mortician or funeral director charges a lump sum to a customer covering the entire cost of the funeral without dividing the charges for sales of tangible personal property and taxable and nontaxable services, the mortician or funeral director shall report the full amount of the funeral bill less any cash advanced by the mortician or funeral director, with tax due on 50 percent of the difference. *Kistner v. Iowa State Board of Assessment and Review,* 224 Iowa 404, 280 N.W. 587 (1938). Cash advance items may include, but are not limited to, the following: cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians, singers, nurses, obituary notices, gratuities, and death certificates.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The mortician or director should present the supplier with a certificate of resale as set out in rule 701—15.3(422,423). A mortician or director is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, motor vehicles and accessories, embalming equipment, instruments, fluid and other chemicals used in embalming, cosmetics, and grave equipment, stretchers, baskets, and other items if title or possession does not pass to the customer. *Kistner,* supra.

For purposes of this rule, the terms of morticians or funeral directors shall also include cemeteries, cemetery associations and anyone engaged in activities similar to those discussed in the rule.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians shall not be liable for tax on services rendered such as examinations, consultations, diagnosis, surgery and other kindred services, nor on the applicable exemptions prescribed under 701—Chapter 20.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual's own use. For example, the purchase for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

Sales of tangible personal property to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

Sales of tangible personal property to physicians or surgeons, which are prescription drugs to be used or consumed by a patient, are exempt from tax.

Sales of tangible personal property to ophthalmologists, oculists, optometrists, and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit a patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames, and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of an item of equipment that is utilized directly in the care of an illness, injury or disease, which item would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(13-15), 423.2 and 423.4(4).

701—18.23(422) Veterinarians. Purchase of food, drugs, medicines, bandages, dressings, serums, tonics, and the like, but not to include tools and equipment, which are used in treating livestock raised as part of agricultural production is exempt from tax. Where these same items are used in treating animals maintained as pets for hobby purposes, sales tax is due. See rule 701—18.48(422, 423) for an exemption for machinery used in livestock or dairy production which may be applicable to veterinarians but should be claimed only with caution by them.

A veterinarian engaged in retail sales, in addition to furnishing professional services, must account for sales tax on the gross receipts from such sales.

This rule is intended to implement Iowa Code sections 422.42(3) and 422.43.

701—18.24(422,423) Hospitals, infirmaries and sanitariums. Hospitals, infirmaries, sanitariums, and like institutions are engaged primarily in rendering services. These facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under 701—Chapter 20 when the items would be exempt if purchased by the individual and if the item is used substantially for the tax-exempt purpose. See rule 18.59(422,423) for an exemption applicable to sales of goods and furnishing of services on and after July 1, 1998, to a nonprofit hospital.

Hospitals, infirmaries, and sanitariums may be the purchasers for use or consumption of tangible personal property used or consumed in furnishing services. *Modern Dairy Co. v. Department of Revenue,* 413 Ill. 55, 108 N.E.2d 8 (1952). However, tangible personal property can be purchased for resale by these facilities and, if purchased for resale, is exempt from tax on the purchases. *Burrows Co. v. Hollingsworth,* 415 Ill. 202, 112 N.E.2d 706 (1953); *Fefferman v. Marohn,* 408 Ill. 542, 97 N.E.2d 785 (1951). Property is purchased for resale if the conditions in subrule 18.31(1) are applicable. See also 701—subrule 15.3(2) with respect to resale exemption certificates.

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TITLE XI
INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX

CHAPTER 86
INHERITANCE TAX
[Prior to 12/17/86, Revenue Department[730]]

701—86.1(450) Administration.

86.1(1) *Definitions.* The following definitions cover Chapter 86.

"Administrator" means the administrator of the compliance division of the department of revenue and finance.

"Child" means a biological or adopted issue entitled to inherit pursuant to Iowa Code chapter 633.

"Compliance division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

"Department" means the department of revenue and finance.

"Devise," when used as a verb, means to dispose of property, both real and personal, by a will.

"Director" means the director of revenue and finance.

"Estate" means the real and personal property, tangible and intangible, of the decedent or a trust, that over time may change in form due to sale, reinvestment, or otherwise, and augmented by accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom. For the definitions of "gross estate" and "net estate" under this chapter, see those terms as referenced in this subrule.

"Executor" means any person appointed by the court to administer the estate of a testate decedent.

"Fiduciary" includes personal representative, executor, administrator, and trustee. This term includes both temporary and permanent fiduciaries appointed by the court to settle the decedent's probate estate and also the trustee of an inter vivos trust where the trust assets are part of the gross estate for inheritance tax purposes.

"Gross estate" as used for inheritance tax purposes as defined in Iowa Code section 450.2 includes all those items, or interests in property, passing by any method of transfer specified in Iowa Code section 450.3 without reduction for liabilities specified in Iowa Code section 450.12. The gross estate for tax purposes may not be the same as the estate for probate purposes. For example, property owned as joint tenants with right of survivorship, property transferred with a retained life use, gifts within three years of death, transfers to take effect in possession or enjoyment at death, trust property, "pay on death" accounts, annuities, and certain retirement plans, are not part of the decedent's probate estate, but are includable in the decedent's gross estate for inheritance tax purposes. *In re Louden's Estate,* 249 Iowa 1393, 92 N.W.2d 409 (1958); *In re Sayres' Estate,* 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Toy's Estate,* 220 Iowa 825, 263 N.W. 501 (1935); *In re Mann's Estate,* 219 Iowa 597, 258 N.W. 904 (1935); *Matter of Bliven's Estate,* 236 N.W.2d 366 (Iowa 1975); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973).

"Gross share" means the total amount of property of an heir, beneficiary, surviving joint tenant, or transferee, without reduction of those items properly deductible in computing the net shares. The total of all gross shares is equal to the gross estate.

"Heir" includes any person, except the surviving spouse, who is entitled to property of the decedent under the statutes of intestate succession.

"Internal Revenue Code" means the Internal Revenue Code of 1954 as defined in Iowa Code section 422.3(4), and is to include the revisions to the Internal Revenue Code made in 1986 and all subsequent revisions.

"Intestate estate" means an estate in which the decedent did not have a will. Administration of such estates is governed by Iowa Code sections 633.227 through 633.230. Rules of inheritance for such estates are found in Iowa Code sections 633.211 through 633.226.

"Issue," for the purpose of intestate succession, means all lawful lineal descendants of a person, whether biological or adopted. For details regarding intestate succession, see Iowa Code sections 633.210 through 633.226. For details regarding partial intestate succession, see Iowa Code section 633.272.

"Net estate" means the gross estate less those items specified in Iowa Code section 450.12 as deductions in determining the net shares of property of each heir, beneficiary, surviving joint tenant, or transferee. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972). The total of all net shares of an estate must equal the total of the net estate.

"Net share" means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant, or transferee. The law of abatement of shares may be applicable for purposes of determining the net share subject to tax. See Iowa Code section 633.436; *In re Estate of Noe*, 195 N.W.2d 361 (Iowa 1972); *Colthurst v. Colthurst*, 265 N.W.2d 590 (Iowa 1978); *In re Estate of Duhme*, 267 N.W.2d 688 (Iowa 1978). However, see Iowa Code section 633.278 for property subject to a mortgage.

"Personal representative" shall have the same meaning as the term is defined in Iowa Code section 633.3(29) and shall also include trustees. For information regarding claims of a personal representative, see Iowa Code section 633.431.

"Probate" means the administration of an estate in which the decedent either had or did not have a will. Jurisdiction over the administration of such estates, among other matters, is by the district court sitting in probate. For further details on the subject matter and personal jurisdiction of the district court sitting in probate, see Iowa Code sections 633.10 through 633.21. For matters regarding the procedure in probate, see Iowa Code sections 633.33 through 633.53.

"Responsible party" is the person liable for the payment of tax under this chapter. See 701—86.2(450).

"Simultaneous deaths" occur when the death of two or more persons occurs at the same time or there is not sufficient evidence that the persons have died otherwise than simultaneously. For distribution of property in this situation, see Iowa Code sections 633.523 through 633.528.

"Surviving spouse" means the legally recognized surviving wife or husband of the decedent.

"Tax" means the inheritance tax imposed by Iowa Code chapter 450.

"Taxpayer" means a person liable for the payment of the inheritance tax under Iowa Code section 450.5 and includes the executor or personal representative of an estate, the trustee or other fiduciary of property subject to inheritance tax, and includes each heir, beneficiary, surviving joint tenant, transferee, or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in Iowa Code section 450.3, as subject to inheritance tax with respect to any inheritance tax due on the respective shares of the property.

"Trustee" means the person or persons appointed as trustee by the instrument creating the trust or the person or persons appointed by the court to administer the trust.

"Trusts" means real or personal property that is legally held by a person or entity for the benefit of another. This includes, but may not be limited to, express trusts, trusts imposed by court order, trusts administered by the court, and testamentary trusts. Such trusts are subject to Iowa Code chapter 450, even in situations when the estate consists solely of trust property.

"Will" includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will. For information regarding mutual and contractual wills, see Iowa Code section 633.270.

86.1(2) *Delegation of authority.* The director delegates to the administrator, subject always to the supervision and review by the director, the authority to administer the Iowa inheritance tax. This delegated authority specifically includes, but is not limited to, the determination of the correct inheritance tax liability; making assessments against the taxpayer for additional inheritance tax due; authorizing refunds of excessive inheritance tax paid; issuing receipts for inheritance tax paid; executing releases of the inheritance tax lien; granting extension of time to file the inheritance tax return and pay the tax due; granting deferments to pay the inheritance tax on a property interest to take effect in possession or enjoyment at a future date; requesting or waiving the appraisal of property subject to the inheritance tax and the imposition of penalties for failure to timely file or pay the inheritance tax. The administrator may delegate the examination and audit of inheritance tax returns to the supervisors, examiners, agents, and any other employees or representatives of the department.

86.1(3) *Information deemed confidential.* Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents, and accounts of any person, firm, or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the inheritance tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to confidentiality and disclosure of federal tax returns and federal return information.

86.1(4) *Information not confidential.* Copies of wills, the filing of an inheritance tax lien, release of a real estate lien, probate inventories, trust instruments, deeds and other documents which have been filed for public record are not deemed confidential by the department.

86.1(5) *Forms.* The final inheritance tax return, inheritance tax receipts, and forms for the audit, assessment, and refund of the inheritance tax shall be in such form as may be prescribed or approved by the director—see 701—8.3(17A).

86.1(6) *Safe deposit boxes.* Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner, or beneficiary.

This rule is intended to implement Iowa Code chapters 22 and 450 and Iowa Code sections 421.2, 450.67, 450.68, 450.94, 450B.7, and 1997 Iowa Acts, chapter 60, sections 1 and 2.

701—86.2(450) Inheritance tax returns and payment of tax.

86.2(1) *Filing of an inheritance tax return.* Estates meeting certain requirements must file an inheritance tax return, and it is the duty of certain persons associated with the estate to file the inheritance tax return as follows:

a. Mandatory filing. The inheritance tax return provided for in subrule 86.2(2) must be filed if the gross share of any heir, beneficiary, transferee, or surviving joint tenant exceeds the exemptions allowable in Iowa Code sections 450.4 and 450.9. In addition, if Iowa real estate is includable in the gross estate, the return must be filed, even if no tax is due, prior to the issuance of a no tax due certificate.

b. Who must file. If the decedent's estate is probated as provided in Iowa Code chapter 633 or administered as provided in Iowa Code section 450.22, the personal representative of the estate is charged with the duty of filing the return with the department. If the personal representative of the estate fails to file the return or if the estate is not probated, it shall be the duty of those heirs, beneficiaries, transferees, surviving joint tenants, and trustees who receive shares in excess of the allowable exemptions or shares which are taxable in whole or in part, without the deduction of liabilities, and those individuals in receipt of the decedent's property are either jointly or severally to file the return with the department.

86.2(2) *Form and content—inheritance tax return.*

a. Estates of decedents dying prior to July 1, 1983. Rescinded IAB 10/13/93, effective 11/17/93.

b. Estates of decedents dying on or after July 1, 1983. For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance tax return is substituted in lieu thereof. The return shall provide for schedules listing the assets includable in the gross estate, a listing of the liabilities deductible in computing the net estate, and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the federal estate tax return, Form 706. For information regarding Iowa returns, see subrule 86.1(5). If the estate has filed a federal estate tax return, a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets from the return. However, any Iowa schedules indicating liabilities must be filed with the Iowa return due to proration of liabilities. When Iowa schedules are filed with the return, only those schedules which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of $10,000 is not sufficient in nontaxable estates. In this case, the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

c. Special rule when the surviving spouse succeeds to property in the estate. Effective for estates of decedents dying on or after January 1, 1988, the following rules apply when the surviving spouse succeeds to property in the estate:

(1) If all of the property includable in the gross estate for inheritance tax purposes is held in joint tenancy with right of survivorship by husband and wife alone, an inheritance tax return is not required to be filed and a certificate from the department stating no inheritance tax is due is not required to release the inheritance tax lien under Iowa Code section 450.7(2).

(2) If any of the property includable in the gross estate passes to the surviving spouse by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the surviving spouse is not the only surviving joint tenant, an inheritance tax return is required to be filed.

d. Estates of decedents dying on or after July 1, 1997. In addition to what is set forth in paragraph *"c,"* effective for estates of decedents dying on or after July 1, 1997, Iowa inheritance tax is not imposed when a parent, grandparent, great-grandparent, or any other lineal ascendant, child (including any legally adopted child and biological child entitled to inherit under the laws of this state), stepchild grandchild, great-grandchild, or any other lineal descendant succeeds to property in the estate. However, an Iowa inheritance tax return is required to be filed with the department of revenue and finance Despite the fact that Iowa inheritance tax may not be due, a qualifying estate may have an Iowa estate tax obligation.

86.2(3) *Liability for the tax.* The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent the person's share of the property is subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for the total tax due from a beneficiary to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant, and any other person being beneficially entitled to any property subject to tax is personally liable for the tax due on all property received subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee, or other fiduciary liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable *Eddy v. Short*, 190 Iowa 1376, 179 N.W. 818 (1920); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923).

86.2(4) *Supplemental return—deferred interest.* When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation.

86.2(5) *Amended return.* If additional assets or errors in valuation of assets or deductible liabilities are discovered after the filing of the inheritance tax return increasing the amount of tax due, an amended inheritance tax return must be filed with the department, reporting the additional assets. The appropriate penalty and interest will be charged on the additional tax due pursuant to Iowa Code section 421.27 and department rules in 701—Chapter 10. To file an amended inheritance tax return, Form IA 706 shall be completed and at the top of the front page of the return the word "AMENDED" shall be printed. If additional liabilities are discovered or incurred after the filing of the inheritance tax return which result in an overpayment of tax, an amended inheritance tax return must be filed in the manner indicated above. For amended returns resulting from federal audit adjustments—see subrule 86.3(6) and rules 86.9(450), and 86.12(450). For permitted and amended returns not permitted for change of values—see subrule 86.9(4).

86.2(6) *Due date for filing—return on present property interests.* Unless an extension of time has been granted, the final inheritance tax return, or the inheritance tax return in case of decedents dying on or after July 1, 1983, must be filed and any tax due paid, for all property in present possession or enjoyment:

a. On or before the last day of the ninth month after death for estates of decedents dying on or after July 1, 1984, subject to the due date falling on a Saturday, Sunday, or legal holiday, which would then make the return due on the following business day. The following table for return due dates illustrates this subrule:

Deaths Occurring During:	Return Due Date:
July 1996	April 30, 1997
August 1996	June 2, 1997
	(May 31 is a Saturday and June 1 is a Sunday)
September 1996	June 30, 1997
October 1996	July 31, 1997
November 1996	September 2, 1997
	(August 31 is a Sunday, September 1 is Labor Day)
December 1996	September 30, 1997
January 1997	October 31, 1997
February 1997	December 1, 1997
	(November 30 is a Sunday)
March 1997	December 31, 1997
April 1997	February 2, 1998
	(January 31 is a Saturday and February 1 is a Sunday)
May 1997	March 2, 1998
	(February 28 is a Saturday and March 1 is a Sunday)
June 1997	March 31, 1998

b. Within nine months after death for estates of decedents dying during the period beginning July 1, 1981, and ending June 30, 1984.

86.2(7) *Election to file—before termination of prior estate.* The tax due on a future property interest may be paid, at the taxpayer's election, on the present value of the future interest as follows:

a. On or before the last day of the ninth month after the decedent's death (or within one year after the death of the decedent for estates of decedents dying prior to July 1, 1981). Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date of the decedent's death. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date of the decedent's death that must be used.

b. After the last day of the ninth month following the decedent's death (one year after death for estates of decedents dying prior to July 1, 1981) but prior to the termination of the prior estate. Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date the tax is paid. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date the tax is paid that must be used. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950); *In re Estate of Millard,* 251 Iowa 1282, 105 N.W.2d 95 (1960). *In re Estate of Dwight E. Clapp,* Clay County District Court, Probate No. 7251 (1980).

86.2(8) *Mandatory due date—return on a future property interest.*

a. For estates of decedents dying prior to July 1, 1984. Rescinded IAB 10/13/93, effective 11/17/93.

b. Mandatory due date—return on a future property interest for estates of decedents dying on or after July 1, 1981. Unless the tax due on a future property interest has been paid under the provisions of subrule 86.2(7), paragraphs *"a"* and *"b,"* the tax due must be paid on or before the last day of the ninth month following the termination of the prior estate. The statute does not provide for an extension of the mandatory due date for payment of the tax.

86.2(9) *Extension of time—return and payment.* For estates of decedents dying on or after July 1, 1984, the department may grant an extension of time to file an inheritance tax return on an annual basis. To be eligible for an extension, an application for an extension of time must be filed with the department on a form prescribed or approved by the director. The application for extension must be filed with the department prior to the time the tax is due and an estimated payment of 90 percent of the tax due must accompany the application—see Iowa Code section 421.27 and rule 701—10.85(422). An extension of time to pay the tax due may be granted in the case of hardship. However, for extensions to be granted, the request must include evidence of the hardship—see 701—Chapter 10. An extension of time to file cannot be extended for a period of time longer than ten years after the last day of the month in which the death of the decedent occurs.

86.2(10) *Discount.* There is no discount allowed for early payment of the tax due.

This rule is intended to implement Iowa Code sections 421.14, 450.5, 450.6, 450.9 as amended by 1997 Iowa Acts, Senate File 35, 450.22, 450.44, 450.46, 450.47, 450.51, 450.52, 450.53, 450.63, and 450.94.

701—86.3(450) Audits, assessments and refunds.

86.3(1) *Audits.* Upon filing of the inheritance tax return, the department must audit and examine it and determine the correct tax due. A copy of the federal estate tax return must be filed with the inheritance tax return in those estates where federal law requires the filing of a federal estate tax return. The department may request the submission of wills, trust instruments, contracts of sale, deeds, appraisals, and such other information as may reasonably be necessary to establish the correct tax due. See Iowa Code sections 450.66 and 450.67 and *Tiffany v. County Board of Review,* 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4). The person or persons liable for the payment of the tax imposed by Iowa Code chapter 450 shall keep the records relating to the gross and net estate required for federal estate tax purposes under 26 U.S.C. Section 6001 of the Internal Revenue Code and federal regulation Section 20.6001-1.

86.3(2) *Assessments for additional tax.* If the inheritance tax return is not filed within the time prescribed by law, taking into consideration any extensions of time, or the return as filed is not correct, the department may make an assessment for the tax and any penalty and interest due based on the inventories, wills, trust instruments, and other information necessary to ascertain the correct tax. For interest and penalty rate information, see 701—Chapter 10.

86.3(3) *Refunds.* If the examination and audit of the inheritance tax return discloses an overpayment of tax, the department will refund the excess to the taxpayer. See 701—Chapter 10 for the statutory interest rate commencing on or after January 1, 1982. For estates of decedents dying prior to January 1, 1988, interest shall be computed for a period beginning 60 days from the date of the payment to be refunded. For estates of decedents dying on or after January 1, 1988, interest must be computed for a period beginning the first day of the second calendar month following the date of payment, or the date upon which the return which sets out the refunded payment was actually filed, or the date that return was due to be filed, whichever date is the latest. For the purposes of computing the period, each fraction of a month counts as an entire month. If the taxpayer, after the tax has been paid, discovers additional liabilities which, when offset by any additional assets results in an overpayment of the tax, the excess payment will be refunded to the taxpayer upon filing with the department an amended inheritance tax return claiming a refund. No refund for excessive tax paid shall be made by the department unless an amended return is filed with the department within three years (five years for estates of decedents dying prior to July 1, 1984) after the tax payment upon which the claim is made became due, or one year after the tax was paid, whichever time is the later—see Iowa Code section 450.94(3).

86.3(4) *Supplemental assessments and refund adjustments.* The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

86.3(5) *Assessments—period of limitations.* Effective for estates of decedents dying on or after July 1, 1984, assessments for additional tax due must be made within the following periods of time:

a. Within three years after the return is filed for property reported to the department on the return. The three-year period of limitation does not begin until the return is filed. The time of the decedent's death is not relevant. For purposes of determining the period of limitations, the assessment period shall terminate on the same day of the month three years later which corresponds to the day and month the return was filed. If there is no numerically corresponding day three years after the return is filed, or if the expiration date falls on a Saturday, Sunday, or legal holiday, the assessment period expires the preceding day in case there is no corresponding day, or the next day following which is not a Saturday, Sunday, or legal holiday.

b. The period of time for making an assessment for additional tax is unlimited if a return is not filed with the department.

c. If a return is filed with the department, but property which is subject to taxation is omitted from the return, the three-year period for making an assessment for additional tax on the omitted property does not begin until the omitted property is reported to the department on an amended return. The omission of property from the return only extends the period of limitations for making an assessment for additional tax against the beneficiary, surviving joint tenant, or transferee whose share is increased by the omitted property. Other shares of the estate are not affected by the extended assessment period due to the omitted property. The inheritance tax is a separate succession tax on each share of the estate, not on the estate as a whole. *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906).

86.3(6) *Period of limitations—federal audits.* In the case of a federal audit, the department, notwithstanding the normal three-year audit period specified in Iowa Code paragraphs 450.94(5)*"a"* and *"b,"* shall have an additional six-month period for examination of the inheritance tax return to determine the correct tax due and for making an assessment for additional tax that may be due.

The additional six-month period begins on the date the taxpayer performs two affirmative acts: (1) notifies the department, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, gift, and generation skipping transfer taxes have been concluded and (2) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document concerning the concluded controversy. The additional six-month examination period does not begin until both of the acts are performed. See Iowa Code sections 622.105 and 622.106 for the mailing date as constituting the filing date and Iowa Code section 4.1(34) and *Emmetsburg Ready Mix Co. v. Norris*, 362 N.W.2d 498 (Iowa 1985) when the due date falls on a legal holiday.

The additional audit period does not limit or shorten the normal three-year examination period. As a result, a six-month additional examination period has no application if the additional six-month examination period would expire during the normal three-year audit period. If additional tax is found to be due, see paragraph 86.12(5)*"b"* for the inheritance tax lien filing requirements for securing the additional tax after an inheritance tax clearance has been issued. The six-month additional examination period means the department shall have at least six months to examine the return after the notification. The department will have more time if the normal three-year examination period expires after the six-month additional period for examination. After the expiration of the normal three-year examination period, and absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments for real property is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5), 701—86.9(450) and 701—86.12(450), and *Kelly-Springfield Tire Co. v. Iowa Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

This rule is intended to implement Iowa Code sections 422.25, 422.30, 450.53, 450.65, 450.71, 450.94, 450A.12 and 451.12.

701—86.4(450) Appeals. A determination made by the department of either the correct amount of the tax due, or the amount of refund for excessive tax paid, shall be final unless the taxpayer, or any other party aggrieved by the determination, appeals to the director for a revision of the department's determination. For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of assessment notice or, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make a payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims. In the event of an appeal, the provisions of 701—Chapter 7 of the department's rules of practice and procedure before the department of revenue and finance and Iowa Code chapter 17A shall apply.

This rule is intended to implement Iowa Code chapter 17A and section 450.94.

701—86.5(450) Gross estate.

86.5(1) *Iowa real and tangible personal property.* Real estate and tangible personal property with a situs in the state of Iowa and in which the decedent had an interest at the time of death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common. Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, life interest, interest or the power of revocation, property or interest in property in trust, and gifts made within three years of death in excess of the federal gift tax exclusion. These constitute transfers of property in which the decedent may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. *In re Dieleman's Estate v. Dept. of Revenue,* 222 N.W.2d 459 (Iowa 1974); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973); and *Lincoln's Estate v. Briggs,* 199 N.W.2d 337 (Iowa 1972).

86.5(2) *Foreign real estate and tangible personal property.* Real estate and tangible personal property with a situs outside the state of Iowa are not subject to the Iowa inheritance tax and, therefore, are not includable in the decedent's gross estate for tax purposes. *Frick v. Pennsylvania,* 268 U.S. 473, 45 S. Ct. 603, 69 L.Ed. 1058 (1925); *In re Marx Estate,* 226 Iowa 1260, 286 N.W.2d 422 (1939).

86.5(3) *Intangible personal property—decedent domiciled in Iowa.* Intangible personal property, or interest therein, owned by a decedent domiciled in Iowa is includable in the gross estate for inheritance tax purposes regardless of the physical location of the evidence of the property or whether the account or obligation is with a non-Iowa financial institution. *Curry v. McCanless,* 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed 1339 (1939); *Lincoln's Estate v. Briggs,* 199 N.W.2d 337 (Iowa 1972).

86.5(4) *Intangible personal property—decedent domiciled outside Iowa.* Intangible personal property may have more than one inheritance tax situs and be subject to multiple state inheritance taxation. Therefore, it has been held that the situs of intangible personal property is the place where the owner is domiciled and also where the intangible has acquired a business situs or is located for state inheritance tax purposes. More than one state can subject the succession to such intangible property to tax. *State Tax Commission of Utah v. Aldrich,* 316 U.S. 174, 62 S. Ct. 1008, 86 L.Ed. 1358 (1942); *Curry v. McCanless,* 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed. 1339 (1939); *Chaffin v. Johnson,* 200 Iowa 89, 204 N.W. 424 (1925). Intangible personal property owned by a decedent domiciled outside Iowa may be subject to the Iowa inheritance tax and, therefore, includable in the gross estate if the physical evidence of the property has an Iowa situs or if the intangible property is an account or obligation of an Iowa financial institution. This intangible personal property is not subject to Iowa inheritance tax if the state of domicile subjects the property to a state death tax and either does not subject intangible personal property owned by a decedent domiciled in Iowa to a state death tax, or grants reciprocity to Iowa-domiciled decedents on like intangible personal property. Intangible personal property owned by a decedent domiciled outside Iowa is subject to the Iowa inheritance tax if the state of domicile does not grant an exemption or reciprocity to like intangible personal property owned by Iowa decedents, or does not impose a death tax on intangible property.

86.5(5) *Classification of property.* The property law of the state of situs determines whether property is classified as real, personal, tangible or intangible and also whether decedent had an interest in the property. *Dieleman's Estate v. Dept. of Revenue,* 222 N.W.2d 459 (Iowa 1974); *Williamson v. Youngs,* 200 Iowa 672, 203 N.W. 28 (1925).

86.5(6) *Insurance—in general.* Whether the proceeds or value of insurance is includable in the gross estate for inheritance tax purposes depends on the particular facts in each situation. Designated beneficiary and type of insurance (life, accident, health, credit life, etc.) are some of the factors that are considered in determining whether the value or proceeds are subject to tax. *In re Estate of Brown,* 205 N.W.2d 925 (Iowa 1973).

a. Insurance proceeds subject to tax. The proceeds of insurance on the decedent's life owned by the decedent and payable to the decedent's estate or personal representative is includable in the gross estate. Insurance owned by the decedent on the life of another is includable in the gross estate to the extent of the cash surrender value of the policy. The proceeds of all insurance to which the decedent had an interest, at or prior to death, but are payable for reasons other than death, are includable in the gross estate. *Bair v. Randall,* 258 N.W.2d 333 (Iowa 1977).

b. Insurance proceeds not taxable. Insurance on the decedent's life payable to a named beneficiary, including a testamentary trust, other than the insured, the estate, or the insured's personal representative, is not subject to Iowa inheritance tax. *In re Estate of Brown,* 205 N.W.2d 925 (Iowa 1973).

c. Insurance proceeds includable—depending on circumstances. Credit life insurance and burial insurance are offsets against the obligation. If the obligation is deducted in full or in part in computing the taxable shares of heirs or beneficiaries, the proceeds of the credit life and burial insurance are includable in the gross estate to the extent of the obligation. Insurance on the decedent's life and owned by the decedent, pledged as security for a debt is an offset against the debt if the insurance is the primary source relied upon by the creditor for the repayment of the obligation and is includable in the gross estate on the same conditions as credit life insurance. See *Estate of Carl M. Laartz* Probate No. 9641, District Court of Cass County, March 17, 1973; *Estate of Roy P. Petersen,* Probate No. 14025, District Court of Cerro Gordo County, May 16, 1974.

Insurance on the decedent's life, payable to a corporation or association in which the decedent had an ownership interest, while not subject to tax as insurance, may increase the value of the decedent's interest. *In re Reed's Estate,* 243 N.Y. 199, 153 N.E.47, 47 A.L.R. 522 (1926).

86.5(7) *Gifts in contemplation of death—for estates of decedents dying prior to July 1, 1984, only.* A transfer of property, or interests in property by a decedent, except in the case of a bona fide sale for fair consideration within three years of the grantor's death, made in contemplation of death, is includable in the decedent's gross estate. Any such transfer made within the three-year period prior to the grantor's death is presumed to be in contemplation of death, unless it is shown to the contrary. Whether a transfer is made in contemplation of death depends on the intention of the grantor in making the transfer and will depend on the facts and circumstances of each individual transfer.

a. Factors to be considered include, but are not limited to:

(1) The age and health of the grantor at the time of the transfer,

(2) Whether the grantor was motivated by living or death motives,

(3) Whether or not the gift was a material part of the decedent's property,

(4) Whether the gift was an isolated event or one of a series of gifts during the decedent's lifetime.

b. Factors which tend to establish that the motive for the gift was prompted by the thought of death include, but are not limited to:

(1) Made with the purpose of avoiding death taxes,

(2) Made as a substitute for a testamentary disposition of the property,

(3) Of such an amount that the remaining property of the grantor would not normally be sufficient to provide for the remaining years of the grantor and those of the grantor's household,

(4) Made with the knowledge that the grantor is suffering from a serious illness that is normally associated with a shortened life expectancy.

c. Factors which tend to establish that the gift was inspired by living motives include, but are not limited to:

(1) Made on an occasion and in an appropriate amount that is usually associated with such gift giving occasions as Christmas, birthdays, marriage, or graduation,

(2) Made because of the financial need of the donee and in an amount that is appropriate to the need,

(3) Made as a remembrance or reward for past services or favors in an amount appropriate to the occasion,

(4) Made to be relieved of the burden of management of the property given, retaining sufficient property and income for adequate support and maintenance.

For a gift to be determined to have been made in contemplation of death it is not necessary that the grantor be conscious of imminent or immediate death. However, the term means more than the general expectation of death which all entertain. It is a gift when the grantor is influenced to do so by such expectation of death, arising from bodily or mental condition, as prompts persons to dispose of their property to those whom they deem the proper object of their bounty. It is sufficient if the thought of death is the impelling cause for the gift. *U.S. v. Wells,* 283 U. S. 102, 51 S. Ct. 446, 75 L.Ed. 867 (1931); *In re Mann's Estate,* 219 Iowa 597, 258 N.W. 904 (1935).

d. Gifts made within three years of death—for estates of decedents dying on or after July 1, 1984. All gifts made by the donor within three years of death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purpose is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, is subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

EXAMPLE. The decedent-donor, A, died July 1, 1995. The three-year period during which gifts may be subject to inheritance tax begins July 1, 1992. During the calendar year 1992, A made a cash gift to nephew B of $11,000 on May 1, 1992, and a second gift to B of $4,000 on August 1, 1992. In this example, none of the $11,000 gift made on May 1, 1992, is includable for inheritance tax purposes because it was made before the three-year period began, based on A's date of death. All of the $4,000 gift made on August 1, 1992, is includable for inheritance tax purposes because it is in excess of the calendar year 1992 federal gift tax exclusion of $10,000.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual exclusion ($10,000 for 1994) which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

(2) Types of transfers which may result in a gift. Whether a transfer of property constitutes a gift depends on the facts and circumstances surrounding each individual transfer. Transfers which may result in a gift, in whole or in part, include, but are not limited to: sales of property where the purchase price, or terms of sale, are less than fair market value; a loan of money, interest free, even though the loan is payable on demand; the release of a retained life use of property; and the payment of a debt or other obligation of another person.

(3) Types of transfers that are not a gift. However, certain transfers which in property law would be considered a present transfer of an interest in property may not be considered gifts within the Iowa three-year rule under Iowa Code section 450.3(2). Rather the transfers may be transfers intended to take effect in possession or enjoyment at death. Examples of this kind of transfer would include, but are not limited to, transfers in trust or otherwise, with a retained life use or interest; commercial annuities where payments are made to a beneficiary upon the death of the primary annuitant; transfers that place property in joint tenancy; irrevocable transfers of real or personal property where the deed or bill of sale is placed in escrow to be delivered only upon the grantor's death. Transfers of this kind are subject to inheritance tax under Iowa Code section 450.3(3) as a transfer to take effect in possession or enjoyment at death, even though under property law an interest in the property may have been transferred prior to death. Different kinds of transfers that may constitute a taxable gift, in whole or in part, include but are not limited to the following:

EXAMPLE A. Grantor-decedent, A, on July 1, 1992, transferred to nephew B, without consideration, a 160-acre Iowa farm, reserving the life use. On the date of transfer, the farm had a fair market value of $2,000 per acre, or $320,000. On August 1, 1994, A released the retained life estate without any consideration being given and then died on December 1, 1994. The release on August 1, 1994, constitutes a gift, for inheritance tax purposes, of the value of the entire farm (less the annual gift tax exclusion), within the three-year period prior to death. What is taxable is what would have been taxable had the release not been given. *United States v. Allen,* 293 F.2d 916 (10th Cir. 1961); Rev. Ruling 56-324, 1956 2 C.B. 999. In this example, the gift is not to be valued at the time of the release of the life use, but rather at its fair market value at the time of death. See subrule 86.9(1). The real estate cannot be valued at its alternate valuation date because it is not included in the federal gross estate for federal estate tax purposes, but rather it constitutes an adjusted taxable gift not eligible for the alternate valuation date. See rule 86.10(450) and Federal Estate Tax Regulation Section 20.2032-1(a) and (d).

EXAMPLE B. A, on August 1, 1992, loaned brother B $450,000 which was evidenced by a non-interest-bearing promissory note, payable on demand. A died on October 1, 1994, with no part of the loan having been repaid. The principal amount of the note is includable in A's gross estate. The free use of money is a valuable property right to the debtor. *Dickman v. Commissioner,* 465 U.S. 330 (1984). Thus, in effect, A has made a gift of the value of the interest to B each year the debt remains unpaid. Assuming for purposes of illustration that the applicable federal short-term rate for the entire year is 9 percent for each year and no other gifts were made to B, A has made a gift to B of $40,500 through August 1993 (one year after the note was executed) and an additional gift of $40,500 through August 1, 1994, and two months' interest of $6,750 from August 1, 1994, to the date of death on October 1, 1994. Therefore, in calendar year 1992 A has made a gift of 5/12 of $40,500, or $16,875. After deducting the annual calendar year exclusion of $10,000, $6,875 is subject to inheritance tax. Since the loan was outstanding for all of calendar year 1993, $40,500, less the $10,000 exclusion, or $30,500, is subject to inheritance tax. For calendar year 1994 the loan was outstanding for nine months. Three-fourths of $40,500, less $10,000, or $20,375, is subject to inheritance tax.

In this example it is not necessary that the loan be made within the three-year period prior to death. It is the free use of the loan during the three-year period prior to death that constitutes the gift.

EXAMPLE C. On March 1, 1992, A sold a 160-acre Iowa farm to niece B for $1,500 per acre, or $240,000. On the date of sale, the fair market value of the farm was $2,500 per acre, or $400,000. A died on August 1, 1994. This sale is, in part, a gift. It is not a bona fide sale for an adequate and full consideration in money or money's worth and as a result, the difference between the sale price and the fair market value of the farm on the date of sale constitutes a gift. The sale price in this example represents only 60 percent of the farm's fair market value; therefore, 40 percent of the farm is a gift. However, the gift percentage to apply to the farm's value at death is 38 percent, not 40 percent, because the $10,000 annual gift tax exclusion must be deducted from the value of the gift. See the computation of this percentage in Example D immediately following.

EXAMPLE D. On March 1, 1992, A sold a 160-acre Iowa farm to niece B for $2,500 per acre, or $400,000, which was also the fair market value of the farm on the date of sale. The sale was an installment sale contract, payable in 20 equal annual installments of principal and interest. The unpaid principal balance is to draw interest at one-half of the prevailing Federal Land Bank loan rate, which for purposes of illustration we will assume to be the rate of 12 percent, or 6 percent per year. The annual payments of principal and interest are $34,873.82 per year. A died on August 1, 1994. In this example, the sale price in and of itself does not constitute a gift because the sale price was also the fair market value of the farm. However, the difference between the prevailing Federal Land Bank loan rate of 12 percent and the contract rate of 6 percent constitutes a gift from A to B.

The amount of the gift that is includable in the gross estate is computed by determining the present value of the future annual payments of $34,873.82 discounted to reflect a 12 percent return on the investment. The discounted value is then divided by the fair market value of the farm on the date of the sale to determine the percentage of the sale price that is a bona fide sale for full consideration and the percentage of the sale price that represents a gift before the annual exclusion. The gift percentage is then applied to the fair market value of the farm (or special use value, if applicable) at death, to determine the amount that is includable in the gross estate.

The computation in this example is as follows:

The present value of the future annual payments of $34,873.82 for 20 years to reflect a 12 percent return on an investment is $260,488.05. That is, an investor who desires to earn the market rate of return of 12 percent on an investment would only pay $260,488.05 for this 6 percent $400,000 contract of sale.

Bona Fide Sale Percentage

Present value: $\frac{260,488.05}{400,000.00} = 65\%$

Sale price: 400,000.00

This is the percentage of the sale price of $400,000 that represents a bona fide sale for full consideration.

Gift Percentage

The sale price of $400,000 - $260,488.05 or $139,511.95 is the gift portion of the sale price due to the 6 percent interest rate on the contract, before the $10,000 annual exclusion is deducted.

The gift percentage is computed as follows:

$\$139,511.95 - \$10,000 = \frac{129,511.95}{400,000.00} = 32\%$

In this example the gift percentage used to determine the amount of the farm value at death that is taxable is only 32 percent of the value because deducting the $10,000 exclusion reduced the gift percentage from 35 percent to 32 percent. The gift took place in the year of sale not in the year of death. As a result, 32 percent of fair market value (or special use value, if applicable) of the farm at the time of the donor's death is includable in the gross estate for inheritance tax purposes.

86.5(8) *Joint tenancy property—in general.* Whether the form of ownership of property is considered to be joint tenancy is determined by the property law of the state of the situs of the property. Generally, the words and phrases "to A and B as joint tenants with full rights of survivorship and not as tenants in common" create a joint tenancy form of ownership unless a contrary interest can be shown by material evidence. "To A or B, payable to the order of self" creates an alternative right of ownership and for tax purposes is treated as joint tenancy property. *In re Estate of Martin,* 261 Iowa 630, 155 N.W.2d 401 (1968); *Petersen v. Carstensen,* 249 N.W.2d 622 (Iowa 1977); *In re Estate of Louden,* 249 Iowa 1393, 92 N.W.2d 409 (1958). Joint tenancy property may be held by more than two persons. *In re Estate of Horner,* 234 Iowa 624, 12 N.W.2d 166 (1944). However, the use of the words "as joint tenants" alone without the use of the phrase "with right of survivorship" may only create a tenancy in common. *Albright v. Winey,* 226 Iowa 222, 284 N.W. 86 (1939).

a. Joint tenancy property—husband and wife alone. Generally there are no shares in joint tenancy property because each joint tenant owns the whole property. As a result, joint tenancy property is not taxed like tenancy in common property where each owner has a specific share. If the joint tenancy property is held by husband and wife alone, only one-half of the property is includable in the gross estate for inheritance tax purposes in the estate of the first joint tenant to die. However, if the survivor can establish by competent evidence that separate money or property was used and contributed to a larger percentage than one-half to the acquisition of a specific item or items of jointly held property, then the larger percentage of such item or items shall be excluded from taxation. *Ida M. Jepsen v. Bair,* No. 85, State Board of Tax Review, June 18, 1975.

b. Joint tenancy property—not held by husband and wife alone. Property held in this form of joint tenancy is includable in the gross estate of the deceased joint tenant, except to the extent the surviving joint tenant or tenants can establish contribution to the acquisition of the joint property, in which case the proportion attributed to the contribution is excluded from the gross estate. In the case of multiple joint tenancy property, excess contribution established by one surviving joint tenant cannot be attributed to another surviving joint tenant. For tax purposes, the requirement of contribution in effect establishes percentage ownership—or shares—in jointly held property that does not exist in property law. Contribution to the acquisition of jointly held property can be established by the survivor by proof, which includes, but is not limited to, evidence that the property was acquired by gift, inheritance, or purchase from the survivor's separate funds or property. Contribution means cash or cash in kind that is applied to the cost of obtaining the property at issue. Unlike joint tenancy property held solely between husband and wife, if any of the surviving joint tenants is not the spouse of the decedent, the presumed one-half exclusion is not automatically available without proof of contribution.

c. Joint tenancy—convenience or constructive trust. If the record ownership of bank accounts, certificates of deposit, and other kinds of property are held in the form of joint tenancy, but in fact are held by the decedent and another person or persons who have a confidential or fiduciary relationship with the decedent, the property is not held in joint tenancy but is held in constructive or resulting trust by the survivor for the decedent. A confidential or fiduciary relationship is any relationship existing between the parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation, the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in one's important affairs. *First National Bank v. Curran,* 206 N.W.2d 317 (Iowa 1973). The fact that the decedent furnished the funds to acquire the property or demonstrated a kind, considerate, and affectionate regard for the survivor does not in itself establish a confidential relationship between the decedent and the survivor. If the evidence to establish a contrary relationship with respect to property in the form of joint tenancy is not substantial, a joint tenancy exists as a matter of law. *Petersen v. Carstensen,* 249 N.W.2d 622 (Iowa 1977).

If a confidential relationship constituting a constructive or resulting trust is established on behalf of the decedent, the property or property interest that is the subject of the trust is part of the decedent's gross estate as singly owned property.

86.5(9) *Transfers reserving a life income or interest.* If the grantor transfers property, except in the case of a bona fide sale for fair consideration, reserving the income, use, possession, or a portion thereof for life, the property is includable in the gross estate for inheritance tax purposes. *In re Sayres' Estate,* 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Estate of English,* 206 N.W.2d 305 (Iowa 1973). If there is a full reservation of income, the entire value of the property in which the reservation exists is includable for tax purposes. If only a portion of the income is reserved, the amount subject to tax is the full value of the property at death multiplied by a fraction of which the total income reserved is the numerator and the total average earning capacity of like property is the denominator. See *In re Estate of English,* 206 N.W.2d at 310.

The reservation of the life income, or portion thereof, need not necessarily be stated or contained in the instrument of transfer to be includable for taxation. The transfer of property may contain no reservation of income or other incidents of ownership in the grantor, but if there is a contemporaneous agreement between the grantor and grantee to pay the income, or portion thereof, to the grantor for life, the two instruments or agreements when considered together may be construed to be reservation of the income from the transferred property. See *In re Sayres' Estate,* 245 Iowa 132 at 141, 142, 60 N.W.2d 120 (1953) for a full discussion of the subject.

The instrument need not be in any special form. For example, it may take the form of a contract of sale to terminate at death where the payments consist of the income from the property only. In addition, the transfer to be includable for taxation is not limited to income-producing property. For example, the transfer of the grantor's dwelling, reserving the life occupancy, falls within the meaning of a reserved life income or interest. Generally, revocable trusts can be classified as reserving a life income or interest. This type of transfer does not fall within the $10,000 gift exclusion.

86.5(10) *Powers of appointment—in general.* Iowa Code section 450.3(4) is concerned with two aspects of powers of appointment that are subject to inheritance tax. First, the taxation of the decedent's property subject to the power of appointment in the estate of the donor (decedent), and second, the exercise, or nonexercise, of the power of appointment over the property in the estate of the donee (the decedent possessing the power).

a. General power of appointment. Whether the instrument of transfer utilized by the donor creates a general or special power of appointment is a matter of property law. For example, a devise to A for life with "power to dispose of and pass clear title ... if A so elects," creates a life estate with a general power of appointment. *In re Estate of Cooksey,* 203 Iowa 754, 208 N.W. 337 (1927). Also to A for life, "Especially giving unto A the right to use and dispose of the same as A may see fit," creates a general power of appointment, *Volz v. Kaemmerle,* 211 Iowa 995, 234 N.W. 805 (1931). However, the power to sell and convert the assets subject to the power does not in itself create a general power of appointment. *In re Estate of Harris,* 237 Iowa 613, 23 N.W.2d 445 (1946). A power is general if being testamentary, it can be exercised wholly in favor of the estate of the donee. *In re Estate of Spencer,* 232 N.W.2d 491 at 495, 496 (Iowa 1975). The definition of a general power of appointment contained in 26 U.S.C. Section 2056(b)(5) of the Internal Revenue Code would meet the test of a general power under Iowa law.

b. Special power of appointment. If there is a limitation on the donee's right to use the corpus only for care, maintenance and support, the power is special, not general. *Brown v. Brown,* 213 Iowa 998, 240 N.W. 910 (1932). Also, to A for life with power to handle the property for A's interest, limits the power of invasion of the principal for care and support only, and is therefore a special, not a general, power of appointment. *Lourien v. Fitzgerald,* 242 Iowa 1258, 49 N.W.2d 845 (1951). Also, to A for life, with unrestricted power of sale with no power over the sale proceeds creates only a special power of appointment in the donee. *McCarthy v. McCarthy,* 178 N.W.2d 308 (Iowa 1970).

If the donee's power to appoint is limited to a class or group of persons, a special, not a general, power is created. *In re Estate of Spencer,* 232 N.W.2d 491, at 496 (Iowa 1975).

c. Powers of appointment—taxation in donor's estate. If the instrument in the donor's estate creates a general power of appointment, the property subject to the power is taxed as if the property had been transferred to the donee in fee simple. Those who would succeed to the property in the event the power is not exercised are treated in the donor's estate as if they receive no interest in the property, even though in property law those who succeed to the property either by the exercise, or nonexercise, take from the donor of the power. *In re Estate of Higgins,* 194 Iowa 369 at 373, 189 N.W. 752 (1922); *Bussing v. Hough,* 237 Iowa 194 at 200, 21 N.W.2d 587 (1946).

If the instrument in the donor's estate creates a special power of appointment, the property subject to the power is taxed as if the donee of the power had received a life estate or term for years, as the case may be. Those persons who would take the property in the event the special power is not exercised are taxed in the donor's estate as if they had received the remainder interest in the property subject to the special power, although an election to defer payment of the tax may result in either no tax or a different tax obligation. This could happen, for example, if the special power is the power to invade the corpus for the health, education, and maintenance of the donee.

d. Powers of appointment in the estate of a donee dying on or after January 1, 1988. Property which is subject to a general power of appointment is includable for inheritance tax purposes in the gross estate of a donee dying on or after January 1, 1988, if the donee has possession of the general power of appointment at the time of the donee's death, or if the donee has released or exercised the general power of appointment within three years of death. Whether or not the donee of a general power exercises the general power at death is not relevant to the includability of the property subject to the general power in the estate of the donee. The mere possession of the power at death is sufficient for the property subject to the power to be included in the estate of the donee for inheritance tax purposes.

Property subject to a special power of appointment is not includable in the gross estate of the donee of the power regardless of whether the donee possesses the special power or exercised the power at death, unless a QTIP election was made under Iowa Code subsection 450.3(7) in which case the rule governing QTIP elections shall control. See paragraphs 86.5(10)*"a"* and *"b"* for the distinction between a general and special power and subrule 86.5(11) for the rule governing QTIP elections.

For inheritance tax purposes, if there is an exercise or release of the general power within three years of the donee's death, the property subject to the exercise or release is includable in the donee's estate just as if the donee had retained possession of the power at death and is taxable to those to whom the property is appointed in case the power is exercised, or to those who take in default of the exercise in case the power is released.

The general power of appointment is considered to have been exercised for the purposes of this rule when the nature of the disposition is such that if it were a transfer or disposition of the donee's property, the transfer would be subject to inheritance tax under Iowa Code section 450.3. The power is considered exercised in the following three nonexclusive classes of cases: (1) where there has been some reference in the will or other instrument to the power; (2) the will or other instrument contains a reference to the property which is the subject on which the power is to be executed; (3) where the provision in the will or other instrument executed by the donee of the power would otherwise be ineffectual or a mere nullity; in other words, the provision would have no operation except as an execution of the power. *In re Trust of Stork*, 233 Iowa 413, 421, 9 N.W.2d 273 (1943). For the purposes of section 450.3(4), a release of a general power is considered to be a transfer of the property subject to the power to those who would take in default if the power was not exercised.

86.5(11) *Qualified terminable interest property (QTIP).*

a. In general. Effective for estates of decedents dying on or after July 1, 1985, property passing from the decedent grantor-donor, which qualifies as qualified terminable interest property (QTIP) within the meaning of 26 U.S.C. Section 2056(b)(7)(B) is eligible to be treated for Iowa inheritance tax purposes, if an election is made, as passing in fee to the donee-grantee surviving spouse, in the estate of the grantor-donor decedent, subject to the provisions of law and this subrule. If the election is made, the qualified property, unless it is disposed of prior to death, shall be included in the gross estate of the surviving spouse and treated as passing in fee to those succeeding to the remainder interest in the qualified property.

b. Property transfers eligible. Four factors are relevant in determining whether property passing from a decedent grantor-donor is eligible for the Iowa qualified terminable interest election. They are: (1) the death of the decedent-transferor, but not necessarily the transfer, must have occurred on or after July 1, 1985; (2) the property must meet the qualifications required in 26 U.S.C. Section 2056(b)(7)(B), or in the case of a gift within three years of the decedent-transferor's death, the qualifications in 26 U.S.C. Section 2523(f); (3) a federal election must have been made on a required federal return with respect to the qualified property for federal estate tax purposes or, for federal gift tax purposes, if the transfer occurred within three years of the transferor's death, and (4) the property must be included in the decedent-transferor's gross estate for Iowa inheritance tax purposes, either because the transfer occurred at death or within three years of the transferor's death.

If property is not eligible for an Iowa qualified terminable interest election, or if eligible, but an Iowa election is not made, it is not included in the estate of the surviving spouse grantee-donee for inheritance tax purposes by reason of Iowa Code section 450.3. The fact that the qualified property is included in the estate of the surviving spouse for federal estate tax purposes does not necessarily mean the property is automatically included in the surviving spouse's Iowa gross estate.

The treatment of the qualified property in both the grantor-donor's and the surviving spouse's estates for Iowa inheritance tax purposes is determined by the Iowa election, or lack of an election, being made in the grantor-donor's estate.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A died testate, a resident of Iowa, July 2, 1995, leaving a surviving spouse, B, and two children, C and D. On February 1, 1992, A transferred by deed a 160-acre Iowa farm to spouse B for life, with the remainder at B's death to two children, C and D. An election was made under 26 U.S.C. Section 2523(f) to treat the gift of the 160-acre farm as passing entirely to B in fee.

Upon A's death the 160-acre farm is not part of A's gross estate either for federal estate or for Iowa inheritance tax purposes because the transfer was made more than three years prior to death. However, upon the death of B, the surviving spouse, the 160 acres is included in B's gross estate (unless disposed of prior to death) for federal estate tax purposes, but is not included in B's Iowa gross estate. The transfer by A took place more than three years prior to death, and therefore is not included in A's Iowa estate and is not eligible for an Iowa qualified terminable interest election.

EXAMPLE 2. On October 1, 1992, grantor A executed a revocable inter vivos trust which consisted of cash and a 160-acre Iowa farm. Under the terms of the trust agreement A was to receive the trust income for life and upon A's death the trustee was to pay the trust income to A's spouse, B, for life, with the power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the corpus was to be paid to A's children, C and D. A died July 2, 1995, and the personal representative elected to treat the trust assets as passing entirely in fee to the surviving spouse, B, for federal estate tax purposes. An Iowa qualified terminable interest election was not made. In this fact situation, the election qualified the trust assets for the marital deduction for federal estate tax purposes. For Iowa inheritance tax purposes, since an Iowa election was not made, the trust assets are taxed on the basis of a life estate passing to B, the surviving spouse, and the remainder passing to the children, C and D. Upon B's death, the trust corpus will be included in B's estate for federal estate tax purposes, but not in B's estate for Iowa inheritance tax purposes, because an Iowa qualified terminable interest election was not made in A's estate.

c. The qualified terminable interest election—in general. The election to treat qualified terminable interest property as passing entirely in fee to the surviving spouse in the estate of the decedent grantor-donor is an affirmative act. In the event an election is not made, the qualified property will be treated as a life estate passing to the surviving spouse with a remainder over as provided in Iowa Code section 450.3(4).

An Iowa election cannot be made unless an election has been made on the same qualified property for federal estate tax purposes on a required federal return, or in case of a gift made within three years of the decedent grantor-donor's death, for federal gift tax purposes. However, even though a federal election has been made, the personal representative of the decedent grantor-donor's estate has the option to either make or not to make the election with respect to the qualified property for Iowa inheritance tax purposes. It is sufficient for Iowa inheritance tax purposes that a valid federal election has been made. What constitutes a valid election for federal estate or gift tax purpose is determined under applicable federal law and practice and not by the department.

However, it is permissible for Iowa inheritance tax purposes to make an election for a smaller but not larger percentage of the qualified property than was made for federal estate or gift tax purposes. These general principles can be illustrated by the following examples:

EXAMPLE 1. Decedent-grantor A created a revocable inter vivos trust on October 15, 1992, which was funded by $200,000 in cash and a 160-acre Iowa farm worth $200,000. The trust provided that the trustee pay the income to A for life and upon A's death, the trustee was to pay the income to A's surviving spouse B for life, with power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the principal was to be distributed to A's two children, C and D.

A died on July 2, 1995, and the principal of the trust is included in A's gross estate both for federal estate and Iowa inheritance tax purposes because the trust was revocable and A retained the income for life. A's personal representative elected to treat 50 percent of the trust assets as qualified terminable interest property for federal estate tax purposes. A's personal representative elected not to treat the qualified property as passing to B for Iowa inheritance tax purposes. This is permissible because the personal representative has the option to either elect or not to elect to treat 50 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes.

EXAMPLE 2. Same factual situation as Example 1. A's personal representative elects to treat only 25 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes. This is permissible because the personal representative is not required to make an election on all of the qualified terminable interest property on which the federal election has been made. It is sufficient that a federal election has been made for at least as large a percentage of the qualified property on which the Iowa election is made. However, an Iowa election cannot be made for a larger percentage of the qualified property than the percentage made on the federal election.

EXAMPLE 3. Same factual situation as Example 1. In this example, A's personal representative, for Iowa inheritance tax purposes, purports to elect to treat the $200,000 cash in the trust as passing in fee to the surviving spouse, but not the 160-acre Iowa farm, which is also valued at $200,000. Although the federal estate tax election is for 50 percent of the qualified property, the Iowa election is invalid even though it is made in respect to an asset which is equal in value to 50 percent of the trust principal. If the election is made for less than all of the qualified terminable interest property, the election must be for a fraction of all the qualified property. The personal representative is not permitted to select for the election some qualified assets and reject others. See Federal Estate Tax Regulation 20.2056-1(b).

d. The election—manner and form. The qualified terminable interest election shall be in writing and made by the personal representative of the decedent grantor-donor's estate on the Iowa inheritance tax return. The election once made shall be irrevocable. If the election is not made on the first inheritance tax return, the election may be made on an amended return, provided the amended return is filed on or before the due date of the return (taking into consideration any extensions of time granted to file the return and pay the tax due). The personal representative may make an election on a delinquent return, provided it is the first return filed for the estate. The filing for the purpose of protective election is not allowed. Failure to make the election on the first return filed after the due date has passed precludes making an election on a subsequent return. See 26 U.S.C. Section 2056(b)(7)(B)(V) and Internal Revenue Service Letter Ruling 8418005.

The election consists of two affirmative acts performed by the personal representative on the inheritance tax return: (1) by answering in the affirmative the question—Is the estate making a qualified terminable interest election with respect to the qualified property? and (2) by computing the share of the surviving spouse to include the qualified terminable interest property on which the election was made. In the event of an inconsistency in complying with the two requirements, the treatment given to the share of the surviving spouse shall be controlling.

e. Disposition of qualified property prior to death. A disposition of all or part of the qualified property, which was the subject of the qualified terminable interest election, prior to the death of the surviving spouse, voids the election as to that portion of the property disposed of that is not retained by the surviving spouse. In this event, the portion of the qualified property not retained by the surviving spouse shall be taxed to those succeeding to the remainder interests in the disposed property as if the tax on the remainder interest had been deferred under Iowa Code sections 450.44 to 450.49. Except in the case of special use valuation property, the tax shall be based on the fair market value of the amount of the qualified property not retained by the surviving spouse at the time the property was disposed of. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950), see subrule 86.11(5) for taxation of remainder interests when the tax is deferred. The alternate valuation date cannot be used in computing the tax. See subrule 86.10(2). If QTIP property has been valued at its special use value under Iowa Code chapter 450B, and is disposed of prior to the death of the surviving spouse, the portion of the QTIP property not retained by the surviving spouse shall be valued for taxation as follows:

1. At its special use value at the time of its disposition, if the QTIP property remains in qualified use under 26 U.S.C. Section 2032A.

2. At its fair market value at the time of its disposition, if there is a cessation of the qualified use under 26 U.S.C. Section 2032A. In case there is a cessation of the qualified use, the recapture tax provisions of Iowa Code section 450B.3 shall not apply. The tax on the remainder interest is treated as a payment of tax deferred and subject to the rules on deferred tax and not a recapture, with interest, of the tax originally imposed in the decedent grantor-donor's estate.

f. Inclusion in the estate of the surviving spouse. Upon the death of the surviving spouse the qualified terminable interest property, which was the subject of an election, that was not disposed of prior to death, shall be included in the gross estate of the surviving spouse and be treated as if it passed in fee from the surviving spouse to those succeeding to the remainder interests. The included QTIP property will receive a stepped up basis for gain or loss as property acquired from a decedent. See 26 U.S.C. Section 1014(b)(10). The relationship of the surviving spouse to the owners of the remainder interest shall determine whether the individual exemptions provided for in Iowa Code section 450.9 apply and which tax rate in Iowa Code section 450.10 shall be applicable.

Qualified property included in the estate of the surviving spouse shall be valued as if it passed from the surviving spouse in fee and shall be valued either (1) at the time of the surviving spouse's death under the provisions of Iowa Code section 450.37 and rule 86.9(450), or at its special use value under Iowa Code chapter 450B and rule 86.8(450B), if the real estate is otherwise qualified; or (2) at the alternate valuation date under the provisions of Iowa Code section 450.37(1)*"b"* and rule 86.10(450), if the property is otherwise eligible.

This subrule can be illustrated by the following examples:

EXAMPLE 1. Decedent A died testate on July 2, 1997, survived by a spouse, B, aged 65, and two step-grandchildren, C and D. Under A's will all property was left in trust to pay all of the income to B for life. Upon B's death, the trust was to terminate and the principal was to be divided equally between C and D, who are the grandchildren of surviving spouse B. The personal representative elected to treat the trust assets as passing entirely in fee to surviving spouse B. The net corpus of the trust consists of a 160-acre farm valued at $250,000 and personal property valued at $200,000.

Tax on the basis of all property passing in fee to B	
Share	Tax
$450,000	$0

EXAMPLE 2. Same facts as Example 1, with the exception that the personal representative did not make an Iowa qualified terminable interest election. In this fact situation, the trust assets are taxed on the basis of a life estate passing to the surviving spouse B with a remainder over to C and D.

Share		Tax
Spouse B: Life estate factor .42226		
$450,000 × .42226 = $190,017		-0-
C's share ½ remainder factor .57774		
$450,000 × .57774 ÷ 2 = $129,991.50		$ 15,498.73
D's share—same as C's share	$129,991.50	15,498.73
Total	$450,000.00	$30,997.46

In Example 1, the qualified terminable interest election results in no inheritance tax. However, as shown in Example 2, it would have cost the step-grandchildren, C and D, $30,997.46 if the election had not been made.

EXAMPLE 3. B, the surviving spouse of A in Example 1, died testate, a resident of Iowa, on October 15, 1997. Under the terms of B's will, B's grandchildren, C and D, inherit B's entire estate in equal shares. B's net estate consists of $200,000 in personal property and a 160-acre Iowa farm with a value of $250,000 both of which were the subject of a qualified terminable interest election in A's estate and in which C and D own the remainder interest. B's net estate also consisted of $100,000 in intangible personal property which B owned in fee simple.

B's net estate for Iowa inheritance tax purposes consists of the following:

$200,000, personal property from A's estate.

$250,000, 160-acre farm from A's estate.

$100,000, owned by B in fee simple.

$550,000 Total

The shares of C and D and their tax owed in B's estate are computed as follows:

Share		Tax
Beneficiary C: ½ of the net estate, or		
	$275,000	$0
Beneficiary D: (same as C)	$275,000	$0
Totals	$550,000	$0

g. The QTIP tax credit and the credit for tax on prior transfers. The credit for the additional tax paid by the surviving spouse in the estate of the decedent grantor-donor on property, which was the subject of a qualified terminable interest election, is governed exclusively by the provisions of Iowa Code section 450.3 and these rules. The credit for tax paid on prior transfers allowable under Iowa Code section 450.10(6) shall not apply. However, property received by the surviving spouse from the estate of the decedent grantor-donor, which was not the subject of a qualified terminable interest election, is eligible for the credit for the tax paid on a prior transfer, if the conditions of Iowa Code section 450.10(6) are otherwise met.

86.5(12) *Annuities.*

a. General rule. Annuities in general are considered to be taxable under Iowa Code section 450.3(3) as a transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. *In re Estate of English,* 206 N.W.2d 305 (Iowa 1973); *In re Endemann's Estate,* 307 N.Y. 100, 120 N.E.2d 514 (1954); *Cochrane v. Commission of Corps & Taxation,* 350 Mass. 237, 214 N.E.2d 283 (1966).

b. Exception to the general rule. Iowa Code section 450.4(5) provides for an exception to the general rule of taxability of annuities. Essentially, an exemption from Iowa inheritance tax is allowed if the following three elements are met: (1) payment under the plan must be in installments; (2) the annuity payment, in whole or in part, must be included as net income for Iowa income tax purposes under Iowa Code section 422.7; and (3) the annuity must be derived from a qualifying employee's pension or retirement plan. In essence, the portions of payments received under a qualified annuity plan that are subject to Iowa income tax are exempt from Iowa inheritance tax and the portions of such payments that are not subject to Iowa income tax are subject to Iowa inheritance tax. The exclusion makes reference only to installment payments and not to lump-sum distributions to a beneficiary. It is within the exclusion, if the payments, or a portion, are subject to Iowa income tax irrespective of the type of income tax treatment given the payments. Whether the payments are includable as ordinary income or receive capital gain treatment is not material to determining the exclusion. Iowa Code section 450.4(5) purports to exclude from inheritance tax what is subject to income tax and Iowa Code section 422.7(4) purports to exclude from income tax what is subject to inheritance tax. The apparent ambiguity can be resolved by an analysis of Iowa Code section 422.7(4). Iowa Code section 422.7(4) excludes from income tax the commuted value of the installment payments, not just a portion of the payments. "Commuted value" has been defined as the sum necessary to provide future payments as provided for in an annuity policy. In other words, the present value of the full amount of each annuity payment is the commuted value. This can be construed to mean only those estates which had been taxed for inheritance tax purposes on the full amount of each installment payment are entitled to the income tax exclusion. Annuities typically known as "employee pensions" are generally considered to be qualified plans for exemption for inheritance tax purposes. The qualified plans receive special income tax treatment during the period the annuity is being funded. This special tax treatment is based on the income being deferred to fund the annuity plan and also the postponement of the earnings from the fund until withdrawal. Payment of the proceeds from the annuity must not be in the form of one lump sum. Instead, payment must be in installments to qualify for the inheritance tax exemption. To constitute an installment, there must be two or more payments of the proceeds from the annuity. There is not a set time period imposed between payments to qualify for exemption.

EXAMPLE. The decedent, a resident of Iowa, had a qualified annuity purchased under a retirement plan through the decedent's Iowa employer. The beneficiary of the pension is the decedent's niece who is a resident of Iowa. A portion of the installment payments received by the niece will be included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of installment payments included as net income. However, the remaining portion of the installment payments not reported as net income pursuant to Iowa Code section 422.7 or subject to Iowa income tax at its commuted value would be subject to Iowa inheritance tax—see Iowa Code sections 422.7(4), 422.7(34), and 450.4.

An exemption from Iowa inheritance tax for a qualified plan does not depend on the relationship of the beneficiary to the decedent. Payments under a qualified plan made to the estate of the decedent are exempt from Iowa inheritance tax. See *In re Estate of Heuermann*, Docket No. 88-70-0388 (September 21, 1989). In addition, it is not relevant for the purpose of determining the taxable or exempt status of payments under a qualified plan that the decedent rolled over or changed the terms of payment prior to death. Taxation or exemption of payments made under a qualified plan is determined at the date of the decedent's death. A rollover of money in a qualified plan that occurs after the death of the decedent is treated as a lump-sum payment for the purposes of inheritance tax.

86.5(13) *Distribution of trust property.* Property of a trust can be divided into two or more trusts, or one or more separate trusts can be consolidated with one or more other trusts into a single trust by dividing the property in cash or in kind, including in undivided interests, by pro-rata or non-pro-rata division or in any combination thereof. Division of property between trusts in this manner does not result in a "sale" of the divided property and a corresponding taxable gain.

This rule is intended to implement Iowa Code sections 422.7(4), 450.2, 450.3, 450.4(5), 450.8, 450.12, 450.37, 450.91, 633.699, and 633.703A as amended by 1997 Iowa Acts, House File 266.

701—86.6(450) The net estate.

86.6(1) *Liabilities deductible.*

a. Debts owing by decedent. A debt, to be allowed as a deduction in determining the net estate under Iowa Code section 450.12, must be the liability of the decedent and also be owing and not discharged at the time of the decedent's death. The amount allowable as a deduction is the principal amount due, plus interest accruing to the day of the decedent's death. If the decedent is not the only person liable for the debt, only a portion of the debt shall be deducted for inheritance tax purposes. The portion deducted is based on the number of solvent obligors. If a joint and several debt has more than one obligor and one obligor pays the remaining balance owed on the debt, the obligor who pays the remaining debt has a right of contribution for payment of the debt against the other solvent obligors. If the decedent is the obligor and the estate pays the remaining balance of the debt, the estate must list the right of contribution as an asset on the Iowa inheritance tax return. *In re Estate of Tollefsrud,* 275 N.W.2d 412 (Iowa 1979); *In re Estate of Thomas,* 454 N.W.2d 66 (Iowa App. 1990); *Estate of Pauline Bladt,* Department of Revenue and Finance, Hearing Office Decision, Docket No. 95-70-1-0174 (December 16, 1996). The term "debt owing by the decedent" is not defined in Iowa Code section 450.12. However, Iowa Code section 633.3(10) defines "debts" as including liabilities of the decedent which survive, whether arising in contract, tort, or otherwise.

The term "debt of the decedent" does not include taxes, which are an impost levied by authority of government upon its citizens or subjects for the support of the state. *Eide v. Hottman,* 257 Iowa 263, 265, 132 N.W.2d 755 (1965). Please note, that this is a nonexclusive example of "debt of the decedent." Promissory notes executed by the decedent without consideration are not debts of the decedent and are not allowable as a deduction in determining the net estate subject to tax. *In re McAllister's Estate,* 214 N.W.2d 142 (Iowa 1974). Payments to persons in compromise of their claim to a portion of the estate made by those persons who take from the decedent are not debts nor treated as expenses of settlement. *In re Estate of Bliven,* 236 N.W.2d 366, 371 (Iowa 1975); *In re Estate of Wells,* 142 Iowa 255, 259, 260, 120 N.W. 713 (1909).

Iowa Code section 450.12 and Internal Revenue Code Section 2053 provide that debts owing by the decedent to be allowable in computing the net estate must be the type of obligation of the decedent for which a claim could be filed and be enforced in the probate proceedings of the estate. *In re Estate of McMahon,* 237 Iowa 236, 21 N.W.2d 581 (1946); *In re Estate of Laartz,* Cass County District Court, Probate No. 9641 (1973); *In re Estate of Tracy,* Department of Revenue and Finance Hearing Officer Decision Docket No. 77-167-3-A (1977). Filing a claim in probate proceedings is not a prerequisite for the allowance of the liability as a deduction in computing the net estate. An allowable liability is deductible whether or not the liability is legally enforceable against the decedent's estate. Claims in probate founded on a promise or agreement are deductible only to the extent they were contracted bona fide and for an adequate and full consideration. *In re McAllister's Estate,* 214 N.W.2d 142 (Iowa 1974).

The debt must have ben paid prior to the filing of the inheritance tax return, or if the debt is not paid at the time the final inheritance tax return is filed (which is frequently the case in installment obligations) the burden is on the taxpayer to establish, if requested by the department, that the debt will be paid at a future date. The validity of a claim in probate based on a liability of the decedent is subject to review by the department. *In re Estate of Stephenson,* 234 Iowa 1315, 1319, 14 N.W.2d 684 (1944).

If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. *In re Estate of Waddington,* 201 N.W.2d 77 (Iowa 1972).

The department may require the taxpayer to furnish reasonable proof to establish the deductible items such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse, and copies of notes and mortgages.

b. Mortgages—decedent's debt. A mortgage or other encumbrance securing a debt of the decedent on Iowa property in which the decedent had an interest is allowable as a deduction in determining the net estate in the same manner as an unsecured debt of the decedent, even though it may be deducted from different shares of the estate than unsecured debts. (See Iowa Code section 633.278.) However, if the debt of the decedent is secured by property located outside Iowa, which is not subject to Iowa inheritance tax, the debt is allowable as a deduction in determining the net estate, only in the amount the debt exceeds the value of the property securing the debt.

c. Mortgages—not decedent's debt. If the gross estate includes property subject to a mortgage or other encumbrance which secures a debt which is not enforceable against the decedent, the amount of the debt, including interest accrued to the day of death, is deductible, not as a debt of the decedent, but from the fair market value of the encumbered property. The deduction is limited to the amount the decedent would have had to pay to remove the encumbrance less the value, if any, of the decedent's right of recovery against the debtor. See *Home Owners Loan Corp. v. Rupe,* 225 Iowa 1044, 1047, 283 N.W. 108 (1938), for circumstances under which the right of subrogation may exist.

d. Mortgages—nonprobate property. A debt secured by property not subject to the jurisdiction of the probate court, such as, but not limited to, jointly owned property and property transferred within three years of death is deducted in the same manner as a debt secured by probate property. The fact the property is includable in the gross estate is the controlling factor in determining the deductibility of the debt (providing the debt is otherwise deductible).

e. Inheritance and accrued taxes.

(1) Inheritance tax. The inheritance tax imposed in the decedent's estate is not a tax on the decedent's property nor is it a state tax due from the estate. It is a succession tax on a person's right to take from the decedent. The tax is the obligation of the person who succeeds to property included in the gross estate. *Wieting v. Morrow,* 151 Iowa 590, 132 N.W. 193 (1911); *Waterman v. Burbank,* 196 Iowa 793, 195 N.W. 191 (1923). Therefore, inheritance tax is not a deduction in determining the net estate of the decedent in which the tax was imposed. However, if a taxpayer dies owing an inheritance tax imposed in another estate, the tax imposed in the prior estate, together with penalty and interest owing, if any, is a deduction as a state tax due in the deceased taxpayer's estate.

(2) Accrued taxes. In Iowa, property taxes accrue on the date that they are levied even though they are not due and payable until the following July 1. *In re Estate of Luke,* 184 N.W.2d 42 (Iowa 1971); *Merv E. Hilpipre Auction Co. v. Solon State Board,* 343 N.W.2d 452 (Iowa 1984).

Death terminates the decedent's taxable year for income tax purposes. Federal regulation Section 1.443-1(a)(2), 701—paragraph 89.4(9)*"b."* As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death.

In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income taxes, both for prior years and the year of death, are deductible in computing the taxable estate if unpaid at death.

f. Federal taxes. Deductible under this category are the federal estate taxes and federal taxes owing by the decedent including any penalty and interest accrued to the date of death. Prior to 1983, the federal estate tax was prorated based on the portion of federal estate tax attributable to Iowa property and that attributable to property located outside the state of Iowa. However, currently the deductibility of federal estate tax is treated like other liabilities of the estate. For estates with property located in Iowa and outside the state of Iowa, see the proration computation provided in 86.6(2). The deduction is limited to the net federal tax owing after all allowable credits, such as the federal credit for state death taxes paid, have been subtracted. Any penalty and interest imposed or accruing on federal taxes after the decedent's death is not deductible.

g. Funeral expenses. The deduction is limited to the expense of the decedent's funeral. If the decedent at the time of death was liable for the funeral expense of another, such expense is categorized as a debt of the decedent and is deductible subject to the same conditions as other debts of the decedent. *In re Estate of Porter,* 212 Iowa 29, 236 N.W. 108 (1931). A devise in the decedent's will, or a direction in a trust instrument, to pay the funeral expense of a beneficiary upon death is an additional inheritance in favor of the beneficiary and not a funeral expense deductible in the estate of the testator or grantor. Funeral expense is the liability of the estate of the person who has died. *In re Estate of Kneebs,* 246 Iowa 1053, 70 N.W.2d 539 (1955).

What constitutes a reasonable expense for the decedent's funeral depends upon the facts and circumstances in each particular estate. Factors to be considered include, but are not limited to: the decedent's station in life and the size of the estate, *Foley v. Brocksmit,* 119 Iowa 457, 93 N.W. 344 (1903); and the decedent's known wishes (tomb rather than a grave), *Morrow v. Durant,* 140 Iowa 437, 118 N.W. 781 (1908). Funeral expense includes the cost of a tombstone or monument. *In re Estate of Harris,* 237 Iowa 613, 23 N.W.2d 445 (1946). A reasonable fee or honorarium paid to the officiating clergy is a deductible funeral expense. *In re Estate of Kneebs,* 246 Iowa 1053, 1058, 70 N.W.2d 539 (1955). It is not a prerequisite for deductibility that a claim for funeral expenses be filed and allowed in the probate proceedings. It is sufficient that the expense be paid whether or not the claim is legally enforceable against the decedent's estate. The deduction allowable is limited to the net expense of the decedent's funeral, after deducting any expense prepaid by the decedent, burial insurance or death benefit, such as the death benefit allowed by the veterans administration or the social security administration.

h. Allowance for surviving spouse and dependents. An allowance for the support of the surviving spouse and dependents to be deductible in determining the net estate for taxation must meet two conditions: First it must be allowed and ordered by the court and second it must be paid from the assets of the estate that are subject to the jurisdiction of the probate court. The allowance is not an additional exemption for the spouse or children. It is part of the costs of administration of the decedent's estate. Iowa Code section 633.374; *In re Estate of DeVries,* 203 N.W.2d 308, 311 (Iowa 1972). Upon request of the department, the taxpayer shall submit a copy of the order of the court providing for the allowance and copies of canceled checks or other documents establishing payment of the allowance.

For the purpose of determining the shares of heirs or beneficiaries for inheritance tax, the allowance is a charge against the corpus of the shares of the estate even though it is paid from the income of the shares. The allowance is included with the other debts and charges for the purpose of abatement of shares to pay the debts and charges of the estate.

i. Court costs. The deduction under this category is limited to Iowa court costs only. *In re Estate of Evans,* 246 Iowa 893, 68 N.W.2d 289 (1955). The term "court costs" is not synonymous with "costs of administration" as defined in Iowa Code section 633.3(8) or "administration expenses" under Section 2053(a) of the Internal Revenue Code. See federal regulation Section 20.2053-3(d). "Court costs" is a narrower term. Court costs are part of costs of administration in Iowa and are an expense of administration under the Internal Revenue Code, but not all costs or expenses of administration are court costs. For example, interest payable on an extension of time to pay the federal estate tax is a cost of administration in the estate in which the federal estate tax is imposed, but it is not part of court costs, and therefore not deductible for inheritance tax purposes.

In general, court costs include only those statutory fees and expenses relating directly to the probate proceeding, carried on the clerk's docket, and paid routinely in the process of closing every estate. *In re Estate of Waddington,* 201 N.W.2d 77, 79 (Iowa 1972). The term "court costs" since August 15, 1975, also includes the expenses of selling property. See Iowa Code sections 450.12 and 633.3(8) and Internal Revenue Code Section 2053 for further details.

j. Additional liabilities that are deductible. Subject to subrules 86.6(4) and 86.6(5), the only liabilities deductible from the gross value of the estate include debts owing by the decedent at the time of death, local and state taxes accrued before the decedent's death, federal estate tax and federal taxes owing by the decedent, a sum for reasonable funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to Section 2053 of the Internal Revenue Code.

(1) Criteria for deductible administration expenses under Section 2053 of the Internal Revenue Code. Administration expenses must meet certain requirements to be allowable deductions under Section 2053 of the Internal Revenue Code. To be allowable deductions, expenses must meet the following conditions:

1. The expenses must be payable out of property subject to claims;
2. The expenses are allowable (not based on the deductible amount) by the law governing the administration of the decedent's estate;

3. The expenses are actually and necessarily incurred in the administration of the estate. Administration expenses are limited to those expenses incurred in the settlement of the estate and the transfer of the estate property to beneficiaries and trustees, including an executor that is a trustee. Expenses that are not essential to the settlement of the estate, but are incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions; and

4. The allowable amount of expenses for deduction is limited to the value of property included in the decedent's gross estate and subject to claims, plus amounts paid out of the property not subject to claims against the decedent's estate, on or before the last day of the ninth month after death or within any granted extension(s) of time for filing the return. "Property subject to claims" is defined as the property includable in the gross estate which bears the burden or would bear the burden under law for payment of the deduction in the final adjustment and settlement of the decedent's estate, less an initial deduction allowable under Section 2054 of the Internal Revenue Code, for any losses for casualty or theft attributable to such property and incurred during the settlement of the estate.

(2) Allowable administration expenses. Subject to the limitations in paragraph *"a"* of this subrule, allowable administration expenses under Section 2053 of the Internal Revenue Code include costs and fees incurred in the collection of assets, payment of debts, distribution of property to entitled persons, executor's commission, attorney's fees, and miscellaneous administration expenses. Miscellaneous administration expenses include costs or fees for surrogates, accountants, appraisers, clerk hire, storing or maintaining property of the estate, and selling the property of the estate. Expenses for preserving and caring for the property do not include expenditures for additions or improvements or expenses for a longer period than the executor is reasonably required to retain the property. Expenses for selling property of the estate are limited to those for sales that are necessary in order to pay the decedent's debts, expenses of administration, and taxes, preserve the estate, or effect distribution. Expenses for selling the property include brokerage fees or auctioneer fees and may include the expenses for a sale of an item in a bona fide sale that is below the fair market value of the item. The allowable selling expense for an item sold below its fair market value to a dealer in such items is the lesser of the amount by which the fair market value of the item on the valuation date exceeded the proceeds from the sale or the amount by which the fair market value of the item on the date of the sale exceeded the proceeds of the sale.

86.6(2) *Prorated liabilities.*

a. The amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator. For the purpose of apportionment of the liabilities, the term "gross estate" means the gross estate for federal estate tax purposes. Provided, if the federal gross estate formula produces a grossly distorted result then, subject to the approval of the department, an alternate apportionment formula may be used either by the department or the taxpayer which fairly represents the particular facts of the estate.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

b. Liabilities that must be prorated. If the gross estate includes property with a situs outside Iowa, the liabilities that must be prorated are: (1) court costs, both foreign and domestic; (2) unsecured debts of the decedent regardless of where the debt was contracted; (3) federal and state income tax, including the tax on the decedent's final return, federal estate, gift and excise tax, and state and local sales, use and excise tax; (4) expenses of the decedent's funeral and burial, regardless of the place of interment; (5) allowances for the surviving spouse and children allowed by the probate court in Iowa or another jurisdiction; (6) the expense of the appraisal of property for the purpose of assessing a state death or succession tax; (7) the fees and necessary expenses of the personal representative and the personal representative's attorney allowed by order of court, both foreign and domestic; (8) the costs of the sale of real and personal property, both foreign and domestic, if not otherwise included in court costs; and (9) the amount paid by the personal representative for a bond, both foreign and domestic.

c. Liabilities that are not prorated. Liabilities secured by a lien on property included in the gross estate are to be allocated in full to the state of situs. These are liabilities secured by: (1) mortgages, mechanic's liens and judgments; (2) real estate taxes and special assessments on real property; (3) liens for an obligation to the United States of America, a state or any of its political subdivisions; and (4) any other lien on property imposed by law for the security of an obligation.

d. Prorated cash bequests. If the distribution of an estate includes pecuniary legacies with an estate with property located in and outside Iowa, or the estate includes specific bequests from a fund containing property located in and outside Iowa, then the Iowa inheritance tax liability for those legacies or bequests will be based on the pro rata portion of the property of the estate located in Iowa. For further details see Estate of Dennis M. Billingsley, Iowa District Court of Emmet County, Case No. 13394 (July 15, 1982).

86.6(3) *Liabilities deductible from property not subject to the payment of debts and charges.*

a. Estates with all of the property located in Iowa. Subject to the special provisions in 86.6(3)*"c,"* the liabilities deductible under Iowa Code section 450.12 may be deductible in whole or in part from property includable in the gross estate for inheritance tax purposes which under Iowa debtor-creditor law is not liable for the payment of the debts and charges of the estate under the following terms and conditions:

(1) The application of liabilities.

1. The liabilities must be paid. If a liability is not paid in full, the amount deductible is limited to the amount paid. If the amount claimed is not certified as paid by the time the inheritance tax return is filed, the statute requires that the director must be satisfied that the liabilities, or portions thereof deductible, will be paid.

2. The liability can be deducted only from property that is included in the gross estate for Iowa inheritance tax purposes. This rule would exclude, among others, that portion of joint tenancy property which is excluded from the gross estate, wrongful death proceeds, the first $10,000 in gifts to each donee made within three years of death and property with a situs outside Iowa.

3. The property included in the gross estate that is under Iowa debtor-creditor law subject to the payment of the deductible liabilities must first be applied to the liabilities, and only after this property has been exhausted can the excess liabilities be applied to the remaining property included in the gross estate.

4. Any excess liabilities remaining unpaid after exhausting the property subject to the payment of the liabilities must be allocated to the remaining property included in the gross estate for inheritance tax purposes on the basis of the ratio the value of each person's share of the remaining property in the gross estate bears to the total value of the remaining property included in the gross estate.

(2) General rules.

1. The source of the funds used for payment of the excess liabilities is not relevant to the allowance of the deduction. It is sufficient for the allowance of the deduction that the liability be paid.

2. The applicability of the statute is limited to the deduction for inheritance tax purposes of those liabilities listed in Iowa Code subsection 450.12(1). It neither enlarges nor diminishes the rights of creditors under existing Iowa law.

3. The statute is not limited to estates which are probated and subject to the jurisdiction of the probate court. The statute also applies to estates which file an inheritance tax return for a tax clearance (CIT proceedings) or those otherwise not probated such as, but not limited to, inter vivos trusts whose assets are subject to inheritance tax, estates consisting of joint tenancy with right of survivorship property, estates whose assets consist of transferred property with a reserved life use or interest, estates whose assets consist of gifts made within three years of the decedent's death and estates consisting entirely of qualified terminal interest property (QTIP) in the estate of the surviving spouse.

The statute will apply to any estate when any share of the estate will remain taxable after being reduced by the liabilities in Iowa Code subsection 450.12(1) which are lawfully charged to the share and the deduction of any statutory exemption. Excess liabilities must be prorated over all of the property not subject to debts and charges regardless of whether or not the property is part of a taxable share.

b. Estates with part of the property located outside Iowa. Iowa Code section 450.12(2) and subrule 86.6(2) require that the liabilities deductible be prorated in those estates where a portion of the property included in the gross estate has a situs outside Iowa. Subject to the special provision in 86.6(3)*"c,"* in these estates the portion of the liabilities deductible which is allocated to the Iowa property under the proration formula must first be applied to the Iowa situs property which is subject to the payment of the liabilities. Any portion of the liabilities allocated to Iowa remaining unpaid may then be applied to the other Iowa property included in the gross estate subject to the same limitations provided for in 86.6(3)*"a"*(1)"1" to "4."

c. Special rule for liabilities secured by property included in the gross estate. If a liability which is deductible under Iowa Code section 450.12(1)*"a"* is secured by property included in the gross estate, then the liability is deductible from the specific property that secures the liability, regardless of whether or not the property is subject to the payment of the ordinary debts and charges of the estate. If the liability exceeds the value of the property that secures it and is the obligation of the decedent, then any excess liability is deductible under the same rules that govern unsecured obligations.

86.6(4) *Resident and nonresident deductions distinction abolished.* Effective for estates of decedents dying on or after July 1, 1983, the domicile of the decedent is not relevant in determining whether a liability is deductible in computing the net estate. In the case of *In re Estate of Evans*, 246 Iowa 893, 68 N.W.2d 289 (1955) applies only to estates of decedents dying prior to July 1, 1983. However, the amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

This rule is intended to implement Iowa Code sections 450.7(1), 450.12, 450.22, 450.24, 450.38, 450.89, 633.278, and 633.374.

701—86.7(450) Life estate, remainder and annuity tables—in general. For estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986, the value of a life estate in property, an annuity for life and the value of a remainder interest in the property, shall be computed by the use of the commissioners' standard ordinary mortality table at the rate of 4 percent per annum.

86.7(1) *Tables for life estates and remainders.* This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. The two factors on the same line on the next page added together equal 100 percent. Multiply the corpus of the estate by the first factor to obtain the value of the life estate. Use the second factor to obtain the value of the remainder interest in the corpus if the tax is to be paid within 12 months after the death of the decedent who created the life estate remainder. If the tax on the remainder is to be paid prior to the death of the life tenant, but after one year from the decedent's death, use the remainder factor opposite the age of the life tenant at the time the tax is to be paid.

Age of Life Tenant	Life Estate	Remainder
0	.90164	.09836
1	.89936	.10064
2	.89900	.10100
3	.89676	.10324
4	.89396	.10604
5	.89104	.10896
6	.88792	.11208
7	.88464	.11536
8	.88120	.11880
9	.87756	.12244
10	.87380	.12620
11	.86984	.13016
12	.86576	.13424
13	.86152	.13848
14	.85716	.14284
15	.85268	.14732
16	.84808	.15192
17	.84336	.15664
18	.83852	.16148
19	.83356	.16644
20	.82840	.17160
21	.82308	.17692
22	.81756	.18244
23	.81184	.18816
24	.80592	.19408
25	.79976	.20024

Age of Life Tenant	Life Estate	Remainder
26	.79336	.20664
27	.78672	.21328
28	.77984	.22016
29	.77268	.22732
30	.76524	.23476
31	.75756	.24244
32	.74960	.25040
33	.74132	.25868
34	.73280	.26720
35	.72392	.27608
36	.71476	.28524
37	.70532	.29468
38	.69560	.30440
39	.68560	.31440
40	.67536	.32464
41	.66488	.33512
42	.65412	.34588
43	.64316	.35684
44	.63192	.36808
45	.62044	.37956
46	.60872	.39128
47	.59680	.40320
48	.58464	.41536
49	.57228	.42772
50	.55972	.44028
51	.54700	.45300
52	.53412	.46588
53	.52104	.47896
54	.50788	.49212
55	.49452	.50548
56	.48108	.51892
57	.46756	.53244
58	.45392	.54608
59	.44024	.55976
60	.42652	.57348

Age of Life Tenant	Life Estate	Remainder
61	.41280	.58720
62	.39908	.60092
63	.38538	.61462
64	.37174	.62826
65	.35817	.64183
66	.34471	.65529
67	.33140	.66860
68	.31829	.68171
69	.30542	.69458
70	.29282	.70718
71	.28048	.71952
72	.26840	.73160
73	.25653	.74347
74	.24481	.75519
75	.23322	.76678
76	.22175	.77825
77	.21045	.78955
78	.19938	.80062
79	.18863	.81137
80	.17826	.82174
81	.16830	.83170
82	.15876	.84124
83	.14960	.85040
84	.14078	.85922
85	.13224	.86776
86	.12395	.87605
87	.11584	.88416
88	.10785	.89215
89	.09990	.90010
90	.09192	.90808
91	.08386	.91614
92	.07563	.92437
93	.06715	.93285
94	.05826	.94174
95	.04866	.95134

Age of Life Tenant	Life Estate	Remainder
96	.03801	.96199
97	.02595	.97405
98	.01275	.98725
99	.00000	1.00000

86.7(2) *Table for an annuity for life.* This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. To find the present value of an annuity or a given amount (specified sum) for life, annualize the annuity payments and multiply the result by the annuity factor in Column 3 opposite the age at the nearest birthday of the person receiving the annuity.

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
0	68.30	22.541
1	67.78	22.484
2	66.90	22.475
3	66.00	22.419
4	65.10	22.349
5	64.19	22.276
6	63.27	22.198
7	62.35	22.116
8	61.43	22.030
9	60.51	21.939
10	59.58	21.845
11	58.65	21.746
12	57.72	21.644
13	56.80	21.538
14	55.87	21.429
15	54.95	21.317
16	54.03	21.202
17	53.11	21.084
18	52.19	20.963
19	51.28	20.839
20	50.37	20.710
21	49.46	20.577
22	48.55	20.439
23	47.64	20.296
24	46.73	20.148
25	45.82	19.994

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
26	44.90	19.834
27	43.99	19.668
28	43.08	19.496
29	42.16	19.317
30	41.25	19.131
31	40.34	18.939
32	39.43	18.740
33	38.51	18.533
34	37.60	18.320
35	36.69	18.098
36	35.78	17.869
37	34.88	17.633
38	33.97	17.390
39	33.07	17.140
40	32.18	16.884
41	31.29	16.622
42	30.41	16.353
43	29.54	16.079
44	28.67	15.798
45	27.81	15.511
46	26.95	15.218
47	26.11	14.920
48	25.27	14.616
49	24.45	14.307
50	23.63	13.993
51	22.82	13.675
52	22.03	13.353
53	21.25	13.026
54	20.47	12.697
55	19.71	12.363
56	18.97	12.027
57	18.23	11.689
58	17.51	11.348
59	16.81	11.006
60	16.12	10.663

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
61	15.44	10.320
62	14.78	9.9770
63	14.14	9.6346
64	13.51	9.2935
65	12.90	8.9543
66	12.31	8.6178
67	11.73	8.2851
68	11.17	7.9572
69	10.64	7.6355
70	10.12	7.3204
71	9.63	7.0121
72	9.15	6.7101
73	8.69	6.4133
74	8.24	6.1203
75	7.81	5.8304
76	7.39	5.5437
77	6.98	5.2612
78	6.59	4.9845
79	6.21	4.7158
80	5.85	4.4566
81	5.51	4.2076
82	5.19	3.9689
83	4.89	3.7399
84	4.60	3.5194
85	4.32	3.3061
86	4.06	3.0988
87	3.80	2.8961
88	3.55	2.6963
89	3.31	2.4975
90	3.06	2.2981

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
91	2.82	2.0965
92	2.58	1.8907
93	2.33	1.6787
94	2.07	1.4564
95	1.80	1.2166
96	1.51	.9502
97	1.18	.6487
98	.83	.3189
99	.50	.0000

86.7(3) *Annuity tables when the term is certain.* This table is to be used to compute the presen values of two types of annuities: (1) the use of property for a specific number of years and (2) an annu ity of a specific amount of money for a number of years certain. To compute the present value of th first annuity, multiply the value of property by 4 percent. Then multiply the result by the annuity facto opposite the number of years of the annuity. Multiply the value of the property by the remainder facto for the present value of the remainder. For the second annuity annualize the payments and multiply th result by the annuity factor opposite the number of years of the annuity. Subtract the present value o the annuity from the value of the property from which the annuity is funded for the remainder value

Number of Years	Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years ANNUITY	Present Value of One Dollar, Payable at the End of a Certain Number of Years REMAINDER
1	$0.96154	$0.961538
2	1.88609	0.924556
3	2.77509	0.888996
4	3.62990	0.854804
5	4.45182	0.821927
6	5.24214	0.790315
7	6.00205	0.759918
8	6.73274	0.730690
9	7.43533	0.702587
10	8.11090	0.675564
11	8.76048	0.649581
12	9.38507	0.624597
13	9.98565	0.600574
14	10.56312	0.577475
15	11.11839	0.555265

Number of Years	Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years ANNUITY	Present Value of One Dollar, Payable at the End of a Certain Number of Years REMAINDER
16	$11.65230	$0.533908
17	12.16567	0.513373
18	12.65930	0.493628
19	13.13394	0.474642
20	13.59033	0.456387
21	14.02916	0.438834
22	14.45112	0.421955
23	14.85684	0.405726
24	15.24696	0.390121
25	15.62208	0.375117
26	15.98277	0.360689
27	16.32959	0.346817
28	16.66306	0.333477
29	16.98371	0.320651
30	17.29203	0.308319

86.7(4) *Tables for life estates and remainders for estates of decedents dying on or after January 1, 1986.* For estates of decedents dying on or after January 1, 1986, the following tables are to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The table is based on the commissioners' standard ordinary mortality tables of life expectancy, with no distinction being made between the life expectancy of males and females of the same age. As a result, the sex of the recipient is not relevant in computing the value of the property interest received. *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris,* 463 U.S. 1073, 103 S.Ct. 3492, 77 L.Ed.2d 1236 (1983). Valuation is based on the age at the nearest birthday. The following tables are to be applied in the same manner as specified in subrule 86.7(1).

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING 50% MALE—50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER	AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER
0	.91904	.08096	50	.61730	.38270
1	.91919	.08081	51	.60576	.39424
2	.91689	.08311	52	.59399	.40601
3	.91443	.08557	53	.58199	.41801
4	.91186	.08814	54	.56979	.43021
5	.90914	.09086	55	.55740	.44260
6	.90629	.09371	56	.54483	.45517
7	.90329	.09671	57	.53206	.46794
8	.90014	.09986	58	.51906	.48094
9	.89683	.10317	59	.50582	.49418
10	.89338	.10662	60	.49234	.50766
11	.88977	.11023	61	.47862	.52138
12	.88603	.11397	62	.46471	.53529
13	.88219	.11781	63	.45064	.54936
14	.87828	.12172	64	.43647	.56353
15	.87429	.12571	65	.42226	.57774
16	.87027	.12973	66	.40801	.59199
17	.86617	.13383	67	.39372	.60628
18	.86200	.13800	68	.37936	.62064
19	.85773	.14227	69	.36489	.63511
20	.85333	.14667	70	.35031	.64969
21	.84878	.15122	71	.33565	.66435
22	.84404	.15596	72	.32098	.67902
23	.83912	.16088	73	.30639	.69361
24	.83399	.16601	74	.29199	.70801
25	.82865	.17135	75	.27787	.72213
26	.82306	.17694	76	.26405	.73595
27	.81724	.18276	77	.25053	.74947
28	.81117	.18883	78	.23727	.76273
29	.80487	.19513	79	.22422	.77578
30	.79833	.20167	80	.21134	.78866
31	.79155	.20845	81	.19866	.80134
32	.78451	.21549	82	.18625	.81375
33	.77723	.22277	83	.17419	.82581
34	.76970	.23030	84	.16260	.83740
35	.76192	.23808	85	.15151	.84849
36	.75389	.24611	86	.14093	.85907

AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER	AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER
37	.74562	.25438	87	.13081	.86919
38	.73710	.26290	88	.12108	.87892
39	.72836	.27164	89	.11163	.88837
40	.71940	.28060	90	.10235	.89765
41	.71022	.28978	91	.09309	.90691
42	.70083	.29917	92	.08368	.91632
43	.69122	.30878	93	.07390	.92610
44	.68138	.31862	94	.06350	.93650
45	.67131	.32869	95	.05221	.94779
46	.66101	.33899	96	.03994	.96006
47	.65046	.34954	97	.02678	.97322
48	.63966	.36034	98	.01321	.98679
49	.62860	.37140	99	.00000	1.00000

86.7(5) *Table for an annuity for life—for estates of decedents dying on or after January 1, 1986.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 1986. The table is to be used in the same manner as the table listed in subrule 86.7(2).

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING 50% MALE—50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00	AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
0	73.30	22.976	50	27.45	15.433
1	72.56	22.980	51	26.61	15.144
2	71.63	22.922	52	25.77	14.850
3	70.70	22.861	53	24.94	14.550
4	69.76	22.796	54	24.13	14.245
5	68.82	22.728	55	23.32	13.935
6	67.87	22.657	56	22.52	13.621
7	66.93	22.582	57	21.73	13.301
8	65.98	22.504	58	20.95	12.976
9	65.03	22.421	59	20.18	12.645
10	64.07	22.334	60	19.41	12.308
11	63.12	22.244	61	18.66	11.966
12	62.16	22.151	62	17.91	11.618
13	61.21	22.055	63	17.18	11.266
14	60.27	21.957	64	16.45	10.912
15	59.32	21.857	65	15.75	10.557

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00	AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
16	58.39	21.757	66	15.05	10.200
17	57.46	21.654	67	14.38	9.843
18	56.53	21.550	68	13.71	9.484
19	55.61	21.443	69	13.06	9.122
20	54.69	21.333	70	12.42	8.758
21	53.77	21.219	71	11.79	8.391
22	52.85	21.101	72	11.17	8.024
23	51.93	20.978	73	10.57	7.660
24	51.01	20.850	74	10.00	7.300
25	50.08	20.716	75	9.44	6.947
26	49.15	20.576	76	8.91	6.601
27	48.23	20.431	77	8.39	6.263
28	47.30	20.279	78	7.90	5.932
29	46.36	20.122	79	7.42	5.605
30	45.43	19.958	80	6.96	5.283
31	44.50	19.789	81	6.52	4.967
32	43.57	19.613	82	6.09	4.656
33	42.64	19.431	83	5.68	4.355
34	41.72	19.242	84	5.29	4.065
35	40.79	19.048	85	4.93	3.788
36	39.87	18.847	86	4.58	3.523
37	38.94	18.640	87	4.26	3.270
38	38.03	18.428	88	3.95	3.027
39	37.11	18.209	89	3.66	2.791
40	36.21	17.985	90	3.37	2.559
41	35.30	17.756	91	3.09	2.327
42	34.41	17.521	92	2.81	2.092
43	33.52	17.280	93	2.52	1.848
44	32.63	17.035	94	2.22	1.588
45	31.75	16.783	95	1.90	1.305
46	30.88	16.525	96	1.56	.999
47	30.01	16.261	97	1.20	.670
48	29.15	15.991	98	.84	.330
49	28.30	15.715	99	.50	.000

This rule is intended to implement Iowa Code sections 450.51 and 450.52.

701—86.8(450B) Special use valuation.

86.8(1) *In general.* Effective for estates of decedents dying on or after July 1, 1982, real estate which has been valued at its special use value under 26 U.S.C. Section 2032A for computing the federal estate tax is eligible to be valued for inheritance tax purposes at its special use value, subject to the limitations imposed by statute and these rules. Special use valuation under the provisions of Iowa Code chapter 450B is in lieu of valuing the real estate at its fair market value in the ordinary course of trade under Iowa Code section 450.37. The valuation of real estate at its special use value must be made on the entire parcel of the real estate in fee simple. The value of undivided interests, life or term estates and remainders in real estate specially valued is determined by (1) applying the life estate, remainder or term tables to the special use value—see rule 86.7(450), or (2) by dividing the special use value by the decedent's fractional interest in case of an undivided interest. The eligibility of real estate for special use value is not limited to probate real estate. Real estate transfers with a retained life use or interest, real estate held in joint tenancy, real estate transferred to take effect in possession or enjoyment at death, real estate held by a partnership or corporation and real estate held in trust are noninclusive examples of real estate not subject to probate that may be eligible for special use valuation.

86.8(2) *Definitions and technical terms.* Reference in this subrule to sections of the Internal Revenue Code mean sections of the Internal Revenue Code of 1954 as defined (and periodically updated) in Iowa Code section 422.4. Technical terms such as, but not limited to, "qualified real property"; "qualified use"; "cessation of qualified use"; "disposition"; "qualified heir"; "member of the family"; "farm"; "farming purpose"; "material participation"; and "active management" are examples of technical terms which have the same meaning for Iowa special use valuation under Iowa Code chapter 450B as the terms are defined and interpreted in 26 U.S.C. Section 203A. It is the purpose of Iowa special use valuation to conform as nearly as possible to the special use valuation provisions of 26 U.S.C. Section 2032A, as can be done within the framework of an inheritance tax instead of an estate tax.

86.8(3) *Eligibility requirements.* The eligibility requirements for valuing real estate at its special use value for computing inheritance tax are the same as the eligibility requirements of 26 U.S.C. Section 2032A for the purpose of computing the federal estate tax imposed by 26 U.S.C. Section 2001. Real estate cannot be specially valued for inheritance tax purposes unless it is also eligible and is valued at its special use value for federal estate tax purposes. However, even though real estate is specially valued for federal estate tax purposes, the estate has the right to elect or not to elect to value real estate at its special use value for computing the inheritance tax. Real estate otherwise qualified will be eligible for special use valuation for Iowa inheritance tax purposes if a valid special use valuation election has been made on the federal estate tax return. What constitutes a valid election for federal estate tax purposes is determined under applicable federal law and practice and is not determined by the department.

86.8(4) *Real estate—not eligible.*

a. Real estate otherwise qualified is not eligible to be specially valued for inheritance tax purposes if it is not includable in the federal gross estate. For example, a gift of real estate may not be part of the federal gross estate. However, the real estate may be a taxable gift, but the real estate would not qualify for special valuation.

b. Real estate, otherwise qualified, will not be eligible for the special use valuation provisions of Iowa Code chapter 450B, if the owner of a remainder, or other future property interest in the real estate, defers the payment of the inheritance tax until the termination of the prior estate. Special use valuation is made at the date of the decedent's death, while Iowa Code section 450.44 requires the future interest to be revalued at the time of the termination of the prior estate when the tax is deferred. See *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950); department subrules 86.2(8) and 86.2(9). In addition, when the tax has been deferred the life estate-remainder factor to be used in computing the tax on the future interest is the factor existing at the time of payment or the termination of the prior estate, while the additional inheritance tax under special use value is based on the life estate-remainder factor at the time of death. See *In re Estate of Millard,* 251 Iowa 1982, 105 N.W.2d 95 (1960). A second valuation after death is not within the scope of either 26 U.S.C. Section 2032A or Iowa Code chapter 450B. Since all persons with an interest in the real estate must sign the agreement specified in 86.8(5)*"e,"* the deferral of the inheritance tax on a future property interest disqualifies all of the property interests in the real estate because the future property interest is not eligible to be specially valued in case of a deferral of the tax.

86.8(5) *Election and agreement.*

a. In general. The election to specially value real estate under the provisions of Iowa Code chapter 450B must be made by the fiduciary for the estate or trust on the inheritance tax return or on a statement attached to the return. The election may be made on a delinquent return. However, once made, the election is irrevocable. The election is an affirmative act. Therefore, failure to make an election on the inheritance tax return shall be construed as an election not to specially value real estate under Iowa Code chapter 450B.

b. Form—election. The election to value real estate at its special use value shall comply with the requirements of 26 U.S.C. Section 2032A(d) and federal regulation Section 20.2032A-8. An executed copy of the election filed as part of the federal estate tax return and accepted by the Internal Revenue Service will fulfill the requirements of this subrule.

c. Content of the election. The election must be accompanied by the agreement specified in 86.8(5)*"e"* and shall contain the information required by federal regulation Section 20.2032A-8. Submission of an executed copy of the information required by federal regulation Section 20.2032A-8(3) in support of the election to specially value property for federal estate tax purposes will fulfill the requirements of this subrule.

d. Protective elections. A protective election may be made to specially value qualified real property for inheritance tax purposes. The availability of special use valuation is contingent upon values, as finally determined for federal estate tax purposes, meeting the requirements of 26 U.S.C. Section 2032A. The protective election must be made on the inheritance tax return and shall contain substantially the same information required by federal regulation Section 20.2032A-8(b). Submission of an executed copy of the protective election filed and accepted for federal estate tax purposes will fulfill the requirements of this subrule.

If it is found that the real estate qualifies for special use valuation as finally determined for federal estate tax purposes, an additional notice of election must be filed within 60 days after the date of the determination. The notice must set forth the information required in 86.8(5)*"c"* and is to be attached, together with the agreement provided for in 86.8(5)*"e,"* to an amended final inheritance tax return. Failure to file the additional notice within the time prescribed by this subrule shall disqualify the real estate for special use valuation.

e. Agreement. An agreement must be executed by all parties who have any interest in the property to be valued at its special use value as of the date of the decedent's death. In the agreement, the qualified heirs must consent to personal liability for the additional inheritance tax imposed by Iowa Code section 450B.3 in the event of early disposition or cessation of the qualified use. All other parties with an interest in the property specially valued must consent to liability for the additional inheritance tax to the extent of the additional tax imposed on their share of the property no longer eligible to be specially valued. The liability of the qualified heir or the successor qualified heir for the additional inheritance tax is not dependent on the heir's share of the property specially valued, but rather it is for the amount of the additional inheritance tax imposed on all of the shares of the parties with an interest in the property no longer eligible for special use value.

f. Failure to file the election and agreement. Failure to file with the inheritance tax return either the election provided for in 86.8(5)*"b"* or the agreement specified in 86.8(5)*"e"* shall disqualify the property for the special use value provisions of Iowa Code chapter 450B. In the event of disqualification, the property shall be valued for inheritance tax purposes at its market value in the ordinary course of trade under the provisions of Iowa Code section 450.37.

86.8(6) *Value to use.*

a. Special use value. The special use value established and accepted by the Internal Revenue Service for the qualified real property shall also be the value of the qualified real property for the purpose of computing the inheritance tax on the shares in the specially valued property.

b. Fair market value when a recapture tax is imposed. The additional inheritance tax imposed by Iowa Code section 450B.3, due to the early disposition or cessation of the qualified use, is based on the fair market value of the qualified real property at the time of the decedent's death as reported and established in the election to value the real estate at its special use value, subject to the limitations in 86.8(6)*"c."* Iowa Code chapter 450B makes reference only to the use of federal values. Therefore, a fair market value appraisal made by the Iowa inheritance tax appraisers cannot be used in computing the amount of the additional inheritance tax imposed unless it is accepted by the Internal Revenue Service. Iowa Code section 450.37 only applies to property which is not specially valued under Iowa Code chapter 450B.

c. Fair market value limitations. The following fair market value limitations shall govern the computation of the additional inheritance tax imposed, if any. If at the time of its disposition or cessation of the qualified use, the fair market value of the property which is the subject of the additional tax is:

1. Greater than its fair market value at the time of the decedent's death, the additional tax is computed on the fair market value at death.

2. Less than its fair market value at the time of death but greater than the special use value, the additional tax is computed on the lesser fair market value.

3. Equal to or less than the special use value of the property, no additional inheritance tax is imposed. In this event, no refund is allowed. Iowa Code chapter 450B makes reference only to the imposition of additional inheritance tax, not to an additional benefit if the agreement is not fulfilled.

As a result, failure to fulfill the agreement provided for in 86.8(5)*"e"* may, in certain circumstances, result in a lower tax liability than would have been the case had the special use valuation election not been made.

The rule for computing the additional federal estate tax under 26 U.S.C. Section 2032A(c) is different. See lines 8 to 11, Additional Federal Estate Tax Form 706-A and IRS letter ruling 8215036 (1982).

86.8(7) *Imposition of additional inheritance tax.*

a. In general. If within ten years after the decedent's death there is a disposition of the property or a cessation of the qualified use within the meaning of 26 U.S.C. Section 2032A(c), an additional inheritance tax is imposed on the shares in the qualified real property specially valued, subject to the limitation in 86.8(6)*"c."* Failure to begin the special use within two years after the decedent's death disqualifies the property for the special use valuation provisions of Iowa Code chapter 450B. However, the ten-year period for imposing an additional inheritance tax is not extended by the period of time between the decedent's death and the beginning date of the special use. The rule for federal estate tax purposes is different. The ten-year period for federal estate tax purposes is extended by the period of time between the decedent's death and the time the special use begins. See 26 U.S.C. Section 2032A(c)(7)(A)(ii). In this respect, the Iowa law does not conform to the federal statute. See Iowa Code section 450B.3.

b. Additional tax on life or term estates and remainders. The additional tax on life or term estates and remainders in real estate which no longer qualifies for special use valuation is computed as if the special use valuation had not been elected. Therefore, if age or time is a determining factor in computing the additional tax, it is the age or time at the date of the decedent's death which governs the computation, not the age or time at the date of the disposition or cessation of the qualified use. Therefore, subrule 86.2(7) implementing Iowa Code section 450.44 does not apply. Iowa Code section 450B.3 makes no provision for deferral of the additional tax on a future property interest in real estate which is no longer eligible to be specially valued.

c. Interplay of the additional inheritance tax with the Iowa estate tax. In the event of an early disposition or cessation of the qualified use of the specially valued real estate, the federal estate tax is recomputed with a corresponding recomputation of the credit allowable under 26 U.S.C. Section 2011 for state death taxes paid. If the maximum allowable credit for state death taxes paid as recomputed is greater than the total inheritance tax obligation on all of the shares of the estate, including the shares which have not been revalued, the amount of the maximum credit for state death taxes paid is the additional tax. See Iowa Code section 451.2.

d. Computation of the tax—full disposition or full cessation. If there is an early disposition or a cessation of the qualified use of all of the real estate specially valued, the inheritance tax on the shares of all persons who succeed to the real estate from the decedent are recomputed based on the fair market value of the specially valued real estate. See 86.8(6)*"c"* on which market value to use. The total revalued share of each person who had an interest in the disqualified real property is the value of that person's share of the property not specially valued plus the revalued share of the special use property. The tax is then recomputed based on the applicable exemption, if any, allowable under Iowa Code section 450.9 and the rates of tax specified in Iowa Code section 450.10 in effect at the time of the decedent's death. A credit is allowed against the amount of the recomputed tax, without interest, for the tax paid which was based on the special use value.

EXAMPLES: Disposition of all of the qualified real property.

It is assumed in these examples that the real estate has qualified for special use valuation and that prior to the date of disposition, the real estate remained qualified.

EXAMPLE. Farmer A, a widower, died July 1, 1992, a resident of Iowa, and by will left all of his property to his three nephews in equal shares. Nephew B operates the farm. Nephew C lives in Des Moines, Iowa, and Nephew D lives in Phoenix, Arizona. At the time of death, Farmer A's estate consisted of:

Asset	Fair Market Value	Special Use Value
160-acre Iowa farm	$ 480,000 ($3,000 per acre)	$ 160,000 ($1,000 per acre)
Grain and livestock	90,000	90,000
Stocks, bonds and bank accounts	80,000	80,000
Gross Estate	$ 650,000	$ 330,000
Less: Deductions without federal estate tax	25,000	25,000
Net estate before federal estate tax	$ 625,000	$ 305,000

COMPUTATION OF THE INHERITANCE TAX UNDER SPECIAL USE VALUATION

Net estate before federal estate tax	$305,000
Less: Federal estate tax	4,120
Net Estate	$300,880

TAX ON SHARES

Beneficiary	Share		Tax
To each nephew	$101,666.67		$11,250.00
Total Tax Paid	$11,250 x 3	=	$33,750.00

On October 15, 1995, Nephew B, the qualified heir, retires from farming and all three nephews sell the farm to a nonrelated party for $3,200 per acre, or $512,000. Under 86.8(6)*"c,"* the $3,000 per acre valuation at death governs the computation of the additional inheritance tax.

COMPUTATION OF THE ADDITIONAL INHERITANCE TAX DUE TO THE EARLY DISPOSITION OF THE QUALIFIED USE PROPERTY

Net estate before federal estate tax	$625,000
Less: Revised federal estate tax ($9,250 was deducted for credit for state death taxes paid)	0
Net Estate	$625,000

Tax on Shares	Share	Tax
To each nephew $208,333.33	$27,250.00	
Less tax previously paid	11,250.00	
	16,000.00	
Additional tax due		
Interest at 10% from 4-03-93 to due date 4-15-96		$4,734.40
Total Due Each Nephew		$20,734.40

Total additional tax and interest for all three shares $20,734.40 × 3 = $62,203.20.

NOTE: In this example, the total additional tax for the three nephews before a credit for tax previously paid is $27,250.00 × 3 or $81,750.00. The credit for state death taxes paid on the revalued federal estate is $9,250.00. Therefore, the larger amount is the additional tax, before the credit for tax previously paid is deducted. The additional inheritance or Iowa estate tax bears interest at 10 percent beginning the last day of the ninth month after the decedent's death until the due date, which is six months after the disposition of the specially valued real estate. Interest accrues on delinquent tax at the same rate. Since interest only accrues on unpaid tax, the amount of the interest in this example would have been less if the tax had been paid prior to its due date, April 15, 1996.

e. Computation of the tax—partial disposition or cessation of the qualified use.

(1) First partial disposition or cessation of the qualified use. Compute the maximum amount of the additional tax that would be due from each person who has an interest in the portion of the real estate no longer eligible to be specially valued, as if there were an early disposition or cessation of the qualified use of all that person's specially valued real estate. The additional tax on a partial disposition or cessation of the qualified use is computed by multiplying the maximum amount of the additional tax by a fraction of which the fair market value of the portion no longer eligible is the numerator and the fair market value of all of that person's specially valued real estate is the denominator. The resulting amount is the tax due on the first partial disposition or cessation of the qualified use.

EXAMPLE 1. First partial additional tax. Assume the fair market value of three parcels of real estate owned by a single qualified heir (brother of the decedent) is $100,000 and the special use value of the three parcels is $75,000. The qualified heir is in the 10 percent tax bracket. FMV in this example means fair market value.

Parcel 1, fair market value	$25,000
Parcel 2, fair market value	50,000
Parcel 3, fair market value	25,000

Computation of Maximum Amount of Additional Tax

Tax based on fair market value ($100,000 x 10%)	$10,000
Tax based on special use value ($75,000 x 10%)	7,500
Maximum amount of additional tax	$ 2,500

Computation on the First Partial Additional Tax
Parcel 1, sale to an unrelated party

FMV of Parcel 1	$ 25,000	x	$2,500 (Maximum	=	$625 (First
FMV of all special use property	$100,000		add'l tax)		add'l tax)

(2) Second or any succeeding disposition or cessation of the qualified use. Compute the maximum amount of the additional tax as outlined in the first partial disposition or cessation of the qualified use. Increase the numerator of the fraction used to determine the first additional tax by the fair market value of the second partial disposition or cessation of the qualified use. The denominator remains the same. The computed tax is then credited with the tax paid on the first partial disposition or cessation of the qualified use. Succeeding partial dispositions or cessations of the qualified use are handled in the same manner by increasing the numerator of the fraction and a corresponding increase in the credit for the prior additional tax paid.

Computation of the second and succeeding partial dispositions or cessations of the qualified use can be illustrated by the following examples:

EXAMPLE 2. Second partial additional tax. Same facts as in Example 1. In this example, Parcel 2 is sold to an unrelated party.

Computation of the Second Partial Additional Tax

FMV of Parcels 1 & 2	$ 75,000	x	$2,500 (Maximum	=	$1,875
FMV of all special use property	$100,000		add'l tax)		

Less tax paid on Parcel 1	625
Second Add'l Tax	$1,250

EXAMPLE 3. Third partial additional tax. Same facts as in Example 1. In this example, Parcel 3 is sold to an unrelated party.

Computation of the Third Partial Additional Tax

FMV of Parcels 1, 2, & 3	$100,000	x	$2,500 (Maximum	=	$2,500
FMV of all specially valued real estate	$100,000		add'l tax)		

Less tax paid on Parcels 1 & 2	1,875
Third Additional Tax	$ 625

f. No additional tax on shares not revalued. The shares of persons who received no interest in the real estate which is no longer eligible to be specially valued are not subject to an additional tax. Therefore, on the amended final inheritance tax return only the shares of the persons receiving interest in the real estate need to be revalued when computing the additional tax under this subrule.

EXAMPLE. Decedent A, a widower and resident of Iowa, died testate July 1, 1992, survived by nephew B and niece C. His estate consisted of two Iowa farms and certain personal property. Under A's will, the niece and nephew share equally in the personal property. Nephew B received one farm and niece C the other one. Nephew B, a qualified heir, elected to specially value his farm and niece C did not. The inheritance tax was paid on this basis. Five years after A's death, nephew B quits farming and sells his inherited farm to an unrelated party, thus incurring an additional inheritance tax. Only nephew B owes an additional tax. Niece C's share in the estate is not revalued.

86.8(8) *Return for additional inheritance tax.* The return reporting the additional inheritance or Iowa estate tax imposed due to the early disposition or cessation of the qualified use shall conform as nearly as possible to the federal additional estate tax return, Form 706A, as can be done within the framework of an inheritance tax on shares instead of an estate tax. The return must be executed by the qualified heir and filed with the Iowa Department of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319.

86.8(9) *Due date for paying the additional inheritance tax.* The additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2 and the return for the additional tax is due six months after the early disposition or cessation of the qualified use of the real estate specially valued.

86.8(10) *No extension of time to file or pay.* Iowa Code chapter 450B makes no provision for an extension of time to file the return for the additional tax and pay the additional inheritance tax or Iowa estate tax due. Therefore, if the return for the additional tax is not filed or the additional inheritance or Iowa estate tax is not paid within six months after the early disposition or cessation of the qualified use, the return or the tax is delinquent and subject to penalty under subrule 86.8(13).

86.8(11) *Interest on additional tax.* The additional inheritance or Iowa estate tax imposed under Iowa Code section 450B.3 or 451.2 accrues interest at the rate of 10 percent per annum until paid commencing the last day of the ninth month after the decedent's death. The variable prime interest rate made applicable to inheritance tax by 1981 Iowa Acts, chapter 131, sections 15 and 16, on real estate not specially valued, does not apply to interest due on the additional tax imposed by Iowa Code section 450B.3 or 451.2. In addition, the federal rule that interest only accrues on the additional federal estate tax when an election is made under 26 U.S.C. Section 1016(c) to increase the basis for gain or loss on the real estate no longer eligible to be specially valued, has no application to Iowa special use valuation. In this respect the Iowa law does not conform to the federal statute.

86.8(12) *Receipt for additional tax.* The receipt for the additional tax imposed by Iowa Code section 450B.3 or 451.2, is separate and distinct from the receipt for inheritance tax required by Iowa Code section 450.64. The receipt must identify the property which was the subject of the early disposition or cessation of the qualified use, the owners of the property, the qualified heir, the amount paid and whether the additional tax paid is for a partial or full disposition or cessation of the qualified use.

86.8(13) *Penalty for failure to file or failure to pay.* Department rules 701—Chapter 10, pertaining to the penalty for failure to timely file the return or to pay the inheritance tax imposed by Iowa Code chapter 450, also apply where there is a failure to timely file the return reporting the additional inheritance or Iowa estate tax or to pay the additional tax due imposed by Iowa Code section 450B.3 or 451.2.

86.8(14) *Duties and liabilities.*

a. Duty to report an early disposition or cessation of the qualified use. The agent designated in the agreement required by 86.8(5)*"e"* has the duty to notify the department of any early disposition or cessation of the qualified use of the property on or before the due date of the additional inheritance tax. An executed copy of the notice required by federal regulation Section 20.2032A(c)(4) will satisfy this subrule.

b. Liability for payment of the tax. The qualified heir or the heir's successor is personally liable for all the additional inheritance or Iowa estate tax imposed under Iowa Code section 450B.3 or 451.2. It is the qualified heir's duty to collect the additional Iowa inheritance or Iowa estate tax from each person whose share was revalued. In respect to the additional tax, the duty of the qualified heir is the same as the duty of the fiduciary of an estate or trust under Iowa Code section 450.5, for the regular inheritance or Iowa estate tax. See subrule 86.2(1) regarding the responsibility of the fiduciary of an estate or trust. While the qualified heir is primarily liable for the payment of all of the additional tax, each person who has an interest in the real estate no longer eligible to be specially valued is also liable under the agreement provided for in 86.8(5)*"e"* for additional tax on that person's revalued share. Therefore, if the qualified heir fails to pay the additional Iowa estate tax or the additional tax imposed on any revalued share, the department may proceed to collect the delinquent tax from the person who received the share. The liability for the additional tax due from each person who had an interest in the revalued real estate is the same as the liability for the inheritance tax on property not specially valued. See *Eddy v. Short,* 190 Iowa 1376, 1380, 1832, 179 N.W. 818 (1920); *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906).

c. Books and records. It is the duty of the qualified heir to keep books and records necessary to substantiate the continued eligibility of the real estate for special use valuation. Upon request, the agent designated in the agreement shall furnish the department sufficient information relating to the use, ownership and status of the real estate to enable the department to determine whether there has been an early disposition or cessation of the qualified use.

86.8(15) *Special lien for additional inheritance tax.*

a. In general. The special lien created by Iowa Code section 450B.6 is separate and distinct from the lien provided for in Iowa Code section 450.7, for the inheritance tax imposed at the time of the decedent's death. The special lien is to secure any additional inheritance or Iowa estate tax that may be due within the ten-year period after the decedent's death, should there be an early disposition or cessation of the qualified use. The inheritance tax lien provided for in Iowa Code section 450.7 is only to secure the tax imposed at the time of the decedent's death on the transfer of property including property that is specially valued. If an additional tax is imposed for the early disposition or cessation of the qualified use, it is secured by the lien created by Iowa Code section 450B.6.

b. Form of the notice of the special lien. The notice of the special lien for additional inheritance or Iowa estate tax created by Iowa Code section 450B.6 must conform as nearly as possible to the special use valuation lien provided for in 26 U.S.C. Section 6324B.

c. Notice of lien. Unlike the lien provided for in Iowa Code section 450.7, notice of the special lien for additional inheritance or Iowa estate tax must be recorded before it has priority over subsequent mortgagees, purchasers or judgment creditors. The special lien is perfected by recording the notice of the special lien in the recorder's office in the county where the estate is being probated (even though the real estate may be located in a different county). Failure to perfect the special lien by recording as provided for in Iowa Code section 450B.6 divests the qualified real property from the lien in the event of a sale to a bona fide purchaser for value.

d. Duration of the special lien. The special lien continues:

(1) Until the additional inheritance or Iowa estate tax is paid, or ten years after the date the additional tax is due, whichever first occurs, if there is an early disposition or cessation of the qualified use, or

(2) For ten years after the decedent's death on all other property which has been specially valued.

e. Release of the lien. The special lien for additional inheritance tax:

(1) May be released at any time in whole or in part upon adequate security being given to secure the additional tax that may be due, if any.

(2) Is released by payment of the additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2, on the property which was the subject of an early disposition or cessation of the qualified use.

(3) Is released when it becomes unenforceable by reason of lapse of time.

f. Application to release the lien. Ten years after the decedent's death, unless there is an additional tax remaining unpaid, the qualified heir may submit to the department an application in writing for release of the lien on the real estate specially valued. The application must contain information necessary to enable the department to determine whether or not the special use valuation lien should be released. Supporting documentation may include a copy of the federal release. If, after audit of the application, it is determined the real estate remained eligible for special valuation, the department will release the lien.

86.8(16) *Valuation of the decedent's interest in corporations, partnerships and trusts—special rules.* If the decedent's interest in a corporation, partnership or a trust has been valued at its special use valuation under 26 U.S.C. Section 2032A for federal estate tax purposes, it is also eligible to be valued at its special use value for inheritance tax purposes, subject to the limitation imposed by statute and these rules. See Internal Revenue Service letter ruling 8108179 (1980) for guidelines in valuing the decedent's interest. Other factors indicative of value, such as the value of other assets, net dividend-paying capacity, book value, profit and loss statements and net worth must also be taken into account in arriving at the value of the decedent's interest for inheritance tax purposes. See Revenue ruling 59-60, 1959-1 C.B. 243 for the factors to be considered in valuing closely held corporate stock. In the event the decedent's interest in a corporation, partnership or trust is no longer eligible to be specially valued, the additional inheritance tax will be imposed on the fair market value of the decedent's interest in the same manner and subject to the same limitations as other property specially valued.

86.8(17) *Audits, assessments and refunds.* Subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the inheritance tax imposed by Iowa Code sections 450.2 and 450.3, shall also be the rules for the audit, assessment and refund of the additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2.

86.8(18) *Appeals.* Rule 86.4(450) providing for an appeal to the director and a subsequent appeal to district court under the Iowa administrative procedure Act for disputes involving the inheritance tax imposed by Iowa Code chapter 450 shall also be the rule for appeal for disputes concerning special use valuation and the additional inheritance or Iowa estate tax imposed by Iowa Code chapters 450B and 451.

This rule is intended to implement Iowa Code sections 450B.1 to 450B.7 and 451.2.

701—86.9(450) Market value in the ordinary course of trade. Fair market value of real or personal property is established by agreement or the appraisal and appeal procedures set forth in Iowa Code section 450.37 and 701—subrules 86.9(1) and 86.9(2). If the value is established by agreement, the agreement may be to accept the values of such property as submitted on the Iowa inheritance tax return, to accept a negotiated value or to accept the values as finally determined for federal estate tax purposes. Values submitted on an inheritance tax return constitute an offer regarding the value of the property by the estate. An inheritance tax clearance that is issued based upon property values submitted on an inheritance tax return constitutes an acceptance of those values on that return. An agreement to accept negotiated values or accept values as finally determined for federal estate tax purposes must be an agreement between the department of revenue and finance, the personal representative, and the persons who have an interest in the property. If an agreement cannot be reached regarding the valuation of real property, then the department may request, within 30 days after the return is filed, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and 701—subrule 86.9(2). If an appraisal is not requested within the required period, then the value listed on the return is the agreed value of the real property. If an agreement cannot be reached regarding the valuation of personal property, the personal representative or any person interested in the personal property may appeal for a revision of the department's value as set forth in Iowa Code section 450.37 and 701—subrule 86.9(2). Any inheritance tax clearance granted by the department may be subject to revision based on federal audit adjustments. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

86.9(1) *In general.* With the exception of real estate which has been specially valued under Iowa Code chapter 450B, property included in the gross estate for inheritance tax purposes must be valued under the provisions of Iowa Code section 450.37 at its market value in the ordinary course of trade. See rule 701—86.10(450) for the rule governing the market value in the ordinary course of trade if the alternate valuation date is elected. "Market value in the ordinary course of trade" and "fair market value" are synonymous terms. *In re Estate of McGhee,* 105 Iowa 9, 74 N.W. 695 (1898). Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includable in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item whenever appropriate. See federal regulation Section 20.2031(1)(b) and Iowa Code section 441.21(1)*"b"* for similar definitions of fair market value.

a. Values not to be used. Other kinds of value assigned to property such as, but not limited to, assessed value of real estate for property tax purposes, cost price, true value, or book value are only relevant in computing the value of the property for inheritance tax purposes, to the extent they may be properly used in the determination of fair market value or special use value. *In re Estate of McGhee,* 105 Iowa 9, 74 N.W.695 (1898). Fair market value cannot be determined alone by agreement between the persons succeeding to the decedent's property. Also, fair market value cannot be determined alone by setting out in the decedent's will the price for which property can be sold. *In re Estate of Fred W. Rekers,* Probate No. 28654, Black Hawk County District Court, July 26, 1972.

b. Date of valuation. Unless the alternate valuation date is elected under Iowa Code section 450.37, or the tax has been deferred according to Iowa Code sections 450.44 to 450.49, all property includable in the gross estate must be valued at the time of the decedent's death for the purpose of computing the tax imposed by Iowa Code section 450.2. Subject to the two exceptions listed, any appreciation or depreciation of the value of an asset after the decedent's death is not to be taken into consideration. *Insel v. Wright County*, 208 Iowa 295, 225 N.W.378 (1929).

86.9(2) *Market value—how determined.*

a. In general. The fair market value of an item of property, both real and personal, that is included in the gross estate for inheritance tax purposes is expressed in the property's monetary equivalent. The process used to determine fair market value presupposes the voluntary exchange of the item in a market for its equivalent in money. *Hetland v. Bilstad*, 140 Iowa 411, 415, 118 N.W. 422 (1908). The fact the item of property is not actually sold or exchanged or even offered for sale is not relevant. It is sufficient for establishing the item's value to arrive at the specific dollar amount that a seller would voluntarily accept in exchange for the property and the amount that a buyer would be willing to pay. *Juhl v. Greene County Board of Review*, 188 N.W.2d 351 (Iowa 1971). It is assumed when determining this specific dollar amount, which is the item's fair market value, that the seller is desirous of obtaining the highest possible price for the property and that the buyer does not wish to pay more than is absolutely necessary to acquire the property.

The item of property must be valued in a market where it is customarily traded to the public. See federal regulation 20.2031-1(b). Therefore, if an item of property is valued in a market which is not open to the general public, the party asserting the value in the restricted market has the burden to prove by a preponderance of the evidence that the value in the restricted market is the item's fair market value.

The distinction between a public and a restricted market can be illustrated by the following:

EXAMPLE 1: Under the provisions of the decedent's will, the personal representative of the estate is given the power to sell the decedent's property at either a public or private sale. Pursuant to this power, the personal representative sold the decedent's household goods at public auction held on a specific day and time which was widely advertised both in the newspaper in the locality where the decedent lived and also by sale bills posted in numerous public places in the decedent's community. The household goods sold at auction for $2,500. The fair market value of the household goods on the day of sale is $2,500. The public auction is a market where such items are commonly sold and the public had knowledge of the impending sale. The public was also invited to bid and the items to be sold were available for inspection.

EXAMPLE 2. Pursuant to an agreement between the beneficiaries of the estate, the personal representative sold the decedent's household goods and personal effects at an auction where only members of the decedent's family were permitted to bid. The items sold for $2,500, which may or may not be the fair market value of the property. Family pride, sentiment, and other personal considerations may have entered into the selling price. In this type of sale the burden is on the personal representative to prove that the selling price is the fair market value of the items sold.

b. Values established by recognized public markets.

(1) Stocks, bonds, and notes. Items of personal property such as, but not limited to, corporate stock, bonds, mutual funds, notes, and commodities which are traded on one or more of the nation's stock or commodity exchanges shall be valued under the provisions of Federal Estate Tax Regulation 20.2031-2, which regulation is incorporated in and made a part of this subrule by reference.

Individuals who have a registration of a security indicating sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship and not as tenants in common, may obtain a registration in beneficiary form as provided in the uniform transfer on death security registration Act as provided in Iowa Code section 633.800. A "registering entity" under this Act must provide notice to the department of revenue and finance of all reregistrations made pursuant to this Act. Such notice must include the name, address, and social security number of the decedent and all transferees. Until the division of the security, after the death of all the owners, multiple beneficiaries surviving the death of all the owners hold their interest as tenants in common. If no beneficiary survives the death of all the owners, the security belongs to the estate of the deceased sole owner of the estate of the last to die of the multiple owners.

(2) Local elevator and sale barn prices. The fair market value of grain and livestock may be determined either by the quoted price from the grain elevator or sale barn in the community where the grain or livestock is located or by the price quoted from the nearest commodity exchange, less the customary delivery discount.

(3) Public auctions by the court. The fair market value of an item may be established in a public market other than a market which has a permanent location and which holds sales at periodic stated intervals. It is common for estates or the probate court to hold a public auction to sell estate property and if the sale meets certain criteria the selling price received in this type of public auction will establish the fair market value of the property. Factors in an estate or court sale which tend to establish the selling price as one at fair market value include but are not limited to the time and place of the sale were well advertised; the public was invited and encouraged to bid; members of the decedent's family or business associates were not given special consideration as to price or terms of sale; and the terms of sale were comparable to those offered at sales in a regularly established public market.

(4) Sales in a regularly established market. Sales made in a regularly established market pursuant to Iowa Code section 633.387 would qualify as a sale at fair market value for inheritance tax purposes.

c. Private sales that may establish fair market value. Private sales of estate assets may establish the fair market value of the item depending on the facts and circumstances surrounding each sale. Factors which tend to establish a private sale as one at fair market value include but are not limited to:

(1) Sales made by a recognized broker who receives a commission from the seller based on the selling price and who has exercised diligence in obtaining a buyer.

(2) Sales made by the personal representative to nonfamily members after a good-faith effort was made to solicit bids from persons who are known to be interested in buying that particular kind of property.

(3) Sales made by the attorney or the personal representative after the item of property was advertised for sale in a newspaper of general circulation or in trade publications and a good-faith effort was made to obtain the best possible price.

(4) Sales made by the personal representative when the sale price is the price quoted on one of the nation's stock or commodity exchanges.

(5) Private sales made by the personal representative to members of the decedent's family or business associates are suspect due to personal, family, or business reasons, but nevertheless may constitute a sale at fair market value, depending on the facts and circumstances surrounding each sale. The personal representative has the burden to establish that this kind of private sale is a sale at fair market value. Factors which have a bearing on whether this type of private sale is one at fair market value include, but are not limited to, the following: Did the decedent's will give a sale or price preference to a member of the decedent's family or business associate? Were the terms of sale more advantageous than terms that would be given to the general public? Was a good-faith effort made to solicit bids from other persons known to be interested in buying that particular kind of property? Was the sale made as part of a family settlement of a will contest or dispute on a claim against the estate?

d. Fair market value—no regularly established market.

(1) In general. Certain items of personal property such as, but not limited to, closely held corporate stock, real estate contracts of sale, private promissory notes, accounts receivable, partnership interests, and choses in action are not customarily bought and sold in a public market. Occasional sales of these items of personal property at infrequent intervals do not establish a market for this kind of personal property, but the lack of a regular market does not indicate that the item is of no value. When there is not a regularly established market to use as a reference point for value, it is necessary to create a hypothetical market to determine fair market value. The factors used to create a hypothetical market vary with the kind of property being valued and depend on the facts and circumstances in each individual case.

(2) Fair market value of closely held corporate stock. A closely held corporation is a corporation whose shares are owned by a relatively limited number of stockholders. Often the entire stock issue is held by members of one family or by a small group of key corporate officers. Because of the limited number of stockholders and due to a family or business relationship, little, if any, trading in the shares takes place. There is, therefore, no established market for the stock. Sales that do occur are usually at irregular intervals and seldom reflect all of the elements of a representative transaction as is contemplated by the term fair market value. The term "fair market value" has the same meaning for federal estate tax purposes as it does for Iowa inheritance tax purposes. As a result, the federal revenue rulings establishing the criteria for valuing closely held corporate stock are equally applicable to inheritance tax values. Therefore, corporate stock which meets the standards for being closely held must be valued for inheritance tax purposes under the provisions of Federal Revenue Ruling 59-60, 1959-1 C.B. 237 as modified by Revenue Ruling 65-193, 1965-2 C.B. 370 and amplified by Revenue Ruling 77-287, 1977-2 C.B. 319, Revenue Ruling 80-213, 1980-2 C.B. 101, and Revenue Ruling 83-120, 1983-2 C.B. 170, which Federal Revenue Rulings are incorporated in and made a part of this subrule by reference.

(3) Fair market value of real estate contracts, notes, and mortgages. The fair market value of promissory notes, secured or unsecured, contracts for the sale of real estate, and other obligations to pay money which are included in the gross estate is presumed to be the amount of the unpaid principal plus the amount of interest, if any, accrued to the day of the decedent's death. If the asset is not reported on the return at face value plus accrued interest, the burden is on the party claiming a greater or lesser value to establish that face value plus accrued interest is not the asset's fair market value.

Factors which have a bearing on whether the fair market value of an asset is greater or less than face value include, but are not limited to, the rate of interest charged on the obligation; the length of time remaining on the obligation; the credit standing and payment history of the debtor; the value and nature of the property, if any, securing the obligation; the relationship of the debtor to the decedent; and whether the obligation is to be offset against the debtor's share of the estate. See Iowa Code section 633.471 and *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983). This subrule can be illustrated by the following:

EXAMPLE 1. The decedent at the time of death owned a seller's interest in an installment sale contract for the sale of a 160-acre farm. The contract contained a forfeiture provision in the event the buyer failed to make the payments and further provided that the purchase price was to be paid in 20 equal annual principal payments plus interest at 7 percent per year on the unpaid principal balance. At the time of the decedent's death, the contract of sale had ten years yet to run and the current federal land bank interest rate for farm land loans was 12 percent. Assuming in this example that other valuation factors are not relevant, the fair market value of the contract is the face amount of the contract, plus interest, discounted to reflect a 12 percent interest return on the outstanding principal balance. A prudent investor would not invest at a lower rate of interest when a comparable investment with equal security would earn 12 percent interest.

EXAMPLE 2. A tenant of the decedent owed the decedent $5,000, which was evidenced by a promissory note, payable on demand, drawing 6 percent interest, and which was executed in 1992, a year prior to the decedent's death. Assuming no other valuation factors are relevant, the fair market value of the $5,000 promissory note is its face value, plus accrued interest. The less than market interest rate on the note does not affect its fair market value because the note is due on demand and, as a consequence, there is no loss of a higher rate of interest which would be the case if the note specified a future payment date.

EXAMPLE 3. Decedent A died intestate July 1, 1993, survived by two nephews, B and C. The estate consisted, after debts and charges, of $300,000 in cash and U.S. Government bonds and a noninterest bearing promissory note for $10,000 executed by nephew B in 1975 for money borrowed for his college education. No payments were ever made on the note. The note is outlawed by the statute of limitations and would be worthless if anyone other than nephew B or C had executed the note. However, since nephew B inherits one-half of A's estate, and is required under the law of setoff and retainer to pay the note before he can participate in the estate, the fair market value of the note in this particular fact situation is $10,000 because it is collectible in full. Each nephew's share of the estate is $155,000. Nephew C receives $155,000 in cash and nephew B receives $145,000 in cash plus his canceled note for $10,000. In this example, the statutory right of setoff and retainer supersedes other factors which are relevant in determining the fair market value of the asset. See Iowa Code section 633.471; *In re Estate of Farris*, 234 Iowa 960, 14 N.W.2d 889 (1944); *Indiana Department of Revenue v. Estate of Cohen*, 436 N.E.2d 832 (Ind. App. 1982); *Gearhart's Ex'r and Ex'x v. Howard*, 302 Ky. 709, 196 S.W.2d 113 (1946).

(4) Fair market value of a sole proprietorship or partnership interest. The fair market value of the decedent's interest in a business, whether a partnership or a proprietorship, is the net amount a willing buyer would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts. Relevant factors in determining net value include but are not limited to the following: a fair appraisal as of the applicable valuation date of all of the assets of the business, tangible and intangible, including goodwill; the demonstrated earning capacity of the business; and the other factors in rule 701—89.8(422), to the extent they are applicable, that must be considered in valuing closely held corporate stock.

(4) Sales made by the personal representative when the sale price is the price quoted on one of the nation's stock or commodity exchanges.

(5) Private sales made by the personal representative to members of the decedent's family or business associates are suspect due to personal, family, or business reasons, but nevertheless may constitute a sale at fair market value, depending on the facts and circumstances surrounding each sale. The personal representative has the burden to establish that this kind of private sale is a sale at fair market value. Factors which have a bearing on whether this type of private sale is one at fair market value include, but are not limited to, the following: Did the decedent's will give a sale or price preference to a member of the decedent's family or business associate? Were the terms of sale more advantageous than terms that would be given to the general public? Was a good-faith effort made to solicit bids from other persons known to be interested in buying that particular kind of property? Was the sale made as part of a family settlement of a will contest or dispute on a claim against the estate?

d. Fair market value—no regularly established market.

(1) In general. Certain items of personal property such as, but not limited to, closely held corporate stock, real estate contracts of sale, private promissory notes, accounts receivable, partnership interests, and choses in action are not customarily bought and sold in a public market. Occasional sales of these items of personal property at infrequent intervals do not establish a market for this kind of personal property, but the lack of a regular market does not indicate that the item is of no value. When there is not a regularly established market to use as a reference point for value, it is necessary to create a hypothetical market to determine fair market value. The factors used to create a hypothetical market vary with the kind of property being valued and depend on the facts and circumstances in each individual case.

(2) Fair market value of closely held corporate stock. A closely held corporation is a corporation whose shares are owned by a relatively limited number of stockholders. Often the entire stock issue is held by members of one family or by a small group of key corporate officers. Because of the limited number of stockholders and due to a family or business relationship, little, if any, trading in the shares takes place. There is, therefore, no established market for the stock. Sales that do occur are usually at irregular intervals and seldom reflect all of the elements of a representative transaction as is contemplated by the term fair market value. The term "fair market value" has the same meaning for federal estate tax purposes as it does for Iowa inheritance tax purposes. As a result, the federal revenue rulings establishing the criteria for valuing closely held corporate stock are equally applicable to inheritance tax values. Therefore, corporate stock which meets the standards for being closely held must be valued for inheritance tax purposes under the provisions of Federal Revenue Ruling 59-60, 1959-1 C.B. 237 as modified by Revenue Ruling 65-193, 1965-2 C.B. 370 and amplified by Revenue Ruling 77-287, 1977-2 C.B. 319, Revenue Ruling 80-213, 1980-2 C.B. 101, and Revenue Ruling 83-120, 1983-2 C.B. 170, which Federal Revenue Rulings are incorporated in and made a part of this subrule by reference.

(3) Fair market value of real estate contracts, notes, and mortgages. The fair market value of promissory notes, secured or unsecured, contracts for the sale of real estate, and other obligations to pay money which are included in the gross estate is presumed to be the amount of the unpaid principal plus the amount of interest, if any, accrued to the day of the decedent's death. If the asset is not reported on the return at face value plus accrued interest, the burden is on the party claiming a greater or lesser value to establish that face value plus accrued interest is not the asset's fair market value.

Factors which have a bearing on whether the fair market value of an asset is greater or less than face value include, but are not limited to, the rate of interest charged on the obligation; the length of time remaining on the obligation; the credit standing and payment history of the debtor; the value and nature of the property, if any, securing the obligation; the relationship of the debtor to the decedent; and whether the obligation is to be offset against the debtor's share of the estate. See Iowa Code section 633.471 and *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983). This subrule can be illustrated by the following:

EXAMPLE 1. The decedent at the time of death owned a seller's interest in an installment sale contract for the sale of a 160-acre farm. The contract contained a forfeiture provision in the event the buyer failed to make the payments and further provided that the purchase price was to be paid in 20 equal annual principal payments plus interest at 7 percent per year on the unpaid principal balance. At the time of the decedent's death, the contract of sale had ten years yet to run and the current federal land bank interest rate for farm land loans was 12 percent. Assuming in this example that other valuation factors are not relevant, the fair market value of the contract is the face amount of the contract, plus interest, discounted to reflect a 12 percent interest return on the outstanding principal balance. A prudent investor would not invest at a lower rate of interest when a comparable investment with equal security would earn 12 percent interest.

EXAMPLE 2. A tenant of the decedent owed the decedent $5,000, which was evidenced by a promissory note, payable on demand, drawing 6 percent interest, and which was executed in 1992, a year prior to the decedent's death. Assuming no other valuation factors are relevant, the fair market value of the $5,000 promissory note is its face value, plus accrued interest. The less than market interest rate on the note does not affect its fair market value because the note is due on demand and, as a consequence, there is no loss of a higher rate of interest which would be the case if the note specified a future payment date.

EXAMPLE 3. Decedent A died intestate July 1, 1993, survived by two nephews, B and C. The estate consisted, after debts and charges, of $300,000 in cash and U.S. Government bonds and a noninterest bearing promissory note for $10,000 executed by nephew B in 1975 for money borrowed for his college education. No payments were ever made on the note. The note is outlawed by the statute of limitations and would be worthless if anyone other than nephew B or C had executed the note. However, since nephew B inherits one-half of A's estate, and is required under the law of setoff and retainer to pay the note before he can participate in the estate, the fair market value of the note in this particular fact situation is $10,000 because it is collectible in full. Each nephew's share of the estate is $155,000. Nephew C receives $155,000 in cash and nephew B receives $145,000 in cash plus his canceled note for $10,000. In this example, the statutory right of setoff and retainer supersedes other factors which are relevant in determining the fair market value of the asset. See Iowa Code section 633.471; *In re Estate of Farris*, 234 Iowa 960, 14 N.W.2d 889 (1944); *Indiana Department of Revenue v. Estate of Cohen*, 436 N.E.2d 832 (Ind. App. 1982); *Gearhart's Ex'r and Ex'x v. Howard*, 302 Ky. 709, 196 S.W.2d 113 (1946).

(4) Fair market value of a sole proprietorship or partnership interest. The fair market value of the decedent's interest in a business, whether a partnership or a proprietorship, is the net amount a willing buyer would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts. Relevant factors in determining net value include but are not limited to the following: a fair appraisal as of the applicable valuation date of all of the assets of the business, tangible and intangible, including goodwill; the demonstrated earning capacity of the business; and the other factors in rule 701—89.8(422), to the extent they are applicable, that must be considered in valuing closely held corporate stock.

(5) Fair market value of choses in action. The fair market value of the decedent's interest in a right to sue for a debt or a sum of money often cannot be determined with certainty at the time of the decedent's death. The value of this right is dependent on many factors which include, but are not limited to, the following: the strength and credibility of the decedent's evidence; the statutory and case law supporting the decedent's claim or position; the ability of the opposing party to pay a judgment; the extent, if applicable, of the decedent's contributory negligence; and the other normal hazards of litigation. However, this lack of certainty does not mean the right to sue has no value at the time of the decedent's death. Evidence of what was actually received for this right by the decedent's estate or its beneficiary is evidence of the fair market value of the right at death.

This subrule can be illustrated by the following example:

The decedent died in a fire of uncertain origin that destroyed his dwelling. Due to the circumstances surrounding the fire, the estate's right of recovery from the fire insurance carrier was speculative and, therefore, the value of this right at death was unknown. After the estate was closed, the beneficiary of the estate settled the fire insurance claim for $15,000. The amount received in settlement of the claim can be considered as evidence of the fair market value of the right of action at death. *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977). In addition, interest on the unpaid tax begins and continues to accrue from the date of the decedent's death.

(6) Wrongful death proceeds are not included in the gross estate. *Estate of Dieleman v. Department of Rev.*, 222 N.W.2d 459 (Iowa 1974).

e. By agreement between the department, the estate and its beneficiaries. Iowa Code section 450.37 provides that the market value in the ordinary course of trade is to be determined by agreement between the estate and its beneficiaries and the department. The term "agreement" when used with reference to the value of an asset, whether it is real or personal property, has the same meaning as the term is used in the law of contracts. The agreement between the department, the estate and its beneficiaries may be contained in a single written instrument, or it may be made by an offer submitted by the estate and its beneficiaries and its acceptance by the department. The agreement establishing values for computing the tax may specify that the values as finally determined for federal estate tax purposes on all or a portion of the assets will be the values used in computing the tax.

(1) Offer by the estate and the beneficiaries. It is the duty of the taxpayer to list on the inheritance tax return the values of the assets in the gross estate which the estate and those beneficially entitled to the decedent's property are willing to offer as the values for computing the taxable shares in the estate. The value of the assets listed on the return will constitute an offer for the department to accept or reject. Counteroffers may be made in the event an offer is rejected. This rule applies equally to real and personal property.

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or
2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or
3. The department does not request an appraisal within 30 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 86.9(2)*"e"*(3) for the rule governing values listed as "unknown" or "undetermined." See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

(3) Values listed on the return as "undetermined" or "unknown." If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as "unknown" or "undetermined." The return must contain a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until 30 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that both the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent's death.

f. Values established—no agreement.

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2)*"e,"* the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, are not controlling in determining values for inheritance tax purposes. *In re Estate of Giffen*, 166 N.W.2d 800 (Iowa 1969); *In re Estate of Lorimor*, 216 N.W.2d 349 (Iowa 1974). If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. See 701—subrule 86.9(2) for additional factors to assist in the determination of fair market value of real property.

(2) Personal property. Effective for estates of decedents dying on or after July 1, 1983. If an agreement is not reached on the value of personal property under 86.9(2)*"e,"* the estate or any person beneficially receiving the personal property may appeal to the director under Iowa Code section 450.94, subsection 3, for a resolution of the valuation dispute, with the right of judicial review of the director's decision under Iowa Code chapter 17A.

g. Amending returns to change values.

(1) Amendment permitted or required. Unless value has been established by the appraisal or administrative proceedings, the inheritance tax return may be amended by the estate to change the value of an asset listed on the return as long as the amendment is filed before an agreement is made between the estate and the department as to the asset's value. The return must be amended to list the value of an asset omitted from the original return or to assign a value for an item listed on the original return as "unknown" or "undetermined."

If the facts and circumstances surrounding the value agreement would justify a reformation or rescission of the agreement under the law of contracts, the return may be amended by the estate, and must be amended at the department's request, to change the value of the item to its correct fair market value or its special use value as the case may be.

(2) Amendment not permitted. A return cannot be amended:

1. To change the agreed value of an asset, if the facts and circumstances surrounding the agreement would not justify a reformation or rescission of the agreement,

2. To change a real estate value that has been established by the appraisal proceedings under Iowa Code sections 450.31 to 450.33, *Insel v. Wright County*, 208 Iowa 295, 225 N.W. 378 (1929), or

3. To change the value of an item of personal property that has been established by the department's administrative procedure under 701—Chapter 7, or, if an appeal is taken from the director's decision, by judicial review under Iowa Code chapter 17A. Provided, in no event may the return be amended to lower the value of an asset that would result in a refund of tax more than three years after the tax became due or one year after the tax was paid, whichever time is the later. Iowa Code section 450.94, *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983).

This rule is intended to implement Iowa Code sections 450.27 to 450.37, 450.44 to 450.49, and 633.800 to 633.811.

701—86.10(450) Alternate valuation date.

86.10(1) *When available.* The alternate valuation date allowed by 26 U.S.C. Section 2032 is available for estates of decedents dying on or after July 1, 1983, on the same terms and conditions which govern the alternate valuation date for federal estate tax purposes. Effective for estates of decedents dying after July 18, 1984, the alternate valuation date cannot be elected unless the value of the gross estate for federal estate tax purposes is reduced and the amount of federal estate tax owing, after all credits have been deducted, has also been reduced. See 26 U.S.C. Section 2032(c) enacted by Public Law 98-369 Section 1023(a). In general, the alternate valuation date is six months after the date of the decedent's death. If property is sold within the six-month period, the date of sale is the alternate date for valuing the property sold. See federal regulation Section 20.2032-1, as amended December 28, 1972, for the rules governing the valuation of property in the gross estate at its alternate valuation date for federal estate tax purposes. If the election is made, all of the property included in the gross estate and not just a portion of the property, must be valued at the alternate valuation date. The estate may elect both the alternate valuation date and the special use value under Iowa Code chapter 450B, if the estate is otherwise qualified. See Federal Revenue Ruling 83-31(1983). It is a precondition for valuing the property at its alternate value for Iowa inheritance tax purposes that the property has been valued at the alternate value for federal estate tax purposes. However, even if the property in the gross estate is valued at the alternate valuation date for federal estate tax purposes, the estate has the option either to elect or not to elect the alternate valuation date for Iowa inheritance tax purposes. If the alternate valuation date is elected, the value established for federal estate tax purposes shall also be the alternate value for inheritance tax purposes. The election is an affirmative act and for estates of decedents dying prior to July 19, 1984, it must be made on a timely filed inheritance tax return, taking into consideration any extensions of time granted to file the return. Effective for estates of decedents dying after July 18, 1984, the election may be made on the first return filed for the estate, regardless of whether the return is delinquent, providing the return is filed no more than one year after the due date, taking into consideration any extensions of time granted to file the return and pay the tax due. See 26 U.S.C. 2032(d) as amended by Public Law 98-369 Section 1024(a). Failure to indicate on the inheritance tax return whether the alternate valuation date is elected shall be construed as a decision not to elect the alternate valuation date.

86.10(2) *When not available.*

a. The alternate valuation date provided for in 26 U.S.C. Section 2032 cannot be elected by the estate if the tax on a future property interest has been deferred under Iowa Code sections 450.44 to 450.49. The tax on a future property interest must be computed on the fair market value of the future property interest at the time the tax is paid. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W. 2d 469 (1950).

b. Real estate which is subject to an additional inheritance tax imposed by Iowa Code section 450B.3 due to the early disposition or cessation of the qualified use cannot be valued at the alternate valuation date for purposes of the recapture tax, unless the alternate valuation date was originally elected on the return for the decedent's estate.

c. The alternate valuation date cannot be elected if the size of the gross estate for federal estate tax purposes, based on the fair market value of the assets at the time of death, is less than the minimum filing requirements under current federal authority. The fact that the gross estate for inheritance tax purposes is less than the minimum federal estate tax filing requirement is not relevant.

This rule is intended to implement Iowa Code sections 422.3 and 450.37.

701—86.11(450) Valuation—special problem areas.

86.11(1) *Valuation of life estate and remainder interests.* In general. Life or term estates and remainders in property cannot be valued separately for inheritance tax purposes without reference to the value of the property in which the life or term estate and remainder exists. The first valuation step is to determine the value of the property as a whole. This rule applies equally to fair market value in the ordinary course of trade, whether it be valued at death or on the alternate valuation date six months after death, or at its special use value under Iowa Code chapter 450B. The second step is to apply the life estate-remainder or term tables in rule 701—86.7(450) to the whole value of the property in which the life estate-remainder or term exists. Iowa Code section 450.51 requires that value of annuities, life or term, deferred or future estates in property be computed on the basis that the use of the property is worth a return of 4 percent per year. The life estate-remainder tables in rule 701—86.7(450) make no distinction between the life expectancy of males and females. See *City of Los Angeles v. Manhart,* 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed. 657 (1978) and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris,* 51 U.S. Law Week 5243, 77 L.Ed.2d 1238 (1983) for the requirement that retirement annuities must not discriminate on the basis of sex. However, the actual life expectancy of the particular person receiving the life estate is not relevant in determining the value of the life estate for inheritance tax purposes. *In re Estate of Evans,* 255 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.2d 62.

86.11(2) *Single life estate and remainder.* The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in rule 86.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to surviving spouse B, aged 68, a life estate in a 160-acre farm, with the remainder at B's death to niece C. Special use value and the alternate value were not elected. The 160-acre farm at the time of the decedent's death had a fair market value of $2,000 per acre, or $320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under 701—86.7(450) is .37936; that is, the use of the $320,000 for life at the statutory rate of return of 4 percent is worth 37.936 percent of the value of the farm. Niece C's remainder factor is .62064. The life estate-remainder factors when combined equal 100 percent of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

Value of B's Life Estate	$320,000 × .37936 = $121,395.20
Value of C's Remainder	$320,000 × .62064 = $198,604.80
Total Value	$320,000.00

86.11(3) *Joint and succeeding life estates.* If property includable in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. There can be no greater value assigned to all of the life estate interests than the value of the life estate of the youngest life tenant. The value of the life estate of the youngest life tenant fixes the value of the remainder interest in the property.

b. If two or more persons share in a life estate, the life tenants are presumed to share equally in the life estate during the life of the older life tenant, unless the will or trust instrument specifically directs that the income or use may be allocated otherwise.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. *In re Estate of Evans,* 225 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.62. As a result, if a succeeding life tenant is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised a 160-acre farm to surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45, for life, and the remainder upon C's death to nephews, D and E, in equal shares. The 160-acre farm had a fair market value at A's death of $320,000. Neither the alternate valuation date nor special use value was elected.

COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

1. Value of B's Life Estate:		
Life estate factor for age 68 is .37936		
$320,000 × .37936 =		$121,395.20
2. Value of C's Succeeding Life Estate		
Life estate factor for age 45 is .67131		
$320,000 × .67131 =	$214,819.20	
Less: B's life estate	$121,395.20	
Value of C's life estate		$ 93,424.00
3. Value of D's ½ remainder		
Remainder factor for a life tenant aged 45 is .32869		
as ½ of $320,000 × .32869 =		$ 52,590.40
4. Value of E's ½ remainder		
½ of $320,000 × .32869		$ 52,590.40
Total Value — life estates and remainders		$320,000.00

NOTE: In this example, the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983) if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240-acre Iowa farm to her nephew, B, aged 52, and the nephew's wife, C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of $2,200 per acre, or $528,000; the alternate value of the farm six months after death was $2,100 per acre, or $504,000. Its special use value is $1,000 per acre or $240,000. The life estates and the remainder are computed on the basis of the special use value of $240,000.

COMPUTATION OF JOINT LIFE ESTATE — REMAINDER VALUES

1. B's share of joint life estate.		
$240,000 × .59399 (life estate factor, age 52) =	$142,557.60	
½ as B's share =		$ 71,278.80
2. C's share of joint life estate.		
$240,000 × .63966 (life estate factor, age 48) =	$153,518.40	
Less: ½ value of life estate for B's life	$ 71,278.80	$ 82,239.60
3. Value of the remainder.		
The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is .36034, based on C's age of 48.		
D's share of the remainder.		
½ $240,000 × .36034 =		$ 43,240.80
E's share of the remainder.		
Same as D's		$ 43,240.80
Total value of joint life estates and the remainder		$240,000.00

NOTE: In this example, B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant's share during B's life is worth $71,278.80. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

86.11(4) *Fixed sum annuity for life or for a term of years.* The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4 percent annuity tables in rule 86.7(450). A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of the annuity does not necessarily bear any relationship to the earning capacity or value of the property which funds the annuity. The fixed sum annuity may be for an amount larger than the 4 percent used to compute a life estate. As a result, the present value of the fixed sum annuity, computed at the statutory rate of 4 percent per year, may exceed the value of the property which funds the fixed annuity. In this case, the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A devises a 240-acre farm to daughter B, with the provision that B pay the sum $5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A's death is $2,000 per acre, or $480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE $5,000 ANNUITY AND THE REMAINDER REVERSION TO B. Under rule 86.7(450) the 4 percent annuity factor for life at age 54 is 14.245 for each dollar of the annuity received. Therefore, C's life annuity is computed as follows:

C's Annuity		
$5,000 × 14.245 =		$ 71,225
B's Reversionary — Remainder Interest		
Value of farm	$480,000	
Less: C's annuity	$ 71,225	$408,775
Total annuity and reversion — remainder		$480,000

NOTE: In this example, the $5,000 annuity is worth less than a life estate in the farm. A life estate would be worth $273,499.20 because the use of $480,000 at 4 percent per year would return $19,200 per year, which is much greater than the $5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of $100,000 be set aside from the residuary estate to be held in trust to pay $500 per month to B for life and upon B's death the remaining principal and income, if any, is to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under rule 701—86.7(450), the annuity factor for a person 35 years of age is 19.048 for each dollar of the annuity. The annuity factor is multiplied by the annual amount of the annuity, which in this case is $6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B's $6,000 ANNUITY

$500.00 × 12 = $6,000 × 19.048 = $114,288, which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is $100,000, the maximum amount allowed by subrule 86.11(4). The remainder to C and D has no value for inheritance tax purposes.

86.11(5) *Valuation of remainder interests.* Iowa Code section 450.51 and rule 701—86.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in rule 86.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. *In re Estate of Millard,* 251 Iowa 1282, 105 N.W. 2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

a. If the tax on a remainder or other future property interest is paid within 9 months after the decedent's death (12 months for estates of decedents dying prior to July 1, 1981), the tax is to be based on the value of the property at the time of the decedent's death (whether it is fair market value or special use value) or the alternate value, 6 months after death, if elected. The age of the life tenant at the time of the decedent's death (the youngest life tenant in case of succeeding or joint life estates), or the term of years specified in the will or trust instrument, must be used to determine the value of the life estate or term estate in computing the tax on the remainder or other future property interests.

b. If the tax is paid after nine months from the date of the decedent's death (one year for estates of decedents dying prior to July 1, 1981), but before the termination of the previous life or term estate, the tax on the remainder or other future property interest shall be computed on the fair market value of the property at the time of payment using the life estate or term factor based on the life tenant's age or term of years remaining at the time the tax is paid. Neither the alternate value nor special use value can be used to value the property after nine months from the date of the decedent's death.

c. If the tax on the remainder or other future property interest is not paid under paragraphs *"a"* and *"b,"* the tax must be paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate. In this case, the tax is based on the fair market value of the property and the life estate remainder or term factor corresponding with the time the prior estate is terminated. If the prior estate is terminated due to the death of the life tenant, or due to the expiration of the term of years, the remainder factor is 100 percent of the value of the property. If the prior estate terminates during the life of the life tenant or during the term of years, the tax is computed in the same manner as provided in paragraph *"b."* If the tax is not paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate, the tax owing is delinquent and is subject to penalty and interest as provided by law. For information regarding interest rate, see 701—Chapter 10. However, in this case the value of the remainder interest is not modified to reflect any change in the fair market value of the property or the life or term estate factor that may occur due to the lapse of time between the due date of the tax and the date the tax is paid.

d. Iowa Code section 450.52 provides that the tax may be paid at any time on the present worth of the future property interest. The term "present worth" means the value of the future property interest at the time the tax is paid. Therefore, if the tax on the remainder or other future property interest is not paid within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981), the estate or the beneficiary receiving the future interest cannot pay the tax on a delinquent basis using a value and a life estate or term factor which does not reflect the present worth of the future interest at the time of payment. In this situation, the tax must be computed under paragraph *"b"* or *"c"* of this subrule, whichever applies. In this respect, failure to pay the tax within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981) operates as a deferral of the tax on the future property interest. *In re Estate of Dwight E. Clapp,* Probate No. 7251, Clay County Iowa District Court, July 2, 1980.

e. If an alternative valuation date is chosen, a liability must be currently owed by the estate to be deductible.

f. Tax rates in effect at the date of the decedent's death are the rates applicable for computation of the tax owed. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950).

These rules can be illustrated by the following examples:

For an example of computing remainder interests, see Examples 1 and 2 in 701—subrule 86.11(3).

EXAMPLE 1: Decedent A died July 1, 1993, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B's death to two nephews, C and D, in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was $2,000 per acre, or $480,000 on the date of A's death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, 1994, the tax on B's life estate was paid. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, 1995, due to adverse economic circumstances, B, C, and D voluntarily sold the 240-acre farm at public auction to an unrelated person for $2,100 per acre, or $504,000. B's life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph *"b,"* when the life estate is terminated before the life tenant's death. The sale price of the farm and the life estate remainder factor reflecting B's age on October 15, 1995, (B's age is now 76) control the value of the remainder.

COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in rule 86.7(450) for a life tenant aged 76 is .73595.

C's ½ remainder interest	½ ($504,000 × .73595) =	$185,459.40
D's ½ remainder interest	same as C's	185,459.40
Total value of remainder		$370,918.80

NOTE: In this example, the value of C and D's remainder interest in the sale proceeds is greater than the value of the remainder at the time of A's death due to the increase in the remainder factor because of B's increased age and the increase in the fair market value of the farm. However, if B's life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C and D's remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE 2: Decedent A at the time of her death on July 1, 1993, owned a vested remainder in a 240-acre Iowa farm, which was subject to the life use of her mother, B, who was 87 years old when A died. A's ownership of the remainder interest was not discovered until after life tenant B's death on October 15, 1995. The fair market value of the farm was $2,000 per acre or $480,000 on July 1, 1993, and $2,200 per acre or $528,000 on October 15, 1995. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See rule 86.10(450) and subrule 86.8(4), paragraph *"c."* A's estate was reopened to include the omitted remainder in the 240-acre farm. An amended inheritance tax return was filed December 10, 1995, basing the tax on the fair market value and the remainder factor corresponding with the life tenant's age (87) on July 1, 1993. In this fact situation, the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of $2,200 per acre and a remainder factor of 100 percent of the value of the farm. No penalty or interest would be assessed if the correct tax is paid prior to July 15, 1996, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

86.11(6) *Valuation of contingent property interests.* Contingent remainders, succeeding life estates and other contingent property interests must be valued as if no contingency exists. Factors to be considered to determine if a contingency interest exists include, but are not limited to, the interest is generally a future interest, it is not a vested interest, and vesting of the interest depends upon the occurrence of a specific event or condition being met. As a result, 701—subrule 86.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay tax on a property interest to which a vested right has not been received. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting that the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 86.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E who own the remainder will come into possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see *In re Estate of Schnepp*, 258 Iowa 33, 138 N.W.2d 886 (1965).

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

701—86.12(450) The inheritance tax clearance.

86.12(1) *In general.* The inheritance tax clearance is a written certificate of the department documenting the satisfaction of the inheritance tax obligation of the persons succeeding to the property included in the gross estate and the personal representative of the estate, and also the obligation of the qualified heir, in case special use valuation is elected under Iowa Code chapter 450B. The clearance is either in the form of a full payment tax receipt or a statement that no tax is due on the shares of the estate. Even though the department of revenue and finance has issued an inheritance tax clearance, the tax may be subject to change as a result of any federal estate tax changes affecting the Iowa inheritance tax. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

86.12(2) *Limitations on the clearance.* Limitations on the inheritance clearance include, but are not limited to:

a. If special use valuation has been elected under Iowa Code chapter 450B, a clearance certifying all inheritance tax has been paid in full, or that no inheritance tax is due, does not extend to any additional inheritance tax that may be imposed under Iowa Code section 450B.3 by reason of the early disposition or early cessation of the qualified use of the real estate specially valued. Provided, this limitation shall be null and void if:

(1) The real estate specially valued remains in qualified use for the ten-year period after the decedent's death, or

(2) There is an early disposition or early cessation of the qualified use and any additional inheritance tax imposed by Iowa Code section 450B.3 is paid in full.

b. The clearance does not extend to property that is not reported on the return.

c. The clearance does not extend to a fraudulently filed return or a return which misrepresents a material fact.

d. The clearance does not release an underlying tax obligation that remains unpaid, even though a clearance may release the liens imposed by Iowa Code sections 450.7 and 450B.6.

86.12(3) *The tax paid in full clearance.* Effective for estates of decedents dying on or after July 1, 1983, the distinction between full payment and partial payment clearances is abolished. For estates of decedents dying on or after July 1, 1983, in which a tax is due, only full payment clearances will be issued. The full payment clearance will be issued only after all the tax, penalty and interest have been paid in full. Provided, if the tax has been paid in full on some, but not all of the shares in the estate, the department will, upon request, issue a full payment clearance limited to those shares on which the tax has been paid in full. The inheritance tax is a separate tax on each share of the estate and not one tax on the estate itself. *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906). However, see subrule 86.12(2), paragraph *"a,"* for the limitation on clearances if the estate elected the special use valuation under Iowa Code chapter 450B.

86.12(4) *The no tax due clearance.* If no tax is found to be due on any of the shares of the estate, the department will issue a clearance certifying that no tax is due, subject to the limitations in subrule 86.12(2).

86.12(5) *Clearance releases the lien.*

a. In general. Two inheritance tax liens have been created by statute to secure the payment of an inheritance tax. The lien created by Iowa Code section 450.7 secures the payment of the tax imposed by Iowa Code section 450.3, regardless of whether the tax is based on market value in the ordinary course of trade, the alternate value or special use value. Iowa Code section 450B.6 creates a second lien to secure the additional inheritance tax that may be due by reason of the early disposition or early cessation of the qualified use of special use valuation property.

b. The section 450.7 lien. For estates with deaths occurring on or after July 1, 1995, a lien is imposed for the inheritance tax on all the property of the estate or owned by the decedent for a period of ten years from the date of death of the decedent, unless a remainder or deferred interest is at issue, then the statutory period for the lien may be extended beyond the ten-year limitation to accommodate the term of the interest. For exceptions and additional information, see Iowa Code section 450.7. A tax clearance releases the lien imposed by Iowa Code section 450.7 on all of the property in the gross estate that is reported on the return.

Effective for estates of decedents dying on or after July 1, 1984, if a tax, or additional tax, is found to be due after the issuance of an inheritance tax clearance, the lien under Iowa Code section 450.7 does not have priority against subsequent mortgages, purchases or judgment creditors, unless the department gives notice of the lien by recording the notice in the office of the recorder of the county where the estate is probated, or in the county where the property is located, if the estate has not been administered. As a result, if the department has issued an inheritance tax clearance, an examiner of real estate or personal property titles can rely on this clearance as a release of the inheritance tax lien even though additional tax may be due. This subrule only pertains to the security for the tax under the lien provisions of Iowa Code section 450.7. Other provisions for security for payment of the tax such as judgment liens, mortgages, bonds and distress warrants, are not affected by this subrule. See Iowa Code section 450B.6 and subrule 86.8(15) for the lien for additional tax on property which has been valued at its special use value.

This subrule can be illustrated by the following example:

EXAMPLE: Decedent A died August 15, 1994, a resident of Iowa. By will A devised a 160-acre farm to nephew B and all personal property to niece C. The net estate consisted of the farm with a fair market value of $2,000 per acre, or $320,000 and personal property worth $320,000. On May 24, 1995, the inheritance tax return was filed and tax of $88,000 ($44,000 for each beneficiary) was paid. The department issued its unqualified inheritance tax clearance on June 13, 1995. On July 5, 1995, C pledges some corporate stock inherited from A as security for a bank loan. On August 1, 1995, additional personal property was discovered worth $10,000 ($10,000 x 15% = $1,500) and an amended inheritance tax return was filed without remittance. On August 15, 1995, the department filed an inheritance tax lien for the $1,500 additional tax plus interest (no penalty was imposed because 90 percent of the tax was timely paid).

In this example, the bank's lien on the pledged corporate stock is superior to the inheritance tax lien under Iowa Code section 450.7, because at the time the stock was pledged (July 5, 1995), the department had not filed its lien for the additional tax owing. Since only C owed additional tax, B's share of the estate was not subject to the lien filed August 15, 1995.

c. The section 450B.6 lien. This lien has no application to estates of decedents dying prior to July 1, 1982. In estates of decedents dying on or after July 1, 1982, the lien only applies to the property which has been specially valued under Iowa Code chapter 450B. A clearance certifying full payment of the additional inheritance tax imposed by Iowa Code section 450B.3 releases the lien on the property which was subject to the additional tax. Since the lien imposed by Iowa Code section 450B.6 expires automatically ten years after the decedent's death on property remaining in qualified use during the ten-year period, a tax clearance is not required.

86.12(6) *Distribution of the clearance.* Effective for estates of decedents dying on or after July 1, 1983, only an original inheritance tax clearance will be issued by the department. The personal representative is required to designate on the return who is to receive the clearance. If the return fails to designate a recipient, the clearance will be sent to the clerk of the district court.

Rules 86.9(450) to 86.12(450) are intended to implement Iowa Code chapter 17A and sections 450.5, 450.7, 450.58, 450.64, 450B.2, 450B.3, 450B.6, 633.477, and 633.479.

701—86.13(450) No lien on the surviving spouse's share of the estate. Effective for estates of decedents dying on or after January 1, 1988, no inheritance tax lien is imposed on the share of the decedent's estate passing to the surviving spouse. In addition, effective for estates of decedents dying on or after July 1, 1997, no inheritance tax lien is imposed on the share of the decedent's estate passing to the decedent's parents, grandparents, great-grandparents, and other lineal ascendants, children (including legally adopted children and biological children entitled to inherit under the laws of this state), grandchildren, great-grandchildren, and other lineal descendants and stepchildren.

This rule is intended to implement Iowa Code sections 450.7(1) and 450.12 as amended by 1997 Iowa Acts, Senate File 35.

701—86.14(450) Computation of shares. The following areas of the law should be applied when computing the shares of an estate for the purpose of Iowa inheritance tax:

86.14(1) *Right to take against the will.* In the event that a decedent dies with a will, a surviving spouse may elect to take against the will and receive a statutory share in real and personal property of the decedent as designated by statute. If a surviving spouse elects to take against the will, this election nullifies gifts to the surviving spouse set forth in the decedent's will. For details regarding this election and statutory share, see Iowa Code sections 633.236 to 633.259 and In the Matter of Campbell, 319 N.W.2d 275, 277 (Iowa 1982).

86.14(2) *Family settlements.* Beneficiaries of an estate may contract to divide real or personal property of the estate, or both, in a manner contrary to the will of the decedent. The court of competent jurisdiction may approve the settlement contract of the beneficiaries. However, the department is not a party to the contract and is not bound to compute the shares of the estate based on the settlement contract. Instead, the department must compute the shares of the estate based upon the terms of the decedent's will, unless a court of competent jurisdiction determines that the will should be set aside. See *In re Estate of Bliven*, 236 N.W.2d 366 (Iowa 1975).

86.14(3) *Order of abatement.* Shares to be received by the beneficiaries of an estate are subject to abatement for the payment of debts, charges, federal and state estate taxes in the order as provided in Iowa Code section 633.436.

86.14(4) *Contrary order of abatement.* An order of abatement contrary to that provided in Iowa Code section 633.436 is provided by statute. For instance, if a provision of a will, trust or other testamentary instrument explicitly directs an order of abatement contrary to Iowa Code section 633.436 or a court of competent jurisdiction determines order of abatement due to a devise that would result in an order of abatement contrary to Iowa Code section 633.436, then the order of abatement indicated is to be followed. For additional information regarding contrary provisions of abatement, see Iowa Code section 633.437. For details regarding marital share and contrary order of abatement see, Estate of Lois C. Olin, Docket No. 92-70-1-0437, Letter of Findings (June 1993).

86.14(5) *"Stepped-up" basis.* If a decedent's will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a "stepped-up" basis will be utilized when computing the shares which will result in the appropriate beneficiaries' shares to include the tax obligation that was paid as an additional inheritance. A "stepped-up" basis is based on gifts prior to the residual share.

EXAMPLE: Decedent's will gives $1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax: $1,000 x 10% = $100. Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example): $100 divided by 90% = $111.11. Add the stepped-up tax of $111.11 to the original bequest of $1,000. This results in a stepped-up share of $1,111.11, which allows the nephew to keep $1,000 after the tax is paid.

86.14(6) *Antilapse provision and the exception to the antilapse statute.* Iowa Code sections 633.273 and 633.274 set forth guidance on the allocation of property in situations in which a lapse in inheritance may occur. Iowa Code section 633.273 provides that when a devisee predeceases a testator, the issue of the devisee inherits the property, per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary. However, Iowa Code section 633.274 is an exception to Iowa Code section 633.273. If the spouse of the testator predeceases the testator, the inheritance shall lapse, unless the terms of the will clearly and explicitly provide to the contrary. For details regarding the provisions, please see the cited statutes.

86.14(7) *Disclaimer.* A person who is to succeed to real or personal property may refuse to take the property by executing a binding disclaimer which relates back to the date of transfer. Unless the transferor of the property has otherwise provided, disclaimed property passes as if the disclaimant has predeceased the transferor. To be valid, a disclaimer must be in writing and state the property, interest or right being disclaimed, the extent the property, right, or interest is being disclaimed, and be signed and acknowledged by the disclaimant. The disclaimer must be received by the transferor or the transferor's fiduciary not later than nine months after the later of the date in which the property, interest or right being disclaimed was transferred or the date the disclaimant reaches 18 years of age. A disclaimer is irrevocable from the date of its receipt by the transferor or the transferor's fiduciary. For additional details regarding disclaimers, please see Iowa Code section 633.704.

86.14(8) *Right of retainer.* If a distributee of an estate is indebted to the estate, whether the decedent dies testate or intestate, the personal representative has the right to offset the distributee's share in the estate against the amount owed to the estate by the distributee. For additional information regarding this right of offset and retainer, see Iowa Code section 633.471.

86.14(9) *Deferred life estates and remainder interest.* A deferred estate generally occurs as the result of a decedent granting a life estate in property to one person with remainder of the property to another. In such cases, the determination of the tax on the remainder interest to be received by the remainderman may be deferred until the determination of the previous life estate pursuant to Iowa Code section 450.46. Tax on a remainder interest that has been deferred is valued pursuant to Iowa Code section 450.37, with no reduction based on the previous life estate. Tax due on a deferred interest must be paid before the last day of the ninth month from the date of the death of life tenant pursuant to Iowa Code section 450.46. Penalty and interest is not imposed if the tax is paid before the last day of the ninth month from the date of the death of life tenant. If the death of the decedent occurred before July 1, 1981, the tax due on a deferred interest must be paid before the last day of the twelfth month from the date of the death of life tenant. Deferment may be elected due to the fact that the remainder interest is contingent and because the value of the remainder interest may be significantly altered from the time of the decedent's death until the death of the life tenant. A request for deferment may be made on a completed department form and the completed form, with any required documentation, may be filed with the department on or before the due date of the inheritance tax return. Failure to file a completed department form requesting a deferral of tax on the remainder interest with the inheritance tax return will allow the department to provide an automatic deferral for qualifying remainder interests.

If deferral is chosen, an inheritance tax clearance cannot be issued for the estate. Expenses cannot be used to offset the value of the deferred remainder interest. Based upon Iowa Code section 450.12, deductible expenses must be expenses paid by the estate. Expenses incurred by a deferred remainder interest would not qualify based on Iowa Code section 450.12 as deductible expenses. Pursuant to Iowa Code section 450.52, the owner of a deferred remainder interest may choose to pay the tax on the present value of the remainder interest and have the lien on such an interest removed prior to the termination of the previous life estate. If early termination of the deferred remainder interest occurs, the value of the remainder interest will be reduced by the value of remaining previous life estate.

This rule is intended to implement Iowa Code chapter 450.

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CHAPTER 87
IOWA ESTATE TAX
[Prior to 12/17/86, Revenue Department[730]]

701—87.1(451) Administration.

87.1(1) *Definitions.* The following definitions cover 701—Chapter 87 and are in addition to the definitions contained in Iowa Code section 451.1.

"Administrator" means the administrator of the compliance division of the department of revenue and finance.

"Compliance division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

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

"Director" means the director of revenue and finance.

"Tax" means the Iowa estate tax imposed by Iowa Code chapter 451.

"Taxpayer" means the personal representative of the decedent's estate as defined in Iowa Code subsection 633.3(29) and any other person or persons liable for the payment of the federal estate tax under 26 U.S.C. Section 2002.

87.1(2) *Delegation of authority.* The director delegates to the administrator of the compliance division, subject always to the supervision and review by the director, the authority to administer the Iowa estate tax. This delegated authority specifically includes, but is not limited to: the determination of the correct Iowa estate tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; and the determination of reasonable cause for failure to file and timely pay the tax due and granting extensions of time to file the return and pay the tax due. The administrator of the compliance division may delegate the examination and audit of tax returns to the supervisors, examiners, agents and any other employees or representatives of the department.

This rule is intended to implement Iowa Code sections 421.2, 421.4 and chapter 451.

701—87.2(451) Confidential and nonconfidential information.

87.2(1) *Confidential information.* Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the Iowa estate tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule 701—6.3(17A).

87.2(2) *Information not confidential.* Copies of wills, probate inventories, trust instruments, deeds, release of a real estate lien, and other documents which are filed for public record are not deemed confidential by the department.

This rule is intended to implement Iowa Code chapter 22, and Iowa Code chapters 450 and 451 as amended by 1992 Iowa Acts, Second Extraordinary Session, chapter 1001.

701—87.3(451) Tax imposed, tax returns, and tax due.

87.3(1) *Tax imposed and tax due.* Iowa Code sections 451.2 and 451.8 impose a tax equal to the maximum amount of credit allowable under 26 U.S.C. Section 2011 of the Internal Revenue Code for state death taxes paid on property included in the gross estate of the decedent. The credit allowable under the federal statute is not limited to the Iowa inheritance tax imposed under Iowa Code chapter 450 on the property in the decedent's gross estate, but also includes any other estate, legacy or succession taxes imposed by the state on the property. The Iowa estate tax qualifies as an estate tax specified in the federal credit statute. However, the tax due and payable, as distinguished from the tax imposed, is the maximum credit allowable under 26 U.S.C. Section 2011, less the Iowa inheritance tax paid on the property included in the gross estate of the decedent.

Therefore, the Iowa estate tax due and payable is the amount which the maximum credit allowable under 26 U.S.C. Section 2011 exceeds the Iowa inheritance tax paid.

87.3(2) *Duty of the taxpayer.* The taxpayer does not have the option of electing on the federal estate return, to claim only the Iowa inheritance tax paid on property included in the gross estate of the decedent, or to claim the maximum credit allowed under 26 U.S.C. Section 2011 of the Internal Revenue Code. The maximum credit allowable under the federal statute must be claimed on the federal estate tax return. If the taxpayer has filed a federal estate tax return claiming an amount of credit less than the maximum credit allowable, the taxpayer has the duty to amend the federal estate tax return and claim the maximum credit allowable.

If there is a change in the amount of inheritance tax paid or in the amount of the maximum federal credit allowable for state death taxes paid (such as the result of a federal audit or an audit of the inheritance tax return) which results in an estate tax, or additional estate tax due, the taxpayer has the duty to promptly report the change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See Iowa Code section 451.8.

Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

87.3(3) *Form of return.* The final inheritance tax return form provided for in 701—subrule 86.2(2) shall be the return for reporting the Iowa estate tax due. The amount of the Iowa estate tax due shall be listed separately on the return from the amount of the inheritance tax shown to be due.

87.3(4) *Liability for the tax.* The personal representative of the decedent's estate and any person, including a trustee, in actual or constructive possession of any property included in the gross estate, have the duty to file the return with the department and pay the tax due. The shares of heirs and beneficiaries abate for the payment of the tax as provided in Iowa Code sections 633.436 and 633.437 in the same manner as they abate for the payment of the federal estate tax. See *Bergren v. Mason,* 163 N.W.2d 374 (Iowa 1968) for the proper method to abate shares to pay the federal estate tax.

87.3(5) *Computation of the tax.*

a. Iowa decedent. If the decedent was a resident of Iowa at the time of death and all of the property included in the gross estate has a situs in Iowa, the total amount allowable as a credit under 26 U.S.C. Section 2001 shall be the tax imposed. If part of the gross estate of an Iowa resident decedent consists of property with a situs at death in a state other than Iowa, the tax imposed shall be prorated in the ratio that the Iowa property included in the gross estate bears to the total gross estate.

EXAMPLE 1.

Decedent dies July 3, 1997, a resident of Iowa. The estate was bequeathed in full to inheritance tax-exempt children, except for a $10,000 bequest to one niece.

Total gross assets =	$1,200,000
Less debts and expenses (except federal estate tax)	(300,000)
Federal adjusted gross estate =	$900,000
Federal tax computation:	
gross federal estate tax =	306,800
less 1997 unified credit	(192,800)
less credit for state death tax paid	(27,600)
Net federal estate tax due =	$86,400
Iowa tax computation:	
Inheritance tax on niece's bequest	1,000
Iowa estate tax equals the federal credit for state death taxes paid	27,600
Less inheritance tax due	(1,000)
Estate tax due	26,600
Total Iowa tax due (1,000 + 26,600) =	$27,600

All of the decedent's assets have a situs in Iowa; therefore, the full amount of the credit allowable for state death taxes, less the Iowa inheritance tax, is the Iowa estate tax.

For simplicity in Example 2, the values used are the same for federal and state purposes and the debts and expenses are charged to the Iowa estate, even though under Iowa Code section 450.12, certain Minnesota expenses are not deductible in computing the Iowa inheritance tax. All liabilities, except mortgages, are prorated.

EXAMPLE 2.

Decedent dies July 3, 1997, a resident of Iowa, owning a vacation home in Minnesota. The estate was bequeathed in full to inheritance tax-exempt children, except for a $10,000 bequest to one niece.

Total gross assets:	
Iowa	$950,000
Minnesota	250,000
Total	1,200,000
Less debts and expenses (except for federal estate taxes)	(300,000)
Federal adjusted gross estate =	900,000
Federal tax computation:	
gross federal estate tax =	306,800
less 1997 unified credit	(192,800)
less credit for state death tax paid	(27,600)
Net federal estate tax due =	86,400
Iowa tax computation:	
Inheritance tax on niece's bequest	1,000
Iowa estate tax	
Proration:	
Iowa $950,000	
Total $1,200,000 = 79.17%	
Iowa portion of federal credit for state death taxes paid:	
$27,600 × 79.17% =	$21,850.92
Less inheritance tax due	($1,000.00)
Iowa estate tax =	$20,850.92
Total Iowa tax due (1,000 + 20,850.92) =	$21,850.92

b. Nonresident decedent. If the gross estate of a nonresident decedent includes property with a situs in the state of Iowa, the tax imposed is the maximum amount of the federal credit for state death taxes allowable prorated on the basis the Iowa situs property in the gross estate bears to the total gross estate. For simplicity in the following two examples, it is assumed the values are the same for federal and state purposes and the debts, expenses and federal estate tax are prorated between Iowa and Arizona even though certain liabilities are not prorated under Iowa Code section 450.12.

EXAMPLE 1.

Decedent died a resident of Arizona on July 3, 1997. The estate was bequeathed in full to tax-exempt children.

Total gross estate:	
Iowa real estate	$750,000
Other property	450,000
Total gross estate:	1,200,000
Less debts and expenses (except federal estate tax)	(300,000)
Net adjusted gross estate =	900,000
Federal tax computation:	
Gross federal estate tax =	306,800
Less 1997 unified credit	(192,800)
Less credit for state death tax paid	(27,600)
Net federal estate tax due =	86,400
Iowa estate tax computation:	
Inheritance tax =	-0-
Iowa estate tax proration:	
Iowa gross $750,000	
Total gross $1,200,000 = 62.50%	
Iowa portion of federal credit for state death tax paid: 27,600 × 62.50%	
Iowa estate tax =	$17,250

EXAMPLE 2.

Decedent died a resident of Arizona on July 3, 1997, with the same property as set forth in Example 1. The estate consisted of four separate $100,000 bequests to non-exempt individuals with the rest of the estate going to charity.

Iowa portion of each bequest: $100,000 × 62.50% =	$62,500
Tax on each bequest =	$6,500
Total Iowa inheritance tax due: $6,500 × 4 =	$26,000
Total estate tax due	-0-
Iowa tax due =	$26,000

The Iowa real property is part of the residual estate from which bequests are paid. See Estate of Dennis M. Billingsley, Emmet County District Court, Case No. 13394 (July 15, 1982).

87.3(6) *Value to use.* For the purpose of computing the amount of the tax imposed in both resident and nonresident estates, the value of the property in the gross estate as determined for federal estate tax purposes, and not the value for state inheritance tax, or other state succession taxes, shall be the value on which the tax is computed.

87.3(7) *Return and payment due date.* For estates of decedents dying prior to July 1, 1986, the return shall be filed with the department and the tax due paid within 12 months after the decedent's death, unless an extension of time has been granted by the department, in which case the return shall be filed and the tax paid within the time prescribed by the extension of time. For estates of decedents dying on or after July 1, 1986, the return must be filed and the tax due paid on or before the last day of the ninth month after the death of the decedent, unless an extension of time has been granted, in which case the return must be filed and the tax due paid within the time prescribed by the extension of time. See 701—paragraph 86.2(6)*"a"* for the due date when the last day of the ninth month following death falls on a Saturday, Sunday, or legal holiday.

87.3(8) *Extension of time.* The extension of time form for inheritance tax provided for in 701—subrule 86.2(9) shall be the extension of time form for the Iowa estate tax. If an extension of time based on hardship is requested, evidence of such hardship is to be provided with the filing of the extension request. Unless the extension of time specifically states to the contrary, an extension of time to file the final inheritance tax return, and pay the tax due, shall also be an extension of time for the same period, to pay the Iowa estate tax. Provided, however, in no event shall the extension be for a period of time greater than the period of time allowed for claiming the credit for state death taxes paid under 26 U.S.C. Section 2011 of the Internal Revenue Code. Provided, further, if the federal estate tax liability is paid prior to the expiration of an extension of time to pay the Iowa estate tax, the tax shall be due and payable at the time the federal estate tax is paid regardless of the extension of time period. The application for an extension of time to file the return and pay the tax must be filed with the department prior to the time the return is required to be filed and the tax paid.

87.3(9) Renumbered as 701—10.90(451), IAB 1/23/91.

87.3(10) Renumbered as 701—subrule 10.90(1), IAB 1/23/91.

87.3(11) Renumbered as 701—subrule 10.90(2), IAB 1/23/91.

87.3(12) Renumbered as 701—subrule 10.90(3), IAB 1/23/91.

87.3(13) *Interest—during an extension of time.* During the period of an extension of time, any unpaid tax shall draw interest at the rate set forth in rule 701—10.2(421). Payments made during an extension of time shall first be credited to penalty, interest and the balance, if any, to the tax due. Estate tax is still due for estates that have deferred Iowa inheritance tax. Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate set forth in rule 701—10.2(421). No discount is allowed for early payment of the tax due.

This rule is intended to implement Iowa Code sections 421.27, 450.63, 451.2, 451.5, 451.6, 451.8, 451.12, and 1997 Iowa Acts, chapter 60, sections 1 and 2.

701—87.4(451) Audits, assessments and refunds. 701—subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the Iowa inheritance tax shall also be the rules for the audit, assessment and refund of the Iowa estate tax.

This rule is intended to implement Iowa Code sections 451.3, 451.6, 451.8, 451.10 and 451.12.

701—87.5(451) Appeals.

Rule 701—86.4(450), providing for an appeal to the director and a subsequent appeal to district court under the Iowa Administrative Procedure Act in inheritance tax disputes, shall also be the rule for appeals in Iowa estate tax disputes. See 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A and sections 450.94 and 451.12.

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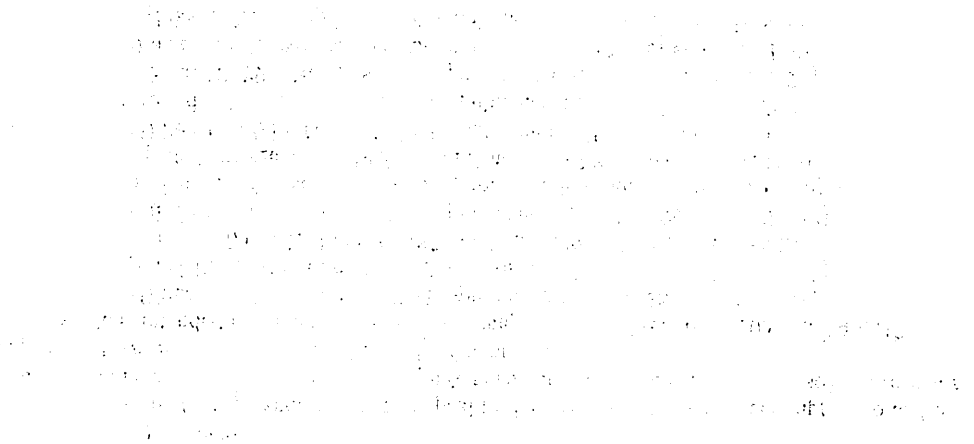

CHAPTER 88
GENERATION SKIPPING TRANSFER TAX
[Prior to 12/17/86, Revenue Department[730]]

701—88.1(450A) Administration.

88.1(1) *Definitions.* The following definitions cover and supplement the definitions contained in Iowa Code section 450A.1.

"Administrator" means the administrator of the compliance division of the department of revenue and finance.

"Compliance division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

"Department" means the department of revenue and finance.

"Director" means the director of revenue and finance.

"Direct skip" means the same as the term is defined in Section 2612(c) of the Internal Revenue Code.

"Tax" means the generation skipping transfer tax imposed by Iowa Code chapter 450A.

"Taxable distribution" means the same as the term is defined in Section 2612(b) of the Internal Revenue Code.

"Taxable termination" means the same as the term is defined in Section 2612(a) of the Internal Revenue Code.

"Taxpayer" means the transferee of the property subject to the generation skipping transfer in case of a taxable distribution or the trustee and the transferee in case of a taxable termination.

"Transferor," "trust," "trustee," and *"interest"* mean the same as those respective terms are defined in Section 2652 of the Internal Revenue Code.

88.1(2) *Delegation of authority.* The director delegates to the administrator of the compliance division, subject always to the supervision and review by the director, the authority to administer the generation skipping transfer tax. This delegated authority specifically includes, but is not limited to: the determination of the correct generation skipping transfer tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; and granting extensions of time to file the return and pay the tax due. The administrator of the compliance division may delegate the examination and audit of the tax returns to such supervisors, examiners, agents and any employees or representatives of the department as the administrator may designate.

This rule is intended to implement Iowa Code sections 421.2 and 421.4 and chapter 450A.

701—88.2(450A) Confidential and nonconfidential information.

88.2(1) *Confidential information.* Federal tax returns, federal return information, Iowa generation skipping transfer tax returns, and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the generation skipping transfer tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule 701—6.3(17A).

88.2(2) *Information not confidential.* Copies of wills, release of real estate liens, probate inventories, trust instruments, deeds and other documents which are filed for public record are not deemed confidential by the department.

This rule is intended to implement Iowa Code chapters 22 and 450A.

701—88.3(450A) Tax imposed, tax due and tax returns.

88.3(1) *Tax imposed—general rule.* Iowa Code section 450A.2 imposes tax equal to the maximum federal credit allowable (5 percent) under 26 U.S.C. Section 2604 of the Internal Revenue Code for state generation skipping transfer taxes paid on property included in certain generation skipping transfers. The tax imposed by Iowa Code section 450A.2 qualifies as a generation skipping transfer tax specified in the federal credit statute. The federal credit is not available for every generation skipping transfer taxable under 26 U.S.C. Section 2601 of the Internal Revenue Code. The credit is available only on those generation skipping transfers occurring at the same time as, and as the result of, the death of an individual.

Therefore, a federal generation skipping transfer occurring at the time of a gift of property which is unrelated to the death of an individual is not eligible for the federal credit allowed by Section 2604 of the Internal Revenue Code.

88.3(2) *Tax imposed—limitation.* Iowa Code section 450A.14 imposes a limitation on the amount of tax imposed under Iowa Code section 450A.2. The taxpayer's total federal and state generation skipping tax liability cannot be greater than the tax payable had chapter 450A not been enacted.

88.3(3) *Tax due—no credit for inheritance tax paid.* Any inheritance tax paid on property included in the estate of the individual whose death is the event imposing the federal tax is not a credit against the generation skipping transfer tax imposed by Iowa Code section 450A.2, although the inheritance tax is a credit against the Iowa estate tax imposed by Iowa Code chapter 451 on this property.

Nor is the inheritance tax paid on the property in a prior estate which is now included in a taxable generation skipping transfer a credit against the tax imposed by Iowa Code section 450A.2. Therefore, the tax due is the maximum credit allowable under 26 U.S.C. Section 2604 of the Internal Revenue Code, subject to the limitation in subrule 88.3(2).

88.3(4) *Duty of the taxpayer.* It is the duty of the taxpayer to file the return prescribed by subrule 88.3(5) and pay the tax due within the time prescribed by law (taking into consideration any extension of time to file and pay). A copy of the federal generation skipping transfer tax return must be submitted to the department at the time the Iowa return is filed. The taxpayer shall keep books, records and accounts as are reasonably necessary to substantiate the amount of the federal tax and value of the property included in a generation skipping transfer subject to tax, and upon request the taxpayer shall furnish information to the department as may be reasonably necessary to enable the department to determine the correct tax due. It is the duty of the taxpayer to claim the maximum amount of the federal credit allowable on the federal generation skipping transfer tax return, subject to the limitation in subrule 88.3(2).

If there is a change in the amount of the maximum federal credit allowable, or the amount allowable under subrule 88.3(2), against the federal tax on a generation skipping transfer (such as a result of a federal audit or in the amount and value of the property included in a generation skipping transfer), the taxpayer has the duty to promptly report the change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See Iowa Code section 450A.11.

Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

88.3(5) *Form and due date of the return.* The form of the return for reporting the generation skipping tax to the department shall be in such form as may be prescribed by the director. It shall provide for such schedules of property subject to tax, deductible expenses, losses, and tax computation tables to conform as nearly as possible to the form of the federal generation skipping transfer tax return. The return must be filed with the department and the tax due paid on or before the last day of the ninth month following the death of the individual whose death is the event causing the imposition of the federal generation skipping transfer tax. If an extension of time has been granted, the return must be filed and any tax, penalty, and interest due must be paid on or before the expiration of the extension of time.

88.3(6) *Liability for the tax.* The transferee of property in a generation skipping transfer subject to tax is personally liable for the tax to the extent of the value of the property received determined under 26 U.S.C. Section 2624. In addition, the trustee and transferee of property in a taxable termination are personally liable for the tax attributable to such termination to the extent of the value of the property under their control. Value for the purpose of determining the extent of the liability of a transferee or trustee is determined at the time of the distribution or termination. Neither the individual's estate whose death is the event imposing the tax, nor its personal representative, is liable for the tax imposed (unless the personal representative is also the transferee or trustee of the property subject to tax).

88.3(7) *Situs of property.* For the purpose of the tax imposed by Iowa Code chapter 450A, the situs of intangible personal property included in a generation skipping transfer subject to tax is the state in which the transferor was a resident at the time of death or in the case the transferor is a trustee, the residence of the trustee at the time of the imposition of the federal generation skipping transfer tax. The situs of real and tangible personal property included in a transfer subject to tax is the state in which the property is located, regardless of the transferor's or trustee's place of residence.

88.3(8) *No reciprocity.* Iowa Code chapter 450A makes no provision for reciprocity to prevent taxation by more than one state of intangible personal property included in a taxable generation skipping transfer. Therefore, intangible personal property attributable to an Iowa transferor or trustee which may have acquired a business situs and may be subject to tax in another state (due to the location of bank accounts, stock certificates and like instruments) is not exempt from the Iowa tax simply for the reason it is subject to tax in another jurisdiction. See *Curry v. McCanless,* 307 U.S. 357, 83 L.Ed. 1339, 59 S.Ct. 900 (1939); *State Tax Commission of Utah v. Aldrich,* 316 U.S. 174, 86 L.Ed. 1358, 62 S.Ct. 1008 (1942).

88.3(9) *Tangible and intangible property—time of classification.* The classification of property as tangible or intangible is determined by the law of the state of the transferor's or trustee's residence. For the purpose of determining whether an Iowa generation skipping transfer tax is due, the classification of the property as tangible or intangible shall be made at the time of the death of the individual causing the generation skipping transfer. The classification of the property in a taxable transfer at the time of the original grantor's death is not determinative of whether the transferred property will be subject to tax upon the individual's death which caused the imposition of the tax. This rule is illustrated by the following two examples:

EXAMPLE 1. A executed a will in 1996 devising an Iowa farm in trust to pay the income to his son, B, for life, and upon B's death the trust is to terminate and the corpus paid to B's children, C and D, in equal shares. If upon B's death the Iowa farm is still part of the trust assets, the value of the farm is subject to the Iowa generation skipping transfer tax regardless of the state of residence of the transferor. However, if during B's lifetime the farm is sold and the proceeds placed in the trust, the trust assets are subject to the Iowa generation skipping transfer tax only if the property had a situs in Iowa at the time of death, because at B's death the trust assets are classified as intangible personal property.

EXAMPLE 2. A, a resident of Chicago, Illinois, by will devised $500,000 in trust to pay the income to his son B, a resident of New York, for life and upon B's death the trust is to terminate and the corpus paid to B's children, C and D, in equal shares. If during B's lifetime the trust purchases an Iowa farm and it is part of the trust assets when B dies, the value of the farm is subject to the Iowa generation skipping transfer tax. Also, if at the time of B's death the trust assets are still classified as intangible, the trust assets would be subject to the Iowa tax if the trustee was an Iowa resident at the time of death.

NOTE: In the two examples it is assumed the generation skipping transfers are in excess of the $1 million exemption.

88.3(10) *Computation of the tax.*

a. In general. The Iowa generation skipping tax is the maximum credit allowed by 26 U.S.C. Section 2604 against the amount of the federal generation skipping transfer tax. The maximum federal credit is 5 percent of the federal tax imposed on the transfer. In this respect, it differs from the federal credit for state death taxes paid under 26 U.S.C. Section 2011 which is a graduated percentage of the value of the property included in the federal adjusted taxable estate. As a result, the valuation of the property included in a generation skipping transfer is only relevant for computing the Iowa generation skipping transfer tax when it is used as the basis for prorating the federal generation skipping transfer tax, when the property subject to the generation skipping transfer tax has a situs in more than one state.

b. Computation of the tax—situs in more than one state. When part of the property included in a generation skipping transfer which is eligible for the credit for state generation skipping transfer tax has situs in Iowa and part in another state or states, the maximum federal credit which is allowed under 26 U.S.C. Section 2604 must be prorated among the states where the property has a situs. In this event, the Iowa generation skipping transfer tax is computed by multiplying the federal tax on the entire transfer by the 5 percent maximum federal credit allowable. This amount is then multiplied by a fraction of which the value of the Iowa property is the numerator and the value of the total generation skipping transfer is the denominator. The resulting amount is the Iowa generation skipping transfer tax. The fact that other states where part of the property has a situs do not have a generation skipping transfer tax, or the state tax is a lesser percentage than the maximum federal credit allowable (5 percent), is not relevant to the computation of the Iowa tax.

This subrule can be illustrated by the following:

EXAMPLE. A generation skipping transfer occurs in an Illinois trust in 1996 by reason of the death of A. The property in the generation skipping transfer consists of $650,000 in stocks and bonds and an Iowa farm worth $240,000, for a total generation skipping transfer of $890,000. Assuming the lifetime exemption does not apply, the federal generation skipping transfer tax is 55 percent of $890,000, or $489,500. The maximum federal credit allowable is 5 percent of $489,500, or $24,475. The Iowa portion of the maximum federal credit is:

$$\text{Iowa prop. } \frac{\$240{,}000}{\$890{,}000} \text{ Total prop.} \times \$24{,}475 = \$6{,}600 \text{ which is the Iowa tax.}$$

In this example, the result would not change if Illinois did not have a generation skipping transfer tax or if its tax were a smaller percentage than the maximum 5 percent credit allowed by the federal statute.

88.3(11) *Value to use.* For the purpose of computing the amount of the tax imposed on generation skipping transfers when the property has a situs in Iowa and another state or states, the value of the transferred property as determined for federal generation skipping transfer tax purposes shall be the value on which the tax is prorated.

88.3(12) *Extension of time.* In the case of hardship, which is a factual determination made on a case-by-case basis, the director may grant an extension of time to file the return and pay the tax due for a period not to exceed ten years after the death of the individual whose death is the event causing the imposition of the federal generation skipping transfer tax. Provided, however, in no event shall the extension be for a period of time greater than the period of time allowed for claiming the credit allowed for state generation skipping transfer tax paid, allowable under 26 U.S.C. Section 2662. If the federal generation skipping transfer tax liability is paid prior to the expiration of an extension of time to pay the Iowa generation skipping transfer tax, the tax shall be due and payable at the time the federal generation skipping transfer tax is paid regardless of the extension of time period. The application for an extension of time to file the return and pay the tax due shall be in a form as the director may prescribe and must be filed with the department prior to the time the return is required to be filed and the tax due paid.

88.3(13) *Discount.* No discount is allowed for early payment of the tax due.

This rule is intended to implement Iowa Code sections 450A.2 to 450A.5 and 450A.8 to 450A.14.

701—88.4(450A) Audits, assessments and refunds. 701—subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the Iowa inheritance tax shall also be the rules for the audit, assessment and refund of the Iowa generation skipping transfer tax.

This rule is intended to implement Iowa Code sections 450A.2, 450A.4, 450A.5, 450A.8 to 450A.12 and 450A.14.

701—88.5(450A) Appeals. Rule 701—86.4(450A) providing for an appeal to the director and a subsequent appeal to district court under the Iowa Administrative Procedure Act in inheritance tax disputes shall also be the rule for appeals in Iowa generation skipping transfer tax disputes. See 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A and sections 450.94 and 450A.12.

701—88.6(450A) Generation skipping transfers prior to Public Law 99-514. Public Law 99-514 repealed the federal generation skipping transfer tax retroactive to June 11, 1976, and provided for a refund of any federal generation skipping transfer tax that had been paid. As a result of this federal statute there is no Iowa generation skipping transfer tax on those transfers which are exempted from the federal tax under Public Law 99-514.

This rule is intended to implement Iowa Code chapter 450A and 1988 Iowa Acts, chapter 1028.

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CHAPTER 89
FIDUCIARY INCOME TAX

[Formerly fiduciary rules ch 48, See IAB 9/30/81]
[Prior to 12/17/86, Revenue Department[730]]

701—89.1(422) Administration.

89.1(1) *Definitions.* The following definitions cover 701—Chapter 89 and are in addition to the definitions contained in Iowa Code section 422.4.

"Administrator" means the administrator of the compliance division of the department of revenue and finance or the personal representative of an intestate estate.

"Compliance division" is the organizational unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws.

"Department" means the department of revenue and finance.

"Director" means the director of revenue and finance.

"Gross income" includes any and all income prior to any deductions as set forth on the Iowa fiduciary return of income.

"Personal representative" means the executor, administrator or trustee of a decedent's estate.

"Tax" means the income tax imposed on estates and trusts under Iowa Code section 422.6.

"Taxable income" is the income of the fiduciary and also includes distributions to beneficiaries as set forth on the Iowa fiduciary return of income.

"Taxpayer" means the executor, administrator or other personal representative of a decedent's estate required to file a return for the estate and the decedent under Iowa Code sections 422.14 and 422.23. "Taxpayer" also means the trustee of a trust subject to tax under 26 U.S.C. Section 641 and required to file a return under 26 U.S.C. Section 6012(b), as well as the trustee of the bankruptcy estate of an individual under Chapter 7 or 11 of Title 11 of the United States Code.

89.1(2) *Delegation of authority.* The director delegates to the administrator of the compliance division, subject always to the supervision and review of the director, the authority to administer the fiduciary income tax. This authority specifically includes, but is not limited to: determining the correct fiduciary income tax liability; making tax liability assessments; issuing refunds; releasing tax liens; filing tax liability claims in probated estates and releasing the claims upon payment of the tax; and issuing the certificate of acquittance authorized by Iowa Code section 422.27. The administrator of the compliance division may delegate the examination and audit of tax returns to the supervisors, agents and employees and representatives of the department.

This rule is intended to implement Iowa Code sections 421.2, 421.4, 422.6, 422.23, 422.25, 422.26, 422.27 and 422.73.

701—89.2(422) Confidentiality.

89.2(1) *Confidential information.* The state and federal returns, accompanying schedules, as well as the taxpayer's books, records, documents and accounts of any person, firm or corporation, are held confidential, except the information which is deemed a public record by the state and federal law. See 26 U.S.C. Section 6103 of the Internal Revenue Code pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rules 701—6.3(17A) and 701—38.5(422) for the confidentiality of a decedent's individual income tax returns.

89.2(2) *Information not confidential.* Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not confidential. The fact alone that a return has or has not been filed with the department is not confidential information. 1976 Op. Att'y. Gen. 679.

89.2(3) *Documents to be filed.*

a. Estates of Iowa decedents. A copy of the inheritance tax return and probate inventory required by Iowa Code section 633.361 and 701—subrule 86.2(2) (relating to inheritance tax) and a copy of the decedent's will in testate estates shall be filed with the first fiduciary return of income, unless previously filed with the department for inheritance tax purposes.

b. Nonresident decedents—ancillary administration. If ancillary administration has been opened for the estate of a nonresident decedent, a copy of the inheritance tax return and probate inventory and a copy of the decedent's will in testate estates shall be filed with the department, subject to the same conditions and requirements in estates of resident decedents. If ancillary administration has not been opened for a nonresident decedent with Iowa taxable income, a copy of the inventory filed in the primary estate, or the portion of the inventory listing the property generating the Iowa income and the decedent's will in testate estates, must be filed with the department with the first fiduciary return of income.

c. Inter vivos trusts. Inter vivos trusts with a situs in Iowa and inter vivos trusts with a situs outside Iowa with Iowa taxable income shall submit to the department with the first fiduciary return the following: (1) a copy of the trust instrument; (2) a list of the trust assets (those generating Iowa taxable income in case of trusts with a situs outside Iowa); and (3) an estimate of the fair market value of each asset. If the trust instrument is amended or additional assets are added to the trust corpus (additional assets which generate Iowa taxable income in case of trusts with a situs outside Iowa), a copy of the amended items must be submitted to the department with the first fiduciary return of income following the change.

d. Testamentary trusts. If the estate was not reported for inheritance tax purposes, a copy of the decedent's will and a list of assets in the trust corpus in testamentary trusts with a situs both within and without Iowa must be submitted to the department with the first fiduciary return of income.

e. Safe deposit box. Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

89.2(4) *Required records.* The taxpayer shall keep records and accounts necessary to substantiate reportable income and deductions. Upon request, the taxpayer shall furnish the department documents, such as copies of tax returns, court orders, trust instruments, annual reports, canceled checks and like information, as may be reasonably necessary to enable the department to determine the correct tax liability. *Tiffany v. County Board of Review,* 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

This rule is intended to implement Iowa Code sections 422.25, 422.27, 422.28, 422.73 and 1997 Iowa Acts, chapter 60, sections 1 and 2.

701—89.3(422) Situs of trusts.

89.3(1) *Testamentary trusts.* The situs of a testamentary trust for tax purposes is the state of the decedent's residence at the time of death until the jurisdiction of the court in which the trust proceedings are pending is terminated. In the event of termination and the trust remains open, the situs of the trust is governed by the same rules as pertain to the situs of inter vivos trusts.

89.3(2) *Inter vivos trusts.* If an inter vivos trust is created by order of court or makes an accounting to the court, its situs is the state where the court having jurisdiction is located until the jurisdiction is terminated. The situs of an inter vivos trust which is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679 is the state of the grantor's residence, or the state of residence of the person other than the grantor deemed the owner, to the extent the income of the trust is governed by the grantor trust rules.

If an inter vivos trust (other than a trust subject to the grantor trust rules in 26 U.S.C. Sections 671 to 679) is not required to make an accounting to and is not subject to the control of a court, its situs depends on the relevant facts of each case. The relevant facts include, but are not limited to: the residence of the trustees or a majority of them; the location of the principal office where the trust is administered; and the location of the evidence of the intangible assets of the trust (such as stocks, bonds, bank accounts, etc.). The residence of the grantor of a trust, not subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679, is not a controlling factor as to the situs of the trust, unless the person is also a trustee. A statement in the trust instrument that the law of a certain jurisdiction shall govern the administration of the trust is not a controlling factor in determining situs. The residence of the beneficiaries of a trust is also not relevant in determining situs.

This rule is intended to implement Iowa Code sections 422.6, 422.8, and 422.14.

701—89.4(422) Fiduciary returns and payment of the tax.

89.4(1) *Form of return.* The form of the fiduciary return shall be prescribed by the director. It shall conform as nearly as possible to the federal fiduciary return.

89.4(2) *Required federal returns and schedules.* Nonresident estates with Iowa taxable income and trusts with situs outside Iowa with Iowa taxable income must submit a copy of the federal fiduciary return with the Iowa return. Estates of Iowa decedents and trusts with a situs in Iowa must submit copies of the federal schedules that substantiate gross income, deductions and ordinary and throwback distributions to beneficiaries with the Iowa return.

89.4(3) *Same form for nonresident estates and foreign situs trusts.* Nonresident estates and foreign situs trusts shall use the same form for reporting Iowa taxable income as prescribed for resident estates and trusts with a situs in Iowa.

89.4(4) *Accounting period—tax year.* The initial fiduciary return may reflect either a calendar or fiscal year accounting period, without the department's prior approval. If a fiscal year is elected, it may end on the last day of any month, except December, but in no case shall the fiscal year adopted be for a period longer than the last day of the month preceding the decedent's death or the month the trust was created. The accounting period for the purpose of the tax imposed by Iowa Code section 422.6 must be the same accounting period that is adopted for federal income tax purposes. This limitation is equally applicable to estates of resident and nonresident decedents and trusts with a situs within and without Iowa. If the taxpayer has not adopted a taxable year prior to the time the return is due to be filed and the tax paid, the taxable year is a calendar year until authorization is granted to change to a fiscal year. See 26 U.S.C. Sections 441 to 443, federal regulations Sections 1.441 - 1(g)(3) and 1.442.2.

The permissible taxable years are illustrated by the following examples:

EXAMPLE 1. Decedent died July 4, 1990. The taxable year for the estate commences the day after the decedent's death (July 5, 1990) and will end December 31, 1990, if a calendar year is adopted as the taxable year. If a fiscal year is adopted, it can end on July 31, 1990, or the last day of any future month (except December 31, 1990), but no later than June 30, 1991, subject to the condition that it is selected prior to the time the return and payment are originally due.

EXAMPLE 2. Grantor creates an irrevocable trust on July 27, 1989. On July 1, 1990, the trustee filed the initial fiduciary return of income, adopting at that time a taxable year ending November 30, 1989. Since the return was due March 17, 1990 (March 15 was a Saturday) for federal income tax purposes and March 31, 1990, for Iowa income tax purposes, it is delinquent and a fiscal year accounting period is disallowed and the trust taxable year is the calendar year.

89.4(5) *Short year returns.* If an estate or trust is in existence only a portion of the taxable year, a return must be filed for the partial year in accordance with subrule 89.4(6).

89.4(6) *Minimum filing requirements.*

a. General rule. A fiduciary return of income must be filed if the gross income of the estate or trust for the taxable year is $600 or more, regardless of any tax liability.

b. Exception to the general rule. A final fiduciary return of income must be filed for the taxable year in which an estate or trust is closed, regardless of the amount of gross income, if an income tax certificate of acquittance is requested. The final fiduciary return of income constitutes an application for an income tax certificate of acquittance pursuant to Iowa Code sections 422.27, 633.477 and 633.479. For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.

89.4(7) *Amended returns.* An amended return must be filed if there is a change in income or deductions that results in a tax or additional tax due, or in a change in income, deductions or credits distributable to a beneficiary. An amended return may be filed in lieu of a claim for refund when a change in reportable income or deductions results in a tax overpayment. See 701—subrules 43.3(4) and 43.3(5) for the period of time for making a claim for a refund of excess tax paid.

89.4(8) *Return due date.* The fiduciary return must be filed with the department and the tax due paid in full on or before the last day of the fourth month following the end of the taxable year. Payment of 90 percent of the tax due with the filing of a return will grant a taxpayer a six-month automatic extension of time to pay the remaining tax due. If the due date falls on a Saturday, Sunday or legal holiday, the due date is the next day which is not a Saturday, Sunday or legal holiday as defined in Iowa Code section 4.1. Returns not timely filed with 90 percent of the tax timely paid are subject to penalty as provided in rule 89.6(422).

89.4(9) *Duties of the taxpayer.*

a. Income of the estate or trust. A taxpayer must timely file a fiduciary return if the minimum filing requirements specified in subrule 89.4(6) are met and must pay 90 percent of the tax due. Receipt of the return with 90 percent of the tax due paid will result in an automatic six-month extension of time to pay the remaining tax due. The department is not required to file a claim for taxes in the estate proceedings and have the claim allowed before the tax is paid. *In re Estate of Oelwein,* 217 Iowa 1137, 1141, 251 N.W. 694 (1933); *Findley v. Taylor,* 97 Iowa 420, 66 N.W. 744 (1896). The personal representative of an estate must pay the tax on income from property in the personal representative's possession, prior to applying the income to estate obligations. See Iowa Code section 633.352.

b. Decedent's final individual income tax return. The executor, administrator, or other personal representative of the decedent's estate must file an individual income tax return for the decedent for the year of the decedent's death if the gross income attributable to the decedent for the part of the taxable year ending with death equals or exceeds the minimum filing requirements. See 701—subrules 39.1(1) to 39.1(3) and 39.1(5) for the minimum filing requirements for individual income tax. If the surviving spouse of a decedent has not remarried during the balance of the taxable year and has the same taxable year as the decedent, the personal representative of the decedent's estate may file a joint return with the surviving spouse for the taxable year of death. In the event of such an election, the joint return must include the surviving spouse's income for the entire taxable year and the decedent's income for the portion of the taxable year ending with death. Income attributable to property owned by the decedent and the decedent's rights to income received after the day of the decedent's death are income of the decedent's estate or the persons succeeding to the property or rights to income. See Iowa Code sections 633.350 to 633.353 for the circumstances under which the estate is charged with the income from the decedent's property or the decedent's rights to income. Income from property held by the decedent and others in joint tenancy received after the decedent's death is charged to the surviving joint tenants, not to the decedent's estate.

The final return for a decedent may be filed at any time after the decedent's death, but in no event later than the last day of the fourth month following the end of the decedent's normal taxable year. The final income tax return of the decedent, if the minimum filing requirements are met, must be filed prior to the time an income tax certificate of acquittance is requested, even though this may require the early filing of the return. Therefore, filing a joint return with the surviving spouse is precluded if the decedent's final return is required to be filed prior to the end of the normal taxable year.

c. Decedent's prior year returns. The personal representative of the decedent's estate is not limited to filing the decedent's final return and paying the tax due. In addition, the personal representative has the duty to file a return, if none was filed, and to pay any additional income tax owed by the decedent that may become due by reason of an audit of the decedent's income or prior year returns. The personal representative's duty to pay the tax, or additional tax, is limited to the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's tax liability according to the order for paying debts and charges specified in Iowa Code section 633.425.

d. Withholding agent—general rule. The personal representative of a decedent's estate and the trustee of a trust shall withhold Iowa income tax from a distribution of Iowa taxable income to beneficiaries who are nonresidents of Iowa. This applies to both Iowa and non-Iowa situs estates and trusts. See Iowa Code subsection 422.16(12) and 701—subrule 46.4(2), item "5," for the duty to withhold. The amount of income tax to be withheld shall be computed either based on 5 percent of the taxable Iowa income distributed or according to tax tables provided by the department. See 701—subrule 46.3(1) for the required withholding form and return to be filed with the department.

e. Exception to the general rule. If a nonresident beneficiary of an estate or trust who is to receive a distribution of Iowa taxable income files with the department a nonresident declaration of estimated tax and pays the estimated tax on the income declared in full, 89.4(9)*"d"* does not apply to the amount of the income declared. A certificate of release from the duty to withhold will be issued to the withholding agent upon request. See Iowa Code sections 422.16(12) and 422.17 and 701—subrule 46.4(3) relating to the release certificate. In addition, an estimated payment of withholding can occur if a distribution is being made to a taxable beneficiary. An estimated payment of withholding should be based on 5 percent of the taxable Iowa income. It is the department's policy to allow estimated payments of withholding to be paid directly to the department.

f. Withholding not required. Withholding is not required from the distribution made by estates and trusts of Iowa taxable income to beneficiaries who are residents of Iowa.

g. Beneficiary's share of income, deductions and credits. After the final distribution of income for the taxable year, but prior to the date for filing a beneficiary's individual income tax return, the personal representative of an estate and the trustee of a trust shall furnish each beneficiary receiving a distribution from an estate or trust a written statement specifying the amount and types of income subject to Iowa tax and the kinds and amounts of the deductions and credits against the tax. A copy of the federal schedule K-1, Form 1041, adapted to reflect Iowa taxable income, may be substituted in lieu of the statement.

h. Liability of a withholding agent. A withholding agent is personally liable for the amount of the tax required to be withheld under Iowa Code subsection 422.16(12) if the income tax liability of a nonresident beneficiary which is attributable to the distribution is not paid, and in addition, is personally liable for any penalty and interest due if the tax required to be withheld is not paid to the department within the time prescribed by law. See rules 701—44.1(422) to 44.7(422) for the application and computation of penalty and interest on income tax required to be withheld.

This rule is intended to implement Iowa Code sections 422.6, 422.8, 422.16, 422.21, 422.23, 422.25, 422.27, 633.352 and 633.425.

701—89.5(422) Extension of time to file and pay the tax.

89.5(1) *Automatic extension of time to file.*

a. For tax years beginning on or after January 1, 1986. An automatic two-month extension of time to file the fiduciary income tax return will be granted by the department if the requirements set out in subparagraphs (1) and (2) are met.

(1) Filing the extension application on or before the due date of the return. See subrule 89.4(8) for what constitutes timely filing.

(2) Payment of at least 90 percent of the tax by the due date. At least 90 percent of the tax required to be shown due must have been paid on or before the due date of the return. To determine whether or not 90 percent of the tax was "paid" on or before the due date, the aggregate amounts of tax credits applicable to the return plus the tax payments which were made on or before the due date are divided by the tax required to be shown due on the return. If the aggregate of the tax credits and the tax payments is equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the "90 percent" test and no penalty will be assessed.

If the time for filing is extended, interest as provided by law, from the date the return originally was required to be filed to the date of actual payment of the tax, is to be computed on the unpaid tax. See rule 701—10.2(421) for the statutory rate of interest commencing on or after January 1, 1982.

b. For tax years beginning on or after January 1, 1991. See 701—subrule 39.2(4).

89.5(2) *Additional extension of time to file beyond the automatic extension.* For tax years beginning on or after January 1, 1986. The department may grant an additional extension of time to file the fiduciary return, not to exceed four months, provided an application for additional time is filed prior to the expiration of the automatic extension of time.

89.5(3) *Extension of time for the decedent's final return.* 701—subrules 39.2(2) and 39.2(3) providing for extensions of time to file individual income tax returns will apply to the decedent's final return.

89.5(4) *Form of application and place of filing.* The application for an extension of time to file the fiduciary income tax return must be made on forms prescribed by the director. The application must be filed with the department prior to the date the return is due, directed to the Compliance Division, Examination Section, P.O. Box 10456, Des Moines, Iowa 50306.

This rule is intended to implement Iowa Code section 422.21.

701—89.6(422) Penalties. Renumbered as 701—10.101(422), IAB 1/23/91.

89.6(1) Renumbered as 701—subrule 10.101(1), IAB 1/23/91.
89.6(2) Renumbered as 701—subrule 10.101(2), IAB 1/23/91.
89.6(3) Renumbered as 701—subrule 10.101(3), IAB 1/23/91.
89.6(4) Renumbered as 701—subrule 10.101(4), IAB 1/23/91.
89.6(5) Renumbered as 701—subrule 10.101(5), IAB 1/23/91.
89.6(6) Renumbered as 701—subrule 10.101(6), IAB 1/23/91.
89.6(7) Renumbered as 701—10.102(422), IAB 1/23/91.

701—89.7(422) Interest or refunds on net operating loss carrybacks.

89.7(1) Reserved.

89.7(2) *Interest on refunds and tax paid prior to due date.* For the purpose of determining the time interest begins to accrue, all income tax withheld, estimated tax paid and other tax paid prior to the due date shall be deemed to be paid on the last day the return is required to be filed disregarding any extensions of time to file the return and pay the tax.

89.7(3) *Interest on a net operating loss carryback—the second calendar month period—on or after April 30, 1981.* For net operating losses occurring in any of the taxable years ending on or after April 30, 1981, interest accrues on excess tax paid in a prior year, if the loss is carried back to such year, only after the close of the taxable year in which the loss occurs or on the first day of the second calendar month following the date the tax to be refunded was paid, whichever time is later.

This rule is intended to implement Iowa Code section 422.25.

701—89.8(422) Reportable income and deductions.

89.8(1) *Application of the Internal Revenue Code.* Iowa Code section 422.4(16) provides that taxable income of estates and trusts for Iowa income tax purposes is the same as taxable income for federal income tax purposes, subject to certain adjustments specified in Iowa Code sections 422.7 and 422.9. Therefore, the Internal Revenue Code is also Iowa law insofar as it relates to what constitutes gross income, allowable deductions and distributions, subject to the adjustments specified above. See *First National Bank of Ottumwa v. Bair,* 252 N.W.2d 723 (Iowa 1977).

For purposes of a distribution deduction under this chapter, an estate or trust shall receive a distribution deduction only for income taxable to Iowa. For example, municipal interest will be included in the distribution deduction because it is taxable to Iowa. U.S. government interest would not be included because it is not taxable to Iowa.

89.8(2) *Authority of federal court cases, regulations and rulings.* The director has the responsibility to enforce and interpret the law relating to the taxes the department is obligated to administer, including those portions of the Internal Revenue Code which are Iowa law under Iowa Code section 422.4. Federal regulations may be interpreted by Iowa courts for state tax purposes. *In re Estate of Louden,* 249 Iowa 1393, 1396, 92 N.W.2d 409 (1958). However, the construction of statutes by a court of the jurisdiction where the statute originated properly commands consideration and is highly persuasive. *Eddy v. Short,* 190 Iowa 1376, 1383, 179 N.W. 818 (1920), *In re Estate of Millard,* 251 Iowa 1282, 1292, 105 N.W.2d 95 (1960). Therefore, while federal court cases, regulations and rulings interpreting the Internal Revenue Code will be accorded every consideration, the department has the right to make its own interpretation of the Internal Revenue Code as to what constitutes taxable income for Iowa tax purposes, consistent with Iowa statutes and court decisions. Also see 701—subrule 41.2.

89.8(3) *Reportable income in general—Iowa estates and trusts.* Estates of Iowa resident decedents and trusts with a situs in Iowa must report all income received from sources within and without Iowa, regardless of whether the income is from real, personal, tangible or intangible property. See 89.8(11)*"b"* for the credit allowable against the Iowa tax for income tax paid to another state or country on income reported to Iowa for taxation.

89.8(4) *Reportable income in general—foreign situs estates and trusts.* Estates and trusts with a situs outside Iowa must report only that portion of income which is derived from Iowa sources. Examples of Iowa source income include, but are not limited to: income from real and tangible personal property with a situs in Iowa, such as a farm and from a business located in Iowa; the capital gain portion of an installment sale contract of Iowa situs property; and wages, salaries and other compensation for services performed in Iowa, but received after the death of the decedent.

Foreign situs estates and trusts must report income from intangible personal property, such as annuities, interest on bank deposits and dividends, but only to the extent the income is derived from a business, trade, profession or occupation carried on in Iowa.

89.8(5) *Income from property subject to the jurisdiction of the probate court.*

a. Probate property subject to possession by the personal representative. Income received on probate property after the decedent's death is chargeable to the estate or to the person succeeding to the decedent's property depending on whether the personal representative has the right to, or has taken possession of, the probate property producing the income. (Rev. Ruling 57-133, 1-CB 200 (1957).) If the personal representative has taken possession of or has the right to possession of a specific item of probate property, the income from this property is estate income, even though the personal representative is bound by law to distribute the income during the course of administration to a beneficiary. *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978); *In re Estate of Herring,* 265 N.W.2d 740 (Iowa 1978). The personal representative is charged with the income from this property for each taxable year until the property is distributed or otherwise disposed of. Iowa Code section 633.351 (probate code) specifies the personal representative shall take possession of the decedent's personal property, except exempt property, and also the decedent's real estate, except the homestead, if any one of the following conditions are met: if there is no distributee present and competent to take possession; if the real estate is subject to a lease; or if the distributee is present and competent and gives consent to possession. *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978); *In re Estate of Peterson,* 263 N.W.2d 555 (Iowa Ct. of Appeals 1977). In addition, Iowa Code section 633.386 (probate code) gives the personal representative authority to lease real estate (and therefore to take possession) in order to pay the debts and charges of the estate.

b. Income charged to the heir or beneficiary. Under Iowa law title to probate property, both real and personal, passes instantaneously on death to the heir or beneficiary. *In re Estate of Bliven,* 236 N.W.2d 366, 370 (Iowa 1975). If property is not subject to the personal representative's right of possession under Iowa Code section 633.351 (probate code) and the personal representative has not exercised the right to sell, lease, mortgage or pledge real and personal property to pay debts and charges under Iowa Code section 633.386 (probate code), the income from this probate property is not estate income. It is income to the person succeeding to the property.

89.8(6) *Income from nonprobate property.* Income from property not subject to the jurisdiction of the probate court is charged to the beneficiary or other person succeeding to the property. Examples of income from nonprobate property include, but are not limited to: property held in joint tenancy, annuity payments, pension and retirement plans not payable to the estate, and income from certain trusts created by the grantor-decedent. See *Wood, Admr., v. Logue,* 167 Iowa 436, 441, 149 N.W. 613 (1914) for joint tenancy property not being subject to the jurisdiction of the probate court; also *Lang v. Commissioner,* 289 U.S. 109, 77 L.Ed. 1066, 53 S.Ct. 535 (1933).

89.8(7) *Gross income of an estate.*

a. In general. 26 U.S.C. Section 641(b) provides that the taxable income of an estate or trust shall be computed in the same manner as the taxable income of an individual, except as modified in subchapter J of the Internal Revenue Code. The gross income of an individual and, therefore, the gross income of an estate or trust, is not given a definitive meaning in 26 U.S.C. Section 641. Subrule 89.8(7), paragraphs *"d"* to *"n,"* describe the most common kinds of income of an estate or trust. However, those paragraphs are not intended to identify all types of taxable income.

b. Definition of the period of administration. The income charged to the decedent's estate is reportable by the personal representative for each taxable year during the period of the administration of the decedent's estate, if the minimum filing requirements are met. The period of administration for Iowa income tax purposes is determined by applying federal tax law to Iowa estates because Iowa taxable income is the same as federal taxable income, subject to the adjustments provided in Iowa Code sections 422.7 and 422.9. *Old Virginia Brick Co., Inc. v. Commissioner,* 367 F.2d 276 (4th CA 1966); *First National Bank of Ottumwa v. Bair,* 252 N.W.2d 723 (Iowa 1977). It is the period actually required by the personal representative to perform the ordinary duties of administration, such as the collection of assets and the payment of debts, taxes, legacies and bequests, whether the period required is longer or shorter than the period specified under the probate code. See federal regulations 1.641(b)-3(a). An estate will be considered terminated for income tax purposes when all of the assets have been distributed, except for a reasonable amount set aside in good faith for the payment of unascertained or contingent liabilities and expenses. The delay in closing the estate cannot be capricious. *Frederich v. Commissioner,* 147 F.2d 796 (5th CA 1944). If the period of administration is terminated for income tax purposes, the heir or beneficiary is charged with the income.

c. The estate's first return—special considerations. Death terminates the decedent's taxable year. Income received the day of the decedent's death is to be reported on the decedent's final individual return. See 26 U.S.C. 443(a)(2); federal regulation Section 1.443-1(a)(1).

The taxable year of a decedent's estate begins the day after the decedent's death. Income received after the decedent's death is either chargeable to the decedent's estate or to the person succeeding to the property producing the income. See 89.8(5)*"a"* and 89.8(5)*"b."* Income the decedent had a right to receive prior to death, but did not receive before death, is not the decedent's income, but is income in respect of a decedent and is chargeable either to the decedent's estate when received or to the person succeeding to the right to income. See 26 U.S.C. Section 691(a) and applicable federal regulations on what constitutes income in respect of a decedent. Trade or business expenses, interest, taxes and expenses for the production of income owing by the decedent at death, but unpaid, and the allowance for depletion on income not received at death, are not deductible on the decedent's final return. These are deductible by the estate or the person succeeding to the property when paid. Medical expenses incurred by the decedent, but unpaid at death, are not deductible by the estate. These are deductible on the decedent's individual return for the year the expenses were incurred, if paid within one year after the decedent's death and if the medical expense is not claimed as a deduction for federal estate tax purposes under 26 U.S.C. Section 2053. See 26 U.S.C. Section 213(d) and federal regulations thereunder relating to deductible medical expense of a decedent. Funeral expense is not a deductible item for income tax purposes, although it is a deductible expense for federal estate tax and Iowa inheritance tax purposes. See 701—86.6(2)*"g"* and 86.6(3)*"b."* Unused ordinary and capital losses remaining after the decedent's income tax liability for the year of death has been determined are not carried forward to the decedent's estate. The unused losses terminate with death, except to the extent they may be used by the decedent's surviving spouse. See Rev. Ruling 74-175, 1 CB 52 (1974). The estate of a decedent is a different taxpayer than the decedent.

d. Dividends. All income classified as dividends under 26 U.S.C. Section 61 and federal regulation section 1.61-9, received or constructually received, during the taxable year constitutes gross income to the estate or trust. However, some income labeled as dividends is for tax purposes classified as interest. For example, income from cooperative banks, credit unions, domestic building and loan associations, domestic savings and loan associations, federal savings and loan associations and mutual savings banks are considered interest and not dividends.

e. Interest. All interest received or constructually received during the taxable year, with the exception of interest, but not capital gain, from federal securities and bonds issued by the Iowa board of regents pursuant to Iowa Code chapter 262 is income to the estate or trust. Interest from securities issued by a state and its political subdivisions or from foreign securities is included in gross income for Iowa tax purposes, even though the interest may be exempt from federal income tax.

f. Partnerships and other estates and trusts. If a partnership in which the decedent had an interest is not terminated at death, the deceased partner's share of the partnership income is considered to be all received at the end of the partnership taxable year. As a result, none of the partnership income is chargeable to the deceased partner, unless the day of the partner's death coincides with the day the partnership year ends. It is chargeable to the deceased partner's estate or the person succeeding to the partner's interest, notwithstanding the fact the deceased partner may have withdrawn most or all of the deceased partner's share of the partnership income prior to death. Federal regulation section 1.706-1(C)(3)(ii); Rev. Ruling 68-215, 18 I.R.B. 14 (1968).

In general, if an estate or trust and its beneficiaries have different taxable years, the beneficiary is required to report the income from the estate or trust as if it were all paid on the last day of the taxable year of the estate or trust. Federal regulation section 1.662(C)-1. *Hay v. U.S.,* 263 F. Supp. 813 (D.C. Tex. 1967). However, if the beneficiary dies during the taxable year of an estate or trust, the taxable income of the beneficiary's estate includes only the portion of the income of the other estate or trust which was required to be distributed to the beneficiary, but was not in fact distributed to the beneficiary before death. The income that was in fact distributed by the other estate or trust prior to the beneficiary's death is properly included in the beneficiary's final income tax return. See federal regulation 1.662(C)-2.

g. Rents and royalties. Income received after death for the use or occupancy of the decedent's real and personal property is the income of the decedent's estate or the income of the person succeeding to the property. See 89.8(5)*"a"* and 89.8(5)*"b."* If the rental income was accrued, but unpaid at death, the accrued rent is income in respect of a decedent and is to be included as income, either by the estate or the person succeeding to the right to the income, in the taxable year when payment is received. Rent is not limited to payments in cash. It includes, but is not limited to, crop share rental payments when the decedent was a nonparticipating landlord. *Alvin R. Huldeen Estate v. Department of Revenue,* Sac County District Court, Probate No. 14,661 (1975). Income from the sale of grain and livestock in the estate of a participating landlord which was on hand at death is classified as income from a farm or business and not rental income.

Income from royalties would include, but is not limited to, payment for rights in books, plays, copyrights, trademarks, formulas, patents and from the exploitation of natural resources.

h. Farm and business income—in general. The death of the decedent does not alter the rules under which business and farm income is computed for income tax purposes. However, the decedent's estate as a new taxpayer may adopt a taxable year which is different than the decedent's taxable year. Also, the decedent's estate may adopt a different accounting method. The rules for determining a gain or loss from the sale or exchange of assets in the decedent's estate are the same as those for an individual. However, see 89.8(7)*"i"* and 89.8(7)*"j"* for the basis for gain or loss from the sale or exchange of property acquired from a decedent and 89.8(7) for depreciation rules for property acquired from a decedent.

i. Basis for gain or loss—the stepped-up basis. Property acquired from a decedent receives a new basis for determining gain or loss when the property is sold or exchanged. This rule does not apply to property which is classified as income in respect of a decedent and certain other property designated in 26 U.S.C. Section 1014(b) and (c) and the federal regulations thereunder. The basis of property acquired from a decedent is either: (1) its fair market value at the time of death or the alternative value when it has been elected for federal estate tax purposes under 26 U.S.C. Section 2032, or (2) its special use value when the property has been valued for federal estate tax purposes under 26 U.S.C. Section 2032A. The decedent's basis in the property is not relevant.

If an estate files a federal estate tax return, then the basis is governed by the federal estate tax value determination. However, if an estate does not file a federal estate tax return, then Iowa inheritance tax valuation governs the basis for the property that is acquired.

EXAMPLE 1. Decedent A died July 1, 1995, owning a 160-acre Iowa farm which the decedent purchased in 1955 for $200 per acre, or $32,000. At the time of A's death, the farm had a fair market value of $2,000 per acre, or $320,000. In 1965, A and surviving spouse B purchased a residence for $35,000 in joint tenancy. Surviving spouse B, a school teacher, contributed one half of the purchase price of the residence; therefore, one-half of the residence is excluded from A's gross estate. At the time of A's death, the residence had a fair market value of $100,000. Surviving spouse B received the entire estate and did not elect the alternative or special use valuation.

B's basis for gain or loss in the farm and residence is computed as follows:

Asset	Fair Market Value at Death	New Basis for Gain or Loss	
160-acre farm	$320,000		$320,000
Residence	100,000	½ new basis	50,000
		½ old basis	17,500
			$ 67,500

Since the entire farm was acquired from A, its basis is 100 percent of the fair market value at death. Only one-half of the residence was acquired from A; therefore, only one half of the residence receives a new basis on A's death.

j. No new basis—income in respect of a decedent. Property or rights to income, classified as income in respect of a decedent under 26 U.S.C. Section 691, do not receive a new basis upon the decedent's death. It is a special exception to the stepped-up basis rule. See 26 U.S.C. Section 1014(c) and federal regulation section 1.1014-1(c).

Examples of income in respect of a decedent include, but are not limited to, the following:

1. Wages, salary or other compensation for personal services earned which are unpaid at death.
2. Interest accrued on obligations, such as bank accounts, certificates of deposit, bonds and promissory notes.
3. Accrued interest and unpaid capital gain on real and personal property installment contracts.
4. Federal income tax refunds, if claimed as a deduction on an Iowa income tax return.
5. Accounts receivable, if the decedent was on a cash accounting basis.
6. Crop share rent if the decedent was a nonparticipating landlord on a cash basis. This also includes growing crops, which are to be valued at the time of the decedent's death or alternate valuation date.

The basis for gain or loss for property classified as income in respect of a decedent is the decedent's basis in the property at the time of death.

k. Gain or loss—holding period. For the purpose of determining whether the sale or exchange of property is a long- or short-term gain or loss, the holding period of property acquired from a decedent begins the day after the decedent's death, regardless of how long the property was held by the decedent. See 26 U.S.C. Section 1.1223, federal regulation Section 1.1223-1(j). However, if the property acquired from a decedent is sold or otherwise disposed of within one year of the decedent's death, it will be considered to have been held over one year. In general, this is a sufficiently long holding period to qualify the sale or exchange as a long-term gain or loss transaction. However, a one-year holding period does not qualify horses and cattle held for draft, breeding or dairy purposes for long-term gain or loss treatment. A 24-month holding period is required by 26 U.S.C. Section 1231(b)(3) for the transaction to be considered long-term.

Therefore, if this kind of livestock is acquired from a decedent (which is usually the case) and is sold or exchanged within 24 months after the decedent's death, the sale is considered a short-term transaction. See Rev. Ruling 75-361, 2 C.B. 344 (1975). However, even if the sale or exchange results in a short-term gain or loss transaction, the property has a stepped-up basis, because it is acquired from a decedent. See 89.8(7)*"i."*

l. Depreciation—property acquired from a decedent. Property acquired from a decedent which is subject to the allowance for depreciation, receives the same value for depreciation purposes as its basis for gain or loss in a sale or exchange, regardless of its basis or remaining useful life in the hands of the decedent. See 26 U.S.C. Sections 167(g) and 1011; federal regulation Section 1.167(g)-1. For the purpose of determining the life of an asset subject to the allowance for depreciation, the property is treated as if it were acquired the day after the decedent's death. See federal regulation Section 1.167(a)-10. The decedent's estate or other person acquiring depreciable property from the decedent may adopt a depreciation method different from that used by the decedent for the depreciable asset. See federal regulation section 1.167(a)-7.

m. Section 641(c) gain. Iowa Code subsection 422.7(7) adds the gain that is excluded from federal taxable income under 26 U.S.C. Section 641(c) to the Iowa taxable income of a trust. This gain is excluded from taxable income for federal purposes because it is subject to a special federal tax under 26 U.S.C. Section 644(a). The effect of Iowa Code subsection 422.7(7) is to tax the gain, which receives separate treatment for federal income tax purposes, in the same manner as this gain was taxed prior to the enactment of the Federal Tax Reform Act of 1976.

n. Nonrecognition of gain—installment sale contracts before October 20, 1980. No gain or loss is realized by the estate of a decedent-seller dying before October 20, 1980, when the purchaser in an installment sale contract inherits the seller's rights under the contract of sale. The merger of the asset with the liability is considered to be a nontaxable transfer. Therefore, any unreported gain from the installment sale contract is not subject to income tax when there is a merger of the asset with the liability. See Senate Finance Committee Report to P.L. 96-471.

o. Recognition of gain—installment sale contracts after October 19, 1980. Effective for estates of decedents dying after October 19, 1980, Section 3 of Public Law 96-471 (Installment Sales Revision Act of 1980) provides for the recognition of the remaining gain on installment sales contracts when the debtor inherits the obligation and thereby causes a merger of the asset with the liability. The rule after October 19, 1980, is if, as a result of the death of the holder of an installment sale obligation (usually the seller), the installment sale obligation is transferred to the debtor (usually the purchaser); or, if the installment sale obligation is canceled either as a result of the holder's death or by the personal representative of the holder's estate, the remaining gain from the installment sale contract not previously reported is recognized by the holder's estate, as if the remaining balance due had been immediately paid in full. The merger of the asset with the debt is treated as a taxable transfer by the estate of the holder (seller) of the obligation and is income in respect of a decedent realized by the holder's estate.

If the obligation was held by a person other than the seller, such as a trust, the cancellation of the obligation will be treated by that person as a taxable transfer immediately after the seller's death. In the absence of some act of canceling the obligation, such as by distribution or notation which results in cancellation under Iowa Code chapter 554 (Uniform Commercial Code), the disposition is considered to occur no later than the time the period of administration of the estate is ended. See Senate Committee Report to P.L. 96-471.

For gain recognition purposes, if the seller and the debtor were related parties, the value of the installment contract is considered to be not less than full face value, regardless of its value for Iowa inheritance tax or federal estate tax purposes. A related party includes, but is not limited to, the spouse, child (including an adopted child), grandchild, or parent of the seller; an estate in which the seller is a beneficiary; a partnership in which the seller is a partner; a corporation in which the seller owns 50 percent or more of the stock; and a trust where the seller is a beneficiary or is treated as the owner.

If the debtor inherits the obligation to pay or another share of the estate, the personal representative of the holder's estate must set off the contract of sale to the debtor when satisfying the debtor's share of the estate if the debtor's share of estate equals or exceeds the face value of the contract. In this case, the entire contract is canceled and all of the unreported gain is income in respect of a decedent to the estate. If the debtor's share of the estate is less than the face value of the contract of sale, the contract of sale is canceled only to the extent of the debtor's share of the estate and only a like percentage of the unreported gain is considered income in respect of a decedent received immediately by the estate. See Iowa Code section 633.471 for the right of retainer and setoff. *In re Estate of Ferris,* 234 Iowa 960, 14 N.W.2d 889 (1944).

p. Nonresident aliens—sales of Iowa real estate. For sales and exchanges occurring after June 18, 1980, nonresident aliens and estates and trusts with a situs outside the United States must include the gain from the sale or exchange of Iowa real estate as taxable income, even though the real estate was not effectively connected with a trade or business carried on in the United States. See Public Law 96-499. Any gain paid or distributed to a nonresident alien or an estate or trust with a situs outside the United States is subject to Iowa income tax withholding, unless the gain has been previously accumulated and any tax due paid. See 89.4(9)*"d"* and 701—subrule 46.4(2), item "5," for the duty to withhold Iowa income tax from distributions to nonresident beneficiaries and individuals.

q. Miscellaneous income. Miscellaneous income is an inclusive term. It includes those items of income that are subject to Iowa income tax under Iowa Code section 422.6 which are not classified as dividends, interest, rent and royalties, income from partnerships and other fiduciaries, business or farm income and gain or loss from the sale or exchange of assets. Examples of miscellaneous income include, but are not limited to: wages and salaries earned by the decedent which are unpaid at death; federal income tax refunds, if the refund was deducted from an Iowa income tax return; and distributions to the estate from an employee's pension or retirement plan, if subject to Iowa income tax.

r. Grantor trusts. If the income of a trust is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679, the grantor of the trust or other person specified in the trust instrument, and not the trust, is considered the owner of the income. This income is properly reportable on the Iowa individual income tax return of the grantor or other individual treated as the owner. The fiduciary income tax return of a grantor trust is an informational return only. Items of income, deductions and credits of a grantor trust should be reported on a separate statement attached to the fiduciary return of income. See federal regulation Section 1.671-4. The taxable year of a grantor trust must be the same as the taxable year of the grantor, or of the other individual considered the owner of the income for tax purposes. *William Scheft,* 59 T.C. 428. Examples of grantor trusts are, but not limited to: trusts where the grantor or a nonadverse party has the power to revoke the trust or to return the corpus to the grantor; trusts where the grantor or a nonadverse party has the power to distribute income to or for the benefit of the grantor or the grantor's spouse; and trusts where the grantor has retained a reversionary interest in the trust, within specified time limits. See federal regulation Section 1.671-1.

s. "Equity trusts"—assignment of future wages and salaries. The assignment of future wages, salaries or other compensation for future services by a grantor to a trust (commonly called "equity" or "family estate" trust) does not shift the tax burden on this income from the grantor to the trust. The trust is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679. The income of the trust is to be reported by the grantor on an Iowa individual income tax return. *Lucas v. Earl,* 281 U.S. 111, 74 L.Ed. 731, 50 S.Ct. 241 (1930); *Vnuk v. Commissioner,* 621 F.2d 1318 (8th CA 1980); Revenue Ruling 75-257, 2 C.B. 251 (1975); *In re August Erling, Jr., et al.,* Director of Revenue decision, Docket No. 77-237-2C-A (1979).

t. Adjustments to federal taxable income. Iowa Code section 422.4(1) provides that the Iowa taxable income of estates and trusts is federal taxable income, without the deduction for the personal exemption, subject to the specific adjustments set forth in Iowa Code section 422.7 and the modifications relating to federal and state income tax specified in Iowa Code section 422.9. The modifications have these results:

1. Federal income tax on the income of Iowa situs estates and trusts is deductible for Iowa income tax purposes in the year paid or accrued depending on the method of accounting.
2. Federal income tax owed by Iowa resident decedents at the time of death is a deduction against estate income in the year paid.
3. The federal income tax deduction allowable for estates and trusts with a situs outside Iowa must be prorated on the basis the Iowa gross income subject to tax bears to the total gross income subject to federal income tax.
4. Federal income tax owed by a nonresident decedent at the time of death must be prorated on the basis the Iowa income included in the federal adjusted gross income bears to the total federal adjusted gross income. See 701—subrule 41.3(2) for prorating the federal income tax deduction for nonresident individuals.
5. Iowa income tax paid by the estate is not a deduction in computing Iowa taxable income.
6. The federal exemption allowed to estates and trusts under 26 U.S.C. Section 642(b), that is, $600 for an estate, $300 for simple trust and $100 for a complex trust, is not deductible for Iowa income tax purposes.
7. Interest and dividends from federal securities, but not capital gain or loss, is exempt from Iowa income tax and, therefore, is not part of the Iowa taxable income of estates and trusts.
8. Interest and dividends from securities of a state and its political subdivisions and from foreign securities are included in Iowa taxable income in the year received, regardless of whether it is exempt from federal income tax. However, see 701—40.3(422) and 89.8(7)*"e"* for the exemption for interest on Iowa board of regents bonds.
9. See 89.8(7)*"m"* for the includability of the gain, excluded by 26 U.S.C. Section 641(c), in the Iowa taxable income of a trust.
10. See 701—paragraph 86.5(11)*"b"* for the inheritance tax exemption for the portion of an employee's pension or retirement plan subject to Iowa income tax.

89.8(8) *Deductions from gross income.*

a. In general. The deductions allowable in computing taxable income of estates and trusts are generally those relating to a trade or business and the expenses attributable to investment income. The important distinction between the deductions allowable in computing federal adjusted gross income and itemized deductions for individual income tax has only limited application in determining the taxable income of estates and trusts. Many deductions in computing the taxable income of an individual have no application to the deductions allowable in computing the taxable income of an estate or trust, due to the nature of estates and trusts and the sources of their income. For example, medical expense and moving expense deductions are applicable only to individuals, but taxes and interest expense can be incurred by both individuals and estates and trusts. Also the deduction for distribution to beneficiaries has no application to individual income tax.

b. Interest expense. Interest paid on obligations secured by property subject to the personal representative or trustee's right of possession is a deduction from gross income in the year paid. Interest on debts or charges which the personal representative or trustee is obligated to pay is also a deduction against gross income in the year paid. Interest on obligations secured by property, not subject to the personal representative's right of possession, is not deductible from the gross income of the estate, but is a deduction for the person succeeding to the encumbered property. No distinction is made between business and nonbusiness interest. See Iowa Code section 633.278 (probate code) for circumstances when the personal representative of the decedent's estate is required to pay the debt and interest on encumbered property, even though the property is not subject to the personal representative's right of possession. *J.S. Dean,* 35 T.C. 1083 (1961); Revenue Ruling 57-481, 2 C.B. 48 (1957).

c. Taxes. The taxes deductible against the gross income of an estate or trust are limited to the taxes deductible for individual income tax purposes under 26 U.S.C. Section 164, subject to the adjustments specified in Iowa Code section 422.9 relating to federal and state income taxes. Real estate and personal property taxes, including the taxes due, but unpaid at death, are only deductible by the estate on the decedent's property which is subject to the personal representative's right of possession. Federal income tax on the income of an estate or trust and federal income tax owing by an Iowa decedent at the time of death, including the federal income tax owing on the decedent's final return for the year of death, are deductible by the estate or trust in the year paid. The federal income tax liability of a nonresident decedent must be prorated for tax years on or before December 31, 1981. For tax years on or after January 1, 1982, the federal income tax deduction attributable to Iowa by nonresidents of Iowa shall be the same deduction as is available for resident taxpayers. See 701—subrule 41.3(2) and Iowa Code section 422.5(1)*"j."* Examples of taxes not deductible include, but are not limited to: federal estate tax (except federal estate tax paid on income in respect of a decedent); Iowa income and inheritance tax; federal gift taxes; and special assessments increasing the value of property. See 26 U.S.C. Section 275. See 89.8(7)*"r"* for the proration of federal income tax for foreign situs estates and trusts. In addition, foreign situs estates and trusts are not allowed a deduction from Iowa gross income for real and personal property taxes paid on property located outside Iowa.

d. Depreciation and depletion—allocation. If the personal representative of a decedent's estate has the right to the possession of property eligible for the depreciation allowance, the depreciation is a deduction from the estate's gross income when the income for the taxable year is accumulated by the estate. If all or part of the income for the year is distributed to the beneficiaries, the deduction for depreciation is apportioned between the estate and the beneficiaries on the basis of the income allocated to each. In the case of an estate, the deduction for depreciation follows the income.

The same depreciation rules apply to simple and complex trusts, with the exception that if the trustee has the right to maintain a reserve for depreciation, and in fact does so, the deduction for depreciation is allocated to the trust to the extent of the reserve maintained, regardless of whether the income is accumulated or distributed. See 26 U.S.C. Section 167, federal regulation 1.167 H-1(b); Revenue Ruling 74-530, 2 C.B. 188 (1974).

The rules governing the allowance for depreciation are also the rules to be applied to the allowance for depletion under 26 U.S.C. Section 611.

e. The charitable deduction. The charitable deduction allowed estates and trusts under 26 U.S.C. Section 642(c) is not subject to the percentage of income limitation applicable to individual taxpayers under 26 U.S.C. Section 170(b). The allowable deduction is governed by the terms of the will or trust instrument, which can provide for unlimited payments for charitable purposes. However, an unused charitable contribution carryover of the decedent remaining after the decedent's individual income tax liability for the year of death is determined is not available to the estate. The unused carryover terminates at death, except to the extent it may be used by the surviving spouse. See federal regulation Section 1.170A-10(d)(4)(iii). The deduction is limited to payments of gross income or amounts permanently set aside for charitable uses. A simple pecuniary bequest to charity in the decedent's will does not qualify for the charitable deduction from the estate's income. It is a payment from the corpus of the estate. *Frank Trust of 1931,* 145 F.2d 411 (3rd CA 1949). However, the pecuniary bequest to charity is exempt from the Iowa inheritance tax under Iowa Code section 450.4 if it meets the exemption requirements.

f. Other deductions. The category of other deductions includes those deductions allowable in computing taxable income not receiving special itemized treatment on the Iowa fiduciary return of income. The most common kind of other deductions is the expense of administration of an estate or trust paid during the taxable year. Expenses of administration include, but are not limited to: a reasonable fee and the necessary expenses of the attorney employed by the personal representative of an estate or the trustee of a trust; a reasonable fee and the necessary expenses of the personal representative of an estate or the trustee of a trust; accounting fees; court costs; and interest paid on federal estate tax during an extension of time to pay. However, administration expenses are subject to the no double deduction rule. See 26 U.S.C. Section 642(g) and 89.8(8)"*g.*" Salaries or fees paid during the taxable year for the management of a farm or business are expenses directly attributable to the production of a specific kind of income and are more properly deductible on the farm schedule F or the business schedule C.

g. The no double deduction rule. Expenses of administration, certain debts of the decedent like medical expenses incurred prior to death and losses during the period of administration are proper deductions in computing both the taxable income of an estate or trust (or on the decedent's individual return in case of medical expenses) and the taxable estate for federal estate tax purposes under 26 U.S.C. Sections 2053 and 2054. The no double deduction rule only applies to trusts when the trust assets are included for federal estate tax purposes. 26 U.S.C. Section 642(g) prohibits the double deduction of those items which qualify as deductions for both taxes. To prevent the double deduction, it is a prerequisite for the allowance of the deduction for income tax purposes that a statement be filed with the fiduciary return of income waiving the right to claim the item or portion of the item as a deduction on the federal estate tax return. The waiver once filed with the fiduciary return of income is irrevocable. However, unless the waiver has been filed, the decision to claim the deduction or portion of the deduction on the federal estate tax return can be changed anytime prior to the time the item or portion of the item is finally allowed for federal estate tax purposes.

The waiver requirement has no application to estates and trusts not required to file a federal estate tax return.

The no double deduction rule has no application to deductions in respect of a decedent, such as deductions relating to trade or business expenses, interest, taxes, expenses for the production of income and the allowance for depletion, which are deductible both for income tax purposes and federal estate tax purposes. See 26 U.S.C. Section 691(b) and federal regulations Section 1.691(b)-1 for what constitutes deductions in respect of a decedent.

The no double deduction rule does not apply to the deduction of an item for Iowa inheritance tax purposes. Items are deductible or not in computing the taxable shares for Iowa inheritance tax purposes by reference alone to Iowa Code chapter 450.

Assuming an item is otherwise deductible for income and inheritance tax purposes, the no double deduction rule has the following applications for Iowa income and inheritance tax:

1. For estates and trusts not required to file a federal estate tax return, an item is deductible for both Iowa inheritance tax and Iowa income tax purposes.

2. Estates and trusts required to file a federal estate tax return can always claim the item as a deduction on the Iowa inheritance tax return. In addition, the same item or portion of the item is a deduction for Iowa income tax purposes if the item or portion of the item is not claimed as a deduction on the federal estate tax return. If it is claimed as a deduction on the federal estate tax return, it is not deductible for income tax purposes.

This rule applies both to estates and trusts with a situs within and without Iowa.

h. The net operating loss deduction. Subject to the modifications specified in federal regulation Section 1.642(d)-1, an estate or trust is allowed a deduction for net operating loss which is computed in the same manner as the net operating loss deduction allowable to individual taxpayers. The modification especially applicable to estates and trusts is: The the charitable deduction allowable under 26 U.S.C. Section 642(C) is disregarded. See federal regulation Section 1.642(d)-1.

The rule that nonbusiness deductions are only taken into account to the extent of nonbusiness income applies equally to estates and trusts and individual taxpayers. Attorney fees and the fees of the trustee or personal representative, without a showing that these administrative expenses were incurred in carrying on the decedent's or grantor's trade or business, are a nonbusiness deduction. *Refling v. Commissioner,* 47 F.2d 895 (8th CA 1930). Therefore, any excess fees over income are not available for a carryback to a prior taxable year or a carryforward to a future taxable year. *Mary C. Westphal,* 37 T.C. 340 (1961). However, see 89.8(9)*"a"* for the special rule on excess deductions in the year the estate or trust terminates. Net operating losses are available to the estate or trust and can be carried back for distribution to a beneficiary, with the exception that any unused loss must be distributed to the beneficiaries in the year the estate or trust terminates.

Estates and trusts with a situs outside Iowa are allowed a deduction only for a net operating loss attributable to a trade or business activity carried on in the state of Iowa. In the event the trade or business activity giving rise to the loss is carried on both in Iowa and another state, the net operating loss deduction for Iowa income tax purposes must be prorated on the ratio of the Iowa gross receipts from the trade or business to the total gross receipts from the trade or business. See 701—subrule 40.18(2) for the computation of the net operating loss deduction of a nonresident decedent.

The same depreciation rules apply to simple and complex trusts, with the exception that if the trustee has the right to maintain a reserve for depreciation, and in fact does so, the deduction for depreciation is allocated to the trust to the extent of the reserve maintained, regardless of whether the income is accumulated or distributed. See 26 U.S.C. Section 167, federal regulation 1.167 H-1(b); Revenue Ruling 74-530, 2 C.B. 188 (1974).

The rules governing the allowance for depreciation are also the rules to be applied to the allowance for depletion under 26 U.S.C. Section 611.

e. The charitable deduction. The charitable deduction allowed estates and trusts under 26 U.S.C. Section 642(c) is not subject to the percentage of income limitation applicable to individual taxpayers under 26 U.S.C. Section 170(b). The allowable deduction is governed by the terms of the will or trust instrument, which can provide for unlimited payments for charitable purposes. However, an unused charitable contribution carryover of the decedent remaining after the decedent's individual income tax liability for the year of death is determined is not available to the estate. The unused carryover terminates at death, except to the extent it may be used by the surviving spouse. See federal regulation Section 1.170A-10(d)(4)(iii). The deduction is limited to payments of gross income or amounts permanently set aside for charitable uses. A simple pecuniary bequest to charity in the decedent's will does not qualify for the charitable deduction from the estate's income. It is a payment from the corpus of the estate. *Frank Trust of 1931,* 145 F.2d 411 (3rd CA 1949). However, the pecuniary bequest to charity is exempt from the Iowa inheritance tax under Iowa Code section 450.4 if it meets the exemption requirements.

f. Other deductions. The category of other deductions includes those deductions allowable in computing taxable income not receiving special itemized treatment on the Iowa fiduciary return of income. The most common kind of other deductions is the expense of administration of an estate or trust paid during the taxable year. Expenses of administration include, but are not limited to: a reasonable fee and the necessary expenses of the attorney employed by the personal representative of an estate or the trustee of a trust; a reasonable fee and the necessary expenses of the personal representative of an estate or the trustee of a trust; accounting fees; court costs; and interest paid on federal estate tax during an extension of time to pay. However, administration expenses are subject to the no double deduction rule. See 26 U.S.C. Section 642(g) and 89.8(8)"*g.*" Salaries or fees paid during the taxable year for the management of a farm or business are expenses directly attributable to the production of a specific kind of income and are more properly deductible on the farm schedule F or the business schedule C.

g. The no double deduction rule. Expenses of administration, certain debts of the decedent like medical expenses incurred prior to death and losses during the period of administration are proper deductions in computing both the taxable income of an estate or trust (or on the decedent's individual return in case of medical expenses) and the taxable estate for federal estate tax purposes under 26 U.S.C. Sections 2053 and 2054. The no double deduction rule only applies to trusts when the trust assets are included for federal estate tax purposes. 26 U.S.C. Section 642(g) prohibits the double deduction of those items which qualify as deductions for both taxes. To prevent the double deduction, it is a prerequisite for the allowance of the deduction for income tax purposes that a statement be filed with the fiduciary return of income waiving the right to claim the item or portion of the item as a deduction on the federal estate tax return. The waiver once filed with the fiduciary return of income is irrevocable. However, unless the waiver has been filed, the decision to claim the deduction or portion of the deduction on the federal estate tax return can be changed anytime prior to the time the item or portion of the item is finally allowed for federal estate tax purposes.

The waiver requirement has no application to estates and trusts not required to file a federal estate tax return.

The no double deduction rule has no application to deductions in respect of a decedent, such as deductions relating to trade or business expenses, interest, taxes, expenses for the production of income and the allowance for depletion, which are deductible both for income tax purposes and federal estate tax purposes. See 26 U.S.C. Section 691(b) and federal regulations Section 1.691(b)-1 for what constitutes deductions in respect of a decedent.

The no double deduction rule does not apply to the deduction of an item for Iowa inheritance tax purposes. Items are deductible or not in computing the taxable shares for Iowa inheritance tax purposes by reference alone to Iowa Code chapter 450.

Assuming an item is otherwise deductible for income and inheritance tax purposes, the no double deduction rule has the following applications for Iowa income and inheritance tax:

1. For estates and trusts not required to file a federal estate tax return, an item is deductible for both Iowa inheritance tax and Iowa income tax purposes.

2. Estates and trusts required to file a federal estate tax return can always claim the item as a deduction on the Iowa inheritance tax return. In addition, the same item or portion of the item is a deduction for Iowa income tax purposes if the item or portion of the item is not claimed as a deduction on the federal estate tax return. If it is claimed as a deduction on the federal estate tax return, it is not deductible for income tax purposes.

This rule applies both to estates and trusts with a situs within and without Iowa.

h. The net operating loss deduction. Subject to the modifications specified in federal regulation Section 1.642(d)-1, an estate or trust is allowed a deduction for net operating loss which is computed in the same manner as the net operating loss deduction allowable to individual taxpayers. The modification especially applicable to estates and trusts is: The the charitable deduction allowable under 26 U.S.C. Section 642(C) is disregarded. See federal regulation Section 1.642(d)-1.

The rule that nonbusiness deductions are only taken into account to the extent of nonbusiness income applies equally to estates and trusts and individual taxpayers. Attorney fees and the fees of the trustee or personal representative, without a showing that these administrative expenses were incurred in carrying on the decedent's or grantor's trade or business, are a nonbusiness deduction. *Refling v. Commissioner,* 47 F.2d 895 (8th CA 1930). Therefore, any excess fees over income are not available for a carryback to a prior taxable year or a carryforward to a future taxable year. *Mary C. Westphal,* 37 T.C. 340 (1961). However, see 89.8(9)*"a"* for the special rule on excess deductions in the year the estate or trust terminates. Net operating losses are available to the estate or trust and can be carried back for distribution to a beneficiary, with the exception that any unused loss must be distributed to the beneficiaries in the year the estate or trust terminates.

Estates and trusts with a situs outside Iowa are allowed a deduction only for a net operating loss attributable to a trade or business activity carried on in the state of Iowa. In the event the trade or business activity giving rise to the loss is carried on both in Iowa and another state, the net operating loss deduction for Iowa income tax purposes must be prorated on the ratio of the Iowa gross receipts from the trade or business to the total gross receipts from the trade or business. See 701—subrule 40.18(2) for the computation of the net operating loss deduction of a nonresident decedent.

i. Capital loss deduction. The capital loss deduction of an estate or trust is computed in the same manner as the capital loss deduction for individual taxpayers. However, it is a deduction only for the estate or trust and is not distributable to a beneficiary, except in the year the estate or trust terminates. *Grey v. Commissioner,* 118 F.2d 153, 141 ALR 1113 (7th CA 1941); *Jones v. Whittington,* 194 F.2d 812 (10th CA 1952). Capital losses do not enter into the computation of the deduction for income required to be distributed currently to beneficiaries. During the period of administration of the estate or trust, capital losses can be used only to offset capital gain for simple trusts required to distribute income currently. However, beneficiaries may derive immediate benefit from capital losses when capital gain is required or permitted to be distributed to beneficiaries prior to closure of the estate or trust, since the losses can be used to offset gain before distribution.

j. The distribution deduction. Estates and trusts are allowed to deduct the amounts of income required to be distributed currently and also other amounts properly paid, credited or required to be distributed to the extent of the distributable net income for the year. For income tax purposes, an estate of a decedent is treated as a complex trust, because normally the personal representative of an estate has the discretion whether or not to distribute current income. Therefore, most distributions of income from a decedent's estate fall under the category of "other amounts properly paid, credited or required to be distributed." However, see *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978) for circumstances when the personal representative of an estate is required to distribute current income during the period of administration to a life tenant (the surviving spouse in this case).

The distribution deduction allowed is limited to the distributable net income of the estate or trust for the taxable year. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668.

Estates and trusts with tax years beginning on or after August 5, 1997, may elect to treat distributions made within 65 days of the end of the tax year as having been made in the tax year of the estate or trust. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668. Effective for distributions made by domestic trusts in tax years beginning after August 5, 1997, there is a repeal of the throwback rules found in 26 U.S.C. Sections 665 through 668. However, the repeal of the throwback rules does not apply to trusts created before March 1, 1984, foreign trusts, or domestic trusts that were once treated as foreign trusts, except as provided by federal regulations.

Income distributed to a beneficiary of an estate or trust retains the same character in the hands of the beneficiary as it had in the estate or trust, with the exception of unused capital loss distributed on closure to a corporation, in which case the loss is treated as a short-term loss, regardless of its character in the estate or trust. See federal regulation Section 1.642(h)-1(g). In addition, unless the will or trust instrument specifically provides otherwise, a distribution to beneficiaries is considered to be a proportionate distribution of the different kinds of income composing the distributable net income of the estate or trust. See 26 U.S.C. Section 662.2(b) and federal regulation Section 1.662(b)-1. The same character and proportionate distribution rule is illustrated by the following:

EXAMPLE:

Decedent A, a resident of Iowa, died February 15, 1997. Under the terms of the will, all the decedent's property was devised in equal shares to beneficiary B, a resident of Phoenix, Arizona, and beneficiary C, a resident of Cedar Rapids, Iowa. The estate adopted a calendar year as its taxable year. For calendar year 1997, the estate had distributable net income of $50,000, which is composed of:

Interest income	$10,000
Dividend income	5,000
Net Iowa farm income	35,000
Total	$50,000

On December 20, 1997, the estate distributed $12,500 to beneficiary B, and $12,500 to beneficiary C. Beneficiaries B and C have received a distribution for 1997 as follows:

Beneficiary B		Beneficiary C	
Interest income	$2,500	Interest income	$2,500
Dividends	1,250	Dividends	1,250
Farm income	8,750	Farm income	8,750
Total	$12,500	Total	$12,500

The estate is entitled to a deduction of $25,000 against gross income in 1997 for the distribution to beneficiaries B and C and owes Iowa income tax on the $25,000 income retained in the estate. Since the interest income of the estate is 20 percent of the distributable net income, 20 percent of the distribution to beneficiaries B and C is considered interest income. Likewise, 10 percent of the estate's distributable net income is dividends and 70 percent farm income. The distribution to B and C consists of a corresponding percentage of dividends and farm income. Beneficiary C, a resident of Iowa, must report the entire distribution of $12,500 on a 1997 Iowa individual income tax return. Beneficiary B, a resident of Arizona, is only required to report the farm income portion of the distribution ($8,750) on a 1997 nonresident individual income tax return, because dividends and interest are income from intangible personal property and were not derived from a business, trade, profession or occupation carried on within Iowa by the nonresident. See 701—subrule 40.16(5).

k. The dividend exclusion. Estates and trusts are eligible for the dividend exclusion allowed individual taxpayers under 26 U.S.C. Section 116 (the Iowa exclusion is $100 for 1981). The exclusion is allocated to the estate or trust if the dividend income for the taxable year is accumulated. The dividend exclusion is allocated to the beneficiaries when all of the distributable net income for the taxable year is distributed. The distribution must not be diminished by the exclusion. The dividend exclusion is then available to the beneficiaries after the dividends distributed are added to any other dividends received by the beneficiaries during the taxable year. If there is only a partial distribution of the distributable net income of the estate or trust for the taxable year, the dividend exclusion must be prorated between the beneficiaries and the estate or trust on the basis of the percentage of the distributable net income accumulated by the estate or trust and the percentage distributed to the beneficiaries. A partial distribution of the dividends and exclusion is to be reported and used by the beneficiaries for income tax purposes in the same manner as the full distribution of dividends. See federal regulation Sections 1.116-1(a) and 1.661(c)-1.

l. The capital gains deduction. 26 U.S.C. Section 1202(b) provides that an estate or trust is allowed a deduction for net capital gain received during the taxable year. Except for the requirement of allocation between the beneficiaries and the estate or trust, the deduction is computed in the same manner as the net capital gain deduction allowed individuals. See federal regulation Section 1.1202-1 (b). If the net capital gain is allocated to corpus, the estate or trust is entitled to the deduction. If the will or trust instrument requires capital gain to be distributed to the beneficiaries or if the trustee or personal representative of a decedent's estate is authorized to allocate capital gain to income and distributes the capital gain, then the net capital gain deduction is allocated to the beneficiaries and is not a deduction to the estate or trust. The gain distributed must not be diminished by the deduction. It must first be combined with any other capital gains and losses of the beneficiary prior to determining whether the net capital gain deduction is applicable for the beneficiary's taxable year.

If the net capital gain for the taxable year is partially allocated to corpus and partially distributed, then the net capital gain deduction is available to the beneficiaries only on the gain distributed and to the estate or trust only on the gain accumulated. A partial distribution of capital gain is treated for purposes of a beneficiary's income tax liability in the same manner as a full distribution of capital gain.

m. The Iowa throwback rule. Iowa Code section 422.6 allows a trust beneficiary receiving an accumulation distribution subject to the throwback rules under 26 U.S.C. Sections 665 through 668 a credit against the beneficiary's income tax liability for the Iowa income tax paid by the trust on the accumulated income distributed. The Iowa income tax paid by the trust on the accumulated income distributed is deemed distributed to the trust beneficiary, without interest, and is a credit for the year of distribution against the portion of the Iowa income tax liability of the beneficiary which is attributable to the accumulated distribution. The accumulated distribution must be adjusted by the beneficiary to reflect income subject to Iowa income tax. No refund is allowed the trust for the Iowa income tax deemed distributed to the beneficiary. The beneficiary is not allowed a refund if the tax distributed is in excess of the income tax liability attributable to the distribution. Effective for distributions made by domestic trusts in tax years beginning after August 5, 1997, there is a repeal of the throwback rules found in 26 U.S.C. Sections 665 through 668. However, the repeal of the throwback rules does not apply to trusts created before March 1, 1984, foreign trusts, or domestic trusts that were once treated as foreign trusts, except as provided by federal regulations.

n. Federal estate tax paid on income in respect of a decedent. For Iowa income tax purposes, Iowa Code section 422.7 makes no provision for adjusting the deduction for federal estate tax paid when the income in respect of a decedent includes interest from federal securities. Therefore, the federal estate tax paid on interest from federal securities, which is classified as income in respect of a decedent under 26 U.S.C. Section 691(a), is a deduction for Iowa income tax purposes in the taxable year the interest is received. However, interest and dividends from securities of a state or political subdivision, which are exempt from federal income tax, do not constitute the kind of income in respect of a decedent on which the deduction is computed. Since the deduction under 26 U.S.C. Section 691(c) does not apply to income exempt from federal income tax, there is no deduction on the Iowa return for the federal estate tax paid on the exempt interest, even though under Iowa Code section 422.7 this interest is subject to Iowa income tax.

The deduction allowable in any taxable year is limited to a percentage of the total federal estate tax deduction which is determined by the ratio of income in respect of a decedent received for the year to the total amount of the net income in respect of a decedent on which federal estate tax was paid. See 26 U.S.C. Section 691(c) and federal regulation Section 1.691(c)-1 for the computation of the deduction. Estates and trusts with a situs outside Iowa are allowed a deduction only for federal estate tax paid on income in respect of a decedent from Iowa sources.

89.8(9) *The final return—special considerations.*

a. General rule. In the year of closure all income received by the estate or trust is considered "other amounts properly paid or credited or required to be distributed" and must be distributed to the beneficiaries according to the terms of the governing instrument. Rev. Ruling 58-423, 2 C.B. 151 (1958). Dividends and capital gains received during the year of closure must be distributed without being diminished by the net capital gain deduction or by the dividend exclusion. See federal regulation Section 1.643(a)-3(d). 26 U.S.C. Section 642(h) provides for an exception to the general rule that net operating and capital losses are only available to the taxpayer incurring the loss. Therefore, in the year of closure, any capital loss and net operating loss carryover that remains unused by the estate or trust is passed through the estate or trust and is allowed as a deduction to the beneficiaries succeeding to the property and may be applied by carrying back the losses, but such losses cannot be carried forward. See federal regulation Section 1.642(h)-1.

If the estate or trust in the year of termination has incurred deductions in excess of gross income which do not qualify for treatment as a net operating or capital loss, such as administration expenses, the excess deductions are passed through the estate or trust and are available to the beneficiaries succeeding to the property. They are available only for the year the estate or trust terminates and only as an itemized deduction in the case of an individual beneficiary. See Revenue Ruling 58-191 1 C.B. 149 (1958). Excess deductions also include any unused net operating loss carryover, if the year the estate or trust terminates is the last carryforward year for the net operating loss. See federal regulation Section 1-642(h)-2(b).

b. Exception to the general rule. If in the year of termination an Iowa ancillary estate makes the required distribution of its income to the primary estate which is not being terminated, instead of to the beneficiaries of the estate, it is proper in the year of closure to treat the income as if it were accumulated by the Iowa ancillary estate. Permitting Iowa income tax to be paid on the income in this special case, in effect, allows the distribution to the primary estate to be made on a tax-paid basis. This exception to the general rule relieves the primary estate from the obligation of filing a second fiduciary return, which it would be required to do except for this special rule.

89.8(10) *Computation of the tax due.*

a. In general. The tax due on the taxable income of an estate or trust is computed by using the same tax rate schedule used for computing the individual income tax liability. The provisions of the Iowa Code relating to the maximum net income of an individual before a tax liability is incurred have no application to the tax liability of an estate or trust. The taxable income of a short taxable year is not required to be annualized for the purpose of computing the tax liability. The tax due cannot be paid in installments. It must be paid in full within the time prescribed by law.

b. Alternative minimum tax. Special rules for estates and trusts. The sum of the items of tax preference determined under 26 U.S.C. Section 57 shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each under the provisions of federal income tax regulation Section 1.58-3. The minimum taxable income exemption of $17,500 allowable to an estate or trust shall be reduced to an amount which bears the same ratio to $17,500 that the sum of the items of tax preference apportioned to the estate or trust bears to the full sum of the items of tax preference before apportionment. See federal income tax regulation Section 1.58-1(d). See rule 701—39.6(422) for the computation of the Iowa alternative minimum tax.

89.8(11) *Credits against the tax.*

a. The personal exemption credit. The estate of a decedent and a trust, whether simple or complex, are allowed the same credit against the tax as the credit allowed an individual taxpayer, that is currently $40. The personal exemption credit is not prorated for short taxable years. The federal exemption allowed estates and trusts under 26 U.S.C. Section 642(b), in lieu of the personal exemption for individuals, has no application to Iowa income tax.

b. Credit for tax paid to another state or foreign country. Iowa Code section 422.8 grants Iowa situs trusts and estates of Iowa resident decedents, which have income derived from sources in another state or foreign country, a credit against the Iowa tax for the income tax paid to the state or foreign country where the income was derived. To be eligible for the credit, the income must have been includable for income tax purposes both in Iowa and the other state or foreign country. The credit allowable against the Iowa tax is limited to the lesser of: (1) the tax paid to the other state or foreign country on the income, or (2) the Iowa income tax paid on the foreign source income. The Iowa income tax paid on the foreign source income is computed by multiplying the Iowa computed tax, less the personal exemption credit, by a fraction of which the foreign source income included in the Iowa gross income is the numerator and the total Iowa gross income is the denominator. The resulting amount is the Iowa tax paid on foreign source income. Any tax paid to another state or foreign country in excess of the Iowa credit allowable is not refundable. Foreign situs trusts and estates of foreign decedents are not allowed a credit against the Iowa tax for the income tax paid another state or foreign country on Iowa source income. This rule is illustrated by the following example:

Decedent A died a resident of Webster City, Iowa, on February 15, 1997. A at the time of death owned income-producing property both in Iowa and the state of Missouri. For the short taxable year ending December 31, 1997, A's estate had the following income and expenses:

Interest	$ 5,000
Dividends	7,500
Iowa farm income	20,000
Missouri farm income	10,000
Iowa gross income	$ 42,500
Less allowable deductions	8,000
Iowa taxable income	$ 34,500
Iowa computed tax	$2,587.87
Less personal credit	40.00
Tax subject to credit for foreign taxes paid	$2,547.87
Less credit for tax paid Missouri	413.00
Iowa tax due	$2,134.87

A's estate paid $413.00 income tax to the state of Missouri on the $10,000 Missouri farm income.

The Iowa tax on the foreign source income is $604.20 computed as follows:

$$\frac{\text{Foreign income included in gross income } \$10{,}000}{\text{Total Iowa gross income } \$42{,}500} \times \$2{,}547.87^{*} = \$604.20$$

*$2,547.87 is the Iowa computed tax less the $40.00 personal credit.

The allowable credit for taxes paid the state of Missouri is $413.00, because it is less than the Iowa tax paid on the Missouri income. If the Missouri tax paid had been greater than the Iowa tax on the Missouri income, the allowable credit would have been the Iowa tax on the Missouri income.

See 701—subrule 42.4(3) for the computation of the credit allowed Iowa resident individuals for income tax paid to another state or foreign country.

c. Motor vehicle fuel tax credit. An estate or trust incurring Iowa motor vehicle fuel tax expense attributable to nonhighway uses may, in lieu of obtaining an Iowa motor vehicle fuel refund, claim as a credit against its Iowa income tax liability, the Iowa motor vehicle fuel taxes paid during the taxable year.

A copy of the Iowa motor vehicle fuel tax credit Form IA 4136 must be submitted with the fiduciary return of income to substantiate the claim for credit. Any credit in excess of the income tax due shall be refunded to the estate or trust, subject to the right of offset against other state taxes owing.

This rule is intended to implement Iowa Code sections 422.3 to 422.9, 422.12, 422.14, 422.23, 633.471 and chapter 452A.

701—89.9(422) Audits, assessments and refunds. Rules 701—43.1(422) to 43.4(422) governing the audit of individual income tax returns, the assessment for tax or additional tax due, and the refund of excessive tax paid, shall also govern the audit of the fiduciary income tax return and the assessment and refund of fiduciary income tax.

This rule is intended to implement Iowa Code sections 422.16, 422.25, 422.30, 422.70 and 422.73.

701—89.10(422) The income tax certificate of acquittance.

89.10(1) *In general.* Iowa Code section 422.27 requires the income tax obligation of an estate or trust to be paid prior to approval of the final report by the court. Iowa Code section 422.27 refers only to the report of the executor, administrator or trustee. In addition, the statute makes reference only to a trustee's final report that is approved by a court. A trust that does not report to and is not subject to the supervision of a court is not required to obtain a certificate of acquittance. However, the statute's reference to a trustee who must report to the court would also include, but is not limited to, a referee in partition and the trustee of the estate of an individual bankrupt under Chapter 7 or 11 of Title 11 of the United States Code. What constitutes a trust is a matter of the trust law of the state of situs.

89.10(2) *The application for certificate of acquittance.* The final fiduciary return of income serves as an application for an income tax certificate of acquittance. For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.

89.10(3) *Requirements for a certificate of acquittance.* The issuance of an income tax certificate of acquittance is dependent upon full payment of the income tax liability of the estate or trust for the period of administration. This includes the obligation to withhold income tax on distributions to nonresident beneficiaries. In the case of an estate, the income tax liability of the decedent for both prior years and the year of death must be paid to the extent of the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's income tax liability according to the order of payment of an estate's debts and charges specified in Iowa Code section 633.425. If the probate property of the estate is insufficient to pay the decedent's income tax obligation in full, the department, in lieu of a certificate of acquittance, shall issue a certificate stating that the probate property is insufficient to pay the decedent's income tax liability and that the department does not object to the closure of the estate. In the event the decedent's income tax obligation is not paid in full, the closure of the decedent's estate does not release any other person who is liable to pay the decedent's income tax obligation.

89.10(4) *The extent of the certificate.* An income tax certificate of acquittance is a statement of the department certifying that all income taxes due from the estate or trust have been paid in full to the extent of the income and deductions reported to the department. The certificate fulfills the statutory requirements of Iowa Code section 422.27 and the Iowa income tax portion of the requirements of Iowa Code sections 633.477 and 633.479. Providing all other closure requirements are met, the certificate permits the closure of the estate or trust by the court. However, the certificate of acquittance is not a release of liability for any income tax or additional tax that may become due, such as the result of an audit by the Internal Revenue Service or because of additional income not reported. See 701—subrule 38.2(1) for the limitations on the period of time to conduct income tax audits.

89.10(5) *No income tax certificate of acquittance required—exception to general rule.* If all of the property included in the estate is held in joint tenancy with rights of survivorship by a husband and wife as the only joint tenants, then in this case the provisions of Iowa Code section 422.27, subsection 1, do not apply and an income tax certificate of acquittance from the department is not required.

This rule is intended to implement Iowa Code sections 422.27, 633.425, 633.477 and 633.479.

701—89.11(422) Appeals to the director. An estate or trust has the right to appeal to the director for a revision of an assessment for additional tax due, the denial or reduction of a claim for refund, the denial of a request for a waiver of a penalty and the denial of a request for an income tax certificate of acquittance. The beneficiary of an estate or trust has the right to appeal a determination of the correct amount of income distributed and a determination of the correct allocation of deductions, credits, losses and expenses between the estate or trust and the beneficiary. The personal representative of an estate and the trustee of a trust have the right to appeal a determination of personal liability for income taxes required to be paid or withheld and for a penalty personally assessed. An appeal to the director must be in writing and must be made within 60 days of the notice of assessment and the other matters which are subject to appeal or for assessments issued on or after January 1, 1995, if the beneficiary of an estate or trust, the personal representative of an estate, or the trustee of a trust fails to timely appeal a notice of assessment, the person may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. 701—Chapter 7 shall govern appeals to the director. See specifically rules 701—7.8(17A) to 7.23(17A) governing taxpayer protests.

These rules are intended to implement Iowa Code section 422.28 and chapter 17A and 1994 Iowa Acts, chapter 1133, section 1.

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CHAPTER 14
DEPOSIT AND SECURITY OF PUBLIC FUNDS IN CREDIT UNIONS

CHAPTER 15
REQUIRED PUBLIC FUNDS CUSTODIAL AGREEMENT PROVISIONS

CHAPTER 16
IOWA EDUCATIONAL SAVINGS PLAN TRUST

CHAPTER 17
DECLARATORY ORDERS

CHAPTER 18
AGENCY PROCEDURE FOR RULE MAKING

4.8(2) Lenders shall renew LIFT targeted small business loans at the LIFT loan interest rate set and communicated monthly by the treasurer of state.

781—4.9(12) LIFT—rural small business transfer program.

4.9(1) Eligibility for this program is limited to borrowers who purchase an existing rural small business with annual sales of less than $2 million. The small business must be located in a community with a population of 5000 or less, for which local competition does not exist, and the loss of which will work a hardship on the rural community.

4.9(2) Combined net worth, as defined by this program, shall equal assets less liabilities for each owner of the business and persons borrowing for the business combined. Lenders shall not include the equity an owner or borrower may have in a personal residence for purposes of determining combined net worth.

4.9(3) Proceeds of these loans may be used for a portion of the business which is essential to its continued viability, including real estate where the business is located, fixtures attached to the real estate, equipment relied upon by the business, and the inventory for sale by the business.

4.9(4) The maximum amount that a borrower or business may borrow from this program is $50,000.

4.9(5) Proceeds may not be used to speculate in real estate or for real estate held for investment purposes. Proceeds may not be used to buy real estate for the purposes of renting or leasing.

4.9(6) Home-based businesses qualify as a LIFT rural small business transfer only if the person qualifies for a tax deduction for that portion of a home used for business pursuant to regulations of the Internal Revenue Service. Applicants who wish to borrow from the LIFT rural small business transfer program, who otherwise qualify, and who have home-based businesses or wish to begin a home-based business must establish to the satisfaction of the lender that they qualify for a tax deduction for that portion of their home they use or intend to use for their business pursuant to regulations of the Internal Revenue Service.

781—4.10(78GA,HF779) LIFT—traditional livestock producer's linked investment loan program.

4.10(1) A "qualified linked investment" means a linked investment in which a certificate of deposit is placed by the treasurer of state with an eligible lending institution under the traditional livestock producers linked investment program established under 1999 Iowa Acts, House File 779, section 4.

4.10(2) "Livestock operation" means an animal feeding operation as defined in Iowa Code section 455B.161 which states that an "animal feeding operation" means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. An animal feeding operation does not include a livestock market.

4.10(3) A borrower who qualifies for a qualified linked investment may use the loan proceeds for new or existing debt directly related to a livestock operation including but not limited to hogs, cattle, feed, supplies, veterinary services, equipment and machinery. For purposes of a qualified linked investment, cattle includes dairy cattle.

4.10(4) A borrower who qualifies for a qualified linked investment may not use the loan proceeds for new or existing debt for land, buildings, or vehicles. A borrower or lender may use land, buildings, or vehicles as collateral for a loan under this program.

4.10(5) The maximum amount that a borrower may borrow from this program is $100,000.

4.10(6) For a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed three years.

4.10(7) A borrower is not qualified for a qualified linked investment if the borrower is receiving interest assistance from the Farm Service Agency of the United States Department of Agriculture.

4.10(8) A lender shall use Form 655-0216 to determine and verify the borrower meets the gross income requirements of a qualified linked investment.

These rules are intended to implement Iowa Code sections 12.35 to 12.37; 1997 Iowa Acts, chapter 195; Iowa Code section 12.34 as amended by 1999 Iowa Acts, House File 779, section 2; and 1999 Iowa Acts, House File 779, section 4.

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CHAPTER 17
DECLARATORY ORDERS

781—17.1(17A) Petition for declaratory order. Any person may file a petition with the department of the treasurer of state for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department of treasurer of state at Treasurer of State, State Capitol Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The department of the treasurer of state 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:

TREASURER OF STATE

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 17.7(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.

781—17.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department of the treasurer of state shall give notice of the petition to all persons not served by the petitioner pursuant to 17.6(17A) to whom notice is required by any provision of law. The department of the treasurer of state may also give notice to any other persons.

781—17.3(17A) Intervention.

17.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 25 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

17.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department of the treasurer of state.

17.3(3) A petition for intervention shall be filed at the department of the treasurer of state at Treasurer of State, State Capitol Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The department of the treasurer of state 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:

TREASURER OF STATE

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.

781—17.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of the treasurer of state may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

781—17.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Department of the Treasurer of State, State Capitol Building, Des Moines, Iowa 50319.

781—17.6(17A) Service and filing of petitions and other papers.

17.6(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.

17.6(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 department of the treasurer of state at Treasurer of State, State Capitol Building, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department of the treasurer of state.

17.6(3) *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.

17.6(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the department of the treasurer of state, 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.

17.6(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)

781—17.7(17A) Consideration. Upon request by petitioner, the department of the treasurer of state must schedule a brief and informal meeting between the original petitioner, all intervenors, and the treasurer of state, or a member of the staff of the treasurer of state, to discuss the questions raised. The department of the treasurer of state may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department of the treasurer of state by any person.

781—17.8(17A) Action on petition.

17.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the treasurer of state or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

17.8(2) The date of issuance of an order or of a refusal to issue an order 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.

781—17.9(17A) Refusal to issue order.

17.9(1) The department of the treasurer of state shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department of the treasurer of state to issue an order.
3. The department of the treasurer of state does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

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

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

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

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

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

17.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

17.9(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.

781—17.10(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.

781—17.11(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.

781—17.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department of the treasurer of state, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department of the treasurer of state. 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 18
AGENCY PROCEDURE FOR RULE MAKING

781—18.1(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.

781—18.2(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.

781—18.3(17A) Public rule-making docket.

18.3(1) *Docket maintained.* The agency shall maintain a current public rule-making docket.

18.3(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 department of the treasurer of state 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.

18.3(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.

781—18.4(17A) Notice of proposed rule making.

18.4(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.

18.4(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 18.12(2) of this chapter.

18.4(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 six months.

781—18.5(17A) Public participation.

18.5(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 Department of the Treasurer of State, State Capitol Building, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

18.5(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.

18.5(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.

18.5(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.

18.5(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 treasurer of state at (515) 281-5368 in advance to arrange access or other needed services.

781—18.6(17A) Regulatory analysis.

18.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

18.6(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 Treasurer of State, State Capitol Building, Des Moines, Iowa 50319. 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.

18.6(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.

18.6(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.

18.6(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.

18.6(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).

18.6(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).

18.6(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).

18.6(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).

18.6(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.

18.6(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).

781—18.7(17A,25B) Fiscal impact statement.

18.7(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.

18.7(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.

781—18.8(17A) Time and manner of rule adoption.

18.8(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.

18.8(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.

18.8(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.

781—18.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

18.9(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.

18.9(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.

18.9(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.

18.9(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.

781—18.10(17A) Exemptions from public rule-making procedures.

18.10(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.

18.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class.

18.10(3) *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 18.10(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 18.10(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 18.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

781—18.11(17A) Concise statement of reasons.

18.11(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 Treasurer of State, State Capitol Building, Des Moines, Iowa 50319. 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.

18.11(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.

18.11(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.

781—18.12(17A) Contents, style, and form of rule.

18.12(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.

18.12(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.

18.12(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.

18.12(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.

781—18.13(17A) Agency rule-making record.

18.13(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.

18.13(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 treasurer of state, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

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

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

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

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

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

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

*j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

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

18.13(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.

***18.13(4)** *Maintenance of record.* The agency shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 18.13(2) *"g," "h," "i,"* or *"j."*

(Alternatively, the agency can maintain the file indefinitely.)

(*NOTE: Alternatively to 18.13(2)*"j"* and the amendment to 18.13(4), an agency could keep a separate file of significant written criticisms to rules and maintain those for five years.)

781—18.14(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.

781—18.15(17A) Effectiveness of rules prior to publication.

18.15(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.

18.15(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 18.15(2).

781—18.16(17A) General statements of policy.

18.16(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.

18.16(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 18.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

781—18.17(17A) Review by agency of rules.

18.17(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.

18.17(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.

[Filed emergency 6/25/99 after Notice 3/24/99—published 7/14/99, effective 7/1/99]

CHAPTER 8
SUBSTANTIVE AND INTERPRETIVE RULES

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 8]

876—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. The cost of public transportation if tendered by the employer or insurance carrier.
2. All mileage incident to the use of a private auto. The per mile rate for use of a private auto shall be 24 cents per mile.
3. Meals and lodging if reasonably incident to the examination.
4. Taxi fares or other forms of local transportation if incident to the use of public transportation.
5. Ambulance service or other special means of transportation if deemed necessary by competent medical evidence or by agreement of the parties.

Transportation expense in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as 50 miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The workers' compensation commissioner or a deputy commissioner may order transportation expense to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation expense.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.

876—8.2(85) Overtime. The word "overtime" as used in Iowa Code section 85.61 means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within Iowa Code section 85.36. Overtime hours at the straight time rate are included in determining gross weekly earnings.

This rule is intended to implement Iowa Code sections 85.36 and 85.61.

876—8.3 Rescinded, effective July 1, 1982.

876—8.4(85) Salary in lieu of compensation. The excess payment made by an employer in lieu of compensation which exceeds the applicable weekly compensation rate shall not be construed as advance payment with respect to either future temporary disability, healing period, permanent partial disability, permanent total disability or death.

This rule is intended to implement Iowa Code sections 85.31, 85.34, 85.36, 85.37 and 85.61.

876—8.5(85) Appliances. Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.

Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

876—8.6(85,85A) Calendar days—decimal equivalent. Weekly compensation benefits payable under Iowa Code chapters 85 and 85A are based upon a seven-day calendar week. Each day of weekly compensation benefits due may be paid by multiplying the employee's weekly compensation benefit rate by the decimal equivalents of the number of days as follows:

1 day = .143 × weekly rate
2 days = .286 × weekly rate
3 days = .429 × weekly rate
4 days = .571 × weekly rate
5 days = .714 × weekly rate
6 days = .857 × weekly rate

This rule is intended to implement Iowa Code sections 85.31, 85.33 and 85.34.

876—8.7(86) Short paper. All filings before the workers' compensation commissioner shall be on white paper measuring 8½ inches by 11 inches.

This rule is intended to implement Iowa Code section 86.18.

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 1999, through June 30, 2000, are the tables in effect on July 1, 1999, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [Rev. January 1999].)
2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance Iowa Withholding Tax Guide, Publication 44-001 [Rev. January 1998], for all wages paid on or after January 1, 1998.)
3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [Rev. January 1999].)

This rule is intended to implement Iowa Code section 85.61(6).

876—8.9(85,86) Exchange of records. Whether or not a contested case has been commenced, upon the written request of an employee or the representative of an employee who has alleged an injury arising out of and in the course of employment, an employer or insurance carrier shall provide the claimant a copy of all records and reports in its possession generated by a medical provider.

Whether or not a contested case has been commenced, upon the written request of the employer or insurance carrier against which an employee has alleged an injury arising out of and in the course of employment, the employee shall provide the employer or insurance carrier with a patient's waiver. See rules 876—3.1(17A) and 876—4.6(85,86,17A) for the waiver form used in contested cases. Claimant shall cooperate with the employer and insurance carrier to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial as well as final clinical assessment without cost when the assessments are requested as supporting documentation to determine liability or for payment of a medical provider's bill for medical services. When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed: $20 for 1 to 20 pages; $20 plus $1 per page for 21 to 30 pages; $30 plus $.50 per page for 31 to 100 pages; $65 plus $.25 per page for 101 to 200 pages; $90 plus $.10 per page for more than 200 pages, and the actual expense of postage. No other expenses shall be allowed. On May 10, 1996, and on an annual basis thereafter, the fee structure imposed shall be reviewed by the commissioner to determine if the charges paid for duplication consistently reflect the actual expense of a medical provider or its agent in providing duplicates of records or reports.

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WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345] under the "umbrella" of Department of Employment Services by 1986 Iowa Acts, chapter 1245] [Prior to 3/12/97, see Job Service Division[345]]

CHAPTER 6
REGIONAL ADVISORY BOARDS

877—6.1(84A,PL105-220) Definitions.

"Board" means a regional advisory board in a workforce development region.

"Chief elected official" means the units of local government joined through a 28E agreement for the purpose of sharing liability and responsibility for the WIA-funded programs.

"Department" means the department of workforce development.

"Local elected officials" means the county supervisors and mayors of the region's cities with a population of more than 50,000.

"One-stop operator" means the entity or consortium of entities selected by the local elected officials and regional advisory board to coordinate workforce development service providers within a region.

"Regional workforce investment board" means the regional advisory board within a workforce development region.

"WIA" means the federal Workforce Investment Act of 1998 (P.L. 105-220).

877—6.2(84A,PL105-220) Number of boards. The governor, in consultation with chief elected officials, shall appoint a regional advisory board in each workforce development region of the state.

877—6.3(84A,PL105-220) Composition.

6.3(1) *Voting members.* Each regional advisory board shall have an equal number of members from business and labor and shall include a county elected official, a city official, a representative of a school district, and a representative of a community college.

6.3(2) *Alternates.* Members appointed to a regional advisory board may send an alternate if the member cannot attend a meeting. The alternate shall not have voting privileges or be counted as present for the member in determining meeting quorum.

6.3(3) *Nonvoting members.* The board may appoint ex officio, nonvoting members. The board must solicit periodic, regular and meaningful input from persons with disabilities, older workers, regional or local economic development groups, and the region's one-stop partners. It is recommended that the board appoint the following four ex officio members to meet this requirement. If ex officio members are not appointed, the board must describe an alternate process to gain input from these groups in their local annual plan for workforce investment act services.

a. A person with a disability nominated by an organization that represents or serves persons with disabilities.

b. An older worker nominated by a senior community service employment program service provider.

c. An individual nominated by a regional or local economic development organization.

d. An individual nominated by the regional one-stop partners.

For other community-based organizations that have an interest in workforce development, provide workforce development services in the region and are not a one-stop partner, and are not represented on the regional advisory board by either a voting or nonvoting member, the local annual plan must describe how their input will be solicited.

6.3(4) *Members in region 8.* In workforce development region 8, which consists of the counties of Audubon, Carroll, Crawford, Greene, Guthrie, and Sac, a regional workforce investment board will be selected by the chief elected officials, using the nomination processes described in subrules 6.3(3) and 6.4(1) to 6.4(5). Fourteen members of the regional workforce investment board will constitute the regional advisory board. These members shall be selected using the process described in subrule 6.4(6) and rule 6.5(84A,PL105-220). The majority of the regional workforce investment board members shall represent business, and the chairperson shall represent the business sector.

6.3(5) *Members in region 11.* In workforce development region 11, which consists of the counties of Boone, Dallas, Jasper, Madison, Marion, Polk, Story, and Warren, a new regional advisory board will be appointed. Nominations and appointments to the new board must conform to the requirements of this chapter and be submitted to the governor by August 9, 1999.

877—6.4(84A,PL105-220) Nomination process for voting members. The following procedures shall be used in soliciting nominations for voting members.

6.4(1) All nominations for members which represent business shall be made by local or regional business organizations or trade associations. Business representatives should be owners of businesses, chief executive or operating officers of business and other business executives or employers with optimum policy-making or hiring authority and represent businesses with employment opportunities that reflect the employment opportunities of the region.

6.4(2) All nominations for members which represent labor shall be made by appropriate local federations of labor, union councils, or state federations of labor.

6.4(3) All nominations for members which represent local school districts or community colleges shall be made by local school districts or community colleges, respectively.

6.4(4) All nominations for members who are county or city officials shall be made individually or collectively by the region's county boards of supervisors or mayors and city councils, respectively.

6.4(5) All nominations shall be made in writing with the signed approval of the required nominating organization.

6.4(6) The overall membership of the board shall be balanced by gender and political affiliation consistent with Iowa Code sections 69.16 and 69.16A. To the extent possible, the members should represent all counties within a region served by the board and both voting and nonvoting members should represent persons with disabilities, minorities and older workers of the region.

6.4(7) Existing and future regional advisory board members that represent business, labor or education do not have to be renominated as outlined in this subrule unless required to do so by the local elected officials of a region.

6.4(8) Nominations are valid for an unlimited time period unless the local elected officials of a region set a specific time limit in the local annual plan.

877—6.5(84A,PL105-220) Appointment process.

6.5(1) In making appointments to the boards, the chief local elected officials shall submit a list of nominees for a board vacancy to the department within 45 days of the vacancy. Chief elected officials shall submit at least two nominees for each vacancy for the governor to review.

6.5(2) The governor shall review the list, add or delete nominees from the list, and return the revised list to the chief elected officials within 45 days of receipt of the list by the department.

6.5(3) The chief elected officials will review the revised list and make the final selection of a person to fill a vacancy from the revised list. If the revised list of candidates is not acceptable to the chief elected officials, the chief elected officials may submit new candidates to the governor for consideration within 45 days and repeat the process specified in subrules 6.5(1) and 6.5(2) until a candidate is appointed.

6.5(4) The chief elected officials will send an appointment letter to the person selected to fill the vacancy on behalf of the chief elected officials and the governor within 30 days of receipt of the revised list and send a copy of the letter to the department.

6.5(5) If the chief elected officials fail to submit nominations for a vacancy within the 45-day time period or fail to reach agreement locally on appointments to the board, the governor may appoint a person to fill the vacancy.

877—6.6(84A,PL105-220) Meetings. The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. The chairperson and vice chairperson shall not be of the same political party. The board shall meet at the call of the chairperson or when a majority of the members of the board file a written request of the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

877—6.7(84A,PL105-220) Duties. The board shall perform the following duties and other functions as necessary and proper to carry out its responsibilities.

6.7(1) Conduct a needs assessment to identify the workforce development needs of the region.

6.7(2) Recommend to the state workforce development board and the department of workforce development awards of grants and contracts administered by the department in the region.

6.7(3) Monitor the performance of grants and contracts awarded in the region.

6.7(4) File an annual report with the department as required by Iowa Code section 84A.1B.

6.7(5) Recommend to the state workforce development board and department of workforce development the services to be delivered in the region.

6.7(6) Fulfill the responsibilities of a local workforce investment board as required by the Workforce Investment Act of 1998, subsequent amendments and all related regulations.

6.7(7) Enter into an agreement with the region's chief elected officials board to delineate their respective duties related to administration of the Workforce Investment Act of 1998.

877—6.8(84A,PL105-220) Board certification. Each board will be certified by the governor every two years based upon:

1. The extent to which the board's composition complies with rule 6.3(84A,PL105-220), and
2. The extent to which the board has ensured the workforce development activities carried out in a region have enabled the region to meet local performance measures.

The first certification shall be conducted by the governor by July 1, 2000, on the basis of 6.8"1" only. Certifications after July 1, 2000, will be based upon both criteria.

877—6.9(84A,PL105-220) Board decertification. The governor may decertify a board for:

1. Failure to achieve certification as outlined in rule 6.8(84A,PL105-220); or
2. Fraud or abuse; or
3. If the region fails to meet performance measures for two consecutive program years.

If the governor decertifies a board for any of the above reasons, the governor may require a new board be appointed and certified through a reorganization plan developed by the governor in conjunction with the chief elected official of the region.

877—6.10(84A,PL105-220) Member travel expenses. Board members may be reimbursed for actual and necessary travel expenses for board meetings and other authorized board travel. Expenses will be reimbursed according to guidelines issued by the department of revenue and finance.

877—6.11(84A,PL105-220) Records. Agendas, minutes, and materials presented to the board are available from the Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection 21.5(4) or which are otherwise confidential by law. Board records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and subsection 96.11(6). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

These rules are intended to implement Iowa Code section 84A.4 and the federal Workforce Investment Act of 1998 (P.L. 105-220).

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CHAPTER 7
Reserved

*Rules 645—chs 6-17 apply to all professional licensure boards

MEAT
Beef promotion **101**—1.1, *see also BEEF INDUSTRY COUNCIL*
Organic, standards **21**—47.3(1–3)
Processing
See also LIVESTOCK: Dead, Disposal
Beef/pork reports **721**—4.2(4)
Condemned carcasses **21**—76.8(3)
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