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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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October 6, 1999, Biweekly Supplement

[Previous Supplement dated 9/22/99]

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21—43.6(200) Standard for the storage and handling of anhydrous ammonia. The American National Standard Safety Requirements for the Storage and Handling of Anhydrous Ammonia, commonly referred to as ANSI K61.1-1989 revision, approved March 17, 1989, is adopted by this reference as the official requirement for the storage and handling of anhydrous ammonia, with the following exceptions:

1. Strike subrule 3.1.1 in its entirety and insert in lieu thereof the following:

3.1.1 Any person required to handle, transfer, transport, or otherwise work with ammonia shall be trained once each calendar year prior to handling to understand the properties of ammonia, to become competent in safe operating practices, and to take appropriate actions in the event of a leak or an emergency.

2. Strike subrule 3.4.1.1 in its entirety and insert in lieu thereof the following:

3.4.1.1 Two full face gas masks, each with one spare ammonia canister in a readily accessible location for use in ammonia concentrations less than the IDLH. See 2.19. A positive pressure, self-contained breathing apparatus may be substituted for the above equipment.

NOTE: A full face piece ammonia gas mask will provide effective respiratory protection in concentrations of ammonia in air that are not immediately dangerous to life or health for short periods of time. A gas mask is not recommended for respiratory protection in concentration exceeding the IDLH except for escape purposes only. Face piece fitting should be used to determine the ability of each individual gas mask wearer to obtain a satisfactory fit. If ammonia vapor is detected within the gas mask face piece, the face piece fit is improper, the ambient concentration is excessive, or the canister is exhausted, the wearer should return to fresh air immediately to take appropriate corrective measures. The life of a canister in service is controlled by many factors including the concentration of ammonia vapor to which it is exposed.

Canisters should not be opened until ready for use and should be discarded after use. Canisters should be discarded and replaced when the shelf life expiration date marked on the canister is exceeded. When canisters include an end-of-service indicator, the manufacturer's expiration instructions are to be followed. In addition to this protection, an independent air-supplied, positive pressure, self-contained breathing apparatus, approved by NIOSH/MSHA, should be used for entry into concentrations of ammonia vapor that are unknown or immediately dangerous to life or health. The American National Standard Z88.2, Practices for Respiratory Protection, should be referred to wherever respirators may be used. (13)

3. Strike subrule 5.2.1 in its entirety and insert in lieu thereof the following:

5.2.1 Containers used with systems covered in Sections 6, 9, 11, and 12 shall be made of steel or other material compatible with ammonia, and tested in accordance with the current ASME Code. An exception to the ASME Code requirements is that construction under Table UW 12 at a basic joint efficiency of under 80 percent is not authorized.

4. Strike subrule 5.2.2.1 in its entirety and insert in lieu thereof the following:

5.2.2.1 The entire container shall be postweld heat treated after completion of all welds to the shells and heads. The method employed shall be as prescribed in the ASME Code, except that the provisions for extended time at lower temperature for postweld heat treatment shall not be permitted. Welded attachments to pads may be made after postweld heat treatment [10]. Exception: Implements of husbandry will not require postweld heat treatment if they are fabricated with hot-formed heads or with cold-formed heads that have been stress relieved.

5. Strike subrule 5.2.2.2 in its entirety.

6. Strike subrule 5.2.4 in its entirety and insert in lieu thereof the following:

5.2.4 Welding for the repair or alteration of pressure-containing parts of a container shall be performed by an ASME Code certified welder. All repair or alteration shall conform insofar as possible to the ASME Code section and edition to which the container was constructed.

7. Strike subrule 5.3.4 in its entirety and insert in lieu thereof the following:

5.3.4 In the absence of a specific determination by the secretary, container locations shall comply with the following table:

	Minimum Distances (in feet or meters) from Each Container to:		
Nominal Capacity of Container (Gallons or Cubic Meters)	Line of Adjoining Property which may be built upon, Highways & Mainline of Railroad	Place of Public Assembly**	Insititution Occupancy
*Over 500 to 2,000 gals	25 ft	150 ft	250 ft
Over 2,000 to 30,000 gals	50 ft	300 ft	500 ft
Over 30,000 to 100,000 gals	50 ft	450 ft	750 ft
Over 100,000 gals	50 ft	600 ft	1000 ft
Over 2 to 8 m^3	8 m	45 m	75 m
Over 8 to 110 m^3	15 m	90 m	150 m
Over 110 to 400 m^3	15 m	140 m	230 m
Over 400 m^3	15 m	180 m	300 m

*NOTE: For 500 gallons ($2m^3$) or less, see 5.3.1 and 5.3.3.

**"Place of Public Assembly" includes any place other than the ammonia business office in which, by public invitation, members of the public normally attend for reasons of business, entertainment, instruction or the like.

8. Strike subrule 5.4.2.2 in its entirety.

9. Strike subrule 5.5.11 in its entirety and insert in lieu thereof the following:

5.5.11 Each liquid filling connection shall have a positive shut-off valve in conjunction with either an internal back-pressure check valve or an internal excess flow valve. Vapor connections shall have a positive shut-off valve together with an internal excess flow valve.

NOTE: The internal back-pressure check valves or internal excess flow valves shall be installed in the facility piping prior to the positive shut-off valves. These valves shall be installed so that any break will occur on the side of the transfer hose. This may be accomplished by bulkheads or equivalent anchorage, or by the use of a weakness or shear fitting or any other method designed to protect the back-pressure check valves or excess flow valves.

10. Strike subrule 5.7.6 in its entirety.

11. Strike subrule 5.8.15 in its entirety and insert in lieu thereof the following:

5.8.15 No container pressure relief device shall be used over five years after the date of installation of the pressure relief device. Records shall be maintained which identify each container and indicate the date of installation for each container pressure relief device.

12. Strike subrule 5.10.8.1 in its entirety and insert in lieu thereof the following:

5.10.8.1 By December 31, 1993, all stationary storage installations shall have an approved emergency shut-off valve installed in the liquid fixed piping of the transfer system. This requirement does not apply to lines feeding a fixed process system. When possible, the emergency shut-off valve shall be located on the discharge side of the pump. A suitable backflow check valve or properly rated excess flow valve shall be installed in the vapor fixed piping of the transfer system. The emergency shut-off valve shall remain closed when plant is not in use. The emergency shut-off valve shall be installed in the facility piping so that any break will occur on the side of the transfer hose.

NOTE: This may be accomplished by concrete bulkheads or equivalent anchorage, or by the use of a weakness or shear fitting or any other method designed to protect the emergency shut-off valve. Such anchorage is not required for tank car unloading.

13. Add the following subrule 5.10.10:

5.10.10 Anhydrous ammonia shall be vented into an adequate supply of water. For this purpose, an adequate supply of water means ten gallons of water for each gallon of liquid ammonia or fraction thereof which is contained in the hose or vessel to be vented. Any aqueous ammonia solution resulting from the venting process shall be disposed of safely and properly.

NOTE: Ammonia vapor may be flared off when appropriate equipment is used to not allow ammonia vapor to escape unchecked into the atmosphere. This section does not apply to venting of a coupling between transfer hose and nurse tank or applicator or venting of vapor through 85 percent bleeder valve when loading a nurse tank or applicator.

14. Add the following subrule 5.10.10.1:

5.10.10.1 Anhydrous ammonia shall not be vented into the air. Each transport truck unloading point at an anhydrous ammonia storage facility shall have a valve for venting purposes installed in the piping at or near the point where the piping and hose from the transport truck are connected. Anhydrous ammonia from any transport truck hose shall be vented into an adequate supply of water. For this purpose, an adequate supply of water means ten gallons of water for each gallon of liquid ammonia or fraction thereof which could be contained in the hose. Any aqueous solution resulting from the venting process shall be disposed of safely and properly.

15. Add the following subrule 5.10.11:

5.10.11 All anhydrous ammonia storage locations shall have a permanent working platform installed at each nurse tank or applicator loading location. The working platform shall be designed to allow for connecting and disconnecting of transfer hoses without standing on equipment being loaded.

NOTE: This section does not apply to nurse tanks or applicators with a working surface designed for loading purposes.

16. Strike subrule 6.3.1.1 in its entirety and insert in lieu thereof the following:

6.3.1.1 Relief valves shall be installed in a manifold or other suitable device so that they can be replaced while the container remains pressurized. See NOTE in section 5.8.7. Containers designed with internal pressure relief systems are exempt from this requirement.

17. Strike subrule 9.7.3 in its entirety and insert in lieu thereof the following:

9.7.3 A cargo tank of 3,500 gallons or less water capacity may be unloaded into permanent storage locations meeting the requirements of 3.4.1 and 5.10.8 or into implements of husbandry meeting the requirements of 11.1 through 11.7. A cargo tank of greater than 3,500 gallons water capacity but not greater than 5,000 gallons water capacity may be unloaded at permanent storage locations meeting the requirements of 3.4.1 and 5.10.8 or into a portable application equipment container which is capable of holding the entire load. A cargo tank of greater than 5,000 gallons water capacity may only be unloaded into a permanent storage location meeting the requirements of 3.4.1 and 5.10.8 and capable of holding the entire load.

18. Strike subrule 11.6.1(1) in its entirety and insert in lieu thereof the following:

11.6.1(1) Any person required to handle, transfer, transport, or otherwise work with ammonia shall be trained once each calendar year prior to handling to understand the properties of ammonia, to become competent in safe operating practices, and to take appropriate actions in the event of a leak or an emergency.

19. Strike subrule 11.6.2.2 in its entirety.

20. Strike subrule 12.4.1(1) in its entirety and insert in lieu thereof the following:

12.4.1(1) Any person required to handle, transfer, transport, or otherwise work with ammonia shall be trained once each calendar year prior to handling to understand the properties of ammonia, to become competent in safe operating practices, and to take appropriate actions in the event of a leak or an emergency.

This rule is intended to implement Iowa Code section 200.14.

21—43.7(200) Groundwater protection fee.

43.7(1) There shall be paid by the licensee, as licensed under Iowa Code section 200.4, to the secretary for all commercial fertilizers and soil conditioners sold or distributed in this state, a groundwater protection fee of 75 cents per ton based on an 82 percent nitrogen solution. Other product formulations containing nitrogen shall pay a fee based on the percentage of actual nitrogen contained in the formulation with 82 percent nitrogen solution serving as the base. Product formulations containing less than 2 percent nitrogen shall be exempt from the payment of a groundwater protection fee. Payment of the groundwater protection fee by any licensee exempts all other persons, firms or corporations from the payment.

43.7(2) Every licensee and any person required to pay a groundwater protection fee under this chapter shall:

a. File not later than the last day of January and July of each year, on forms furnished by the secretary, a semiannual statement setting forth the number of net tons of commercial fertilizer or soil conditioners containing nitrogen which were distributed in this state during the preceding six-month period; and upon filing the statement shall pay the groundwater protection fee at the rate stated in subsection 1 of this rule, except that manufacturers of individual packages of fertilizer containing 25 pounds or less shall file not later than the last day of July of each year, on forms furnished by the secretary, an annual statement setting forth the number of net tons of fertilizer containing nitrogen distributed in this state in packages of 25 pounds or less during the preceding 12-month period; and upon filing the statement shall pay the groundwater protection fee at the rate stated in subrule 43.7(1).

b. Reserved.

43.7(3) All licensees who distributed specialty fertilizer, as defined in Iowa Code section 200.3, paragraph 5, or apply specialty fertilizer for compensation, shall file not later than the last day of July of each year, on forms furnished by the secretary, an annual statement setting forth the number of tons of fertilizer containing nitrogen distributed in this state and listing the manufacturer from which the product was purchased but no groundwater protection fee shall be due.

This rule is intended to implement Iowa Code section 200.9.

21—43.8 to **43.19** Reserved.

21—43.20(201) Agricultural lime.

43.20(1) *Notification of production.* The manufacturer or producer of agricultural lime, limestone or aglime shall notify the secretary seven calendar days prior to the manufacture or production of agricultural lime, limestone, or aglime so that samples may be taken.

43.20(2) *Sample fee.* The manufacturer or producer of agricultural lime, limestone, or aglime shall pay a fee of no more than $25 per sample collected. This fee may be adjusted by the secretary of agriculture by a separate notice letter to each manufacturer or producer to reflect as accurately as possible the actual cost of sampling and testing expended by the Iowa department of agriculture and land stewardship and Iowa State University for each sample taken at the manufacturer's or producer's facilities.

This rule is intended to implement Iowa Code sections 201.6 and 201.12.

21—43.36(201A) Compliance with certification. If official sampling and analysis of agricultural liming material or specialty limestone in accordance with subrule 43.32(3) and rule 43.33(201A) indicates that the agricultural liming material or specialty limestone does not meet a minimum of 90 percent of the certification as provided in rule 43.35(201A), the secretary shall notify the manufacturer or producer of the agricultural liming material or specialty limestone that the certification must be corrected prior to any further sale, distribution or offer for sale of the agricultural liming material or specialty limestone in Iowa. The secretary may request that monetary reimbursement be made to the purchaser to rectify the deficiency of the agricultural liming material or specialty limestone and that the monetary reimbursement be reported to the department. Reimbursement must be made within 30 days of the reported deficiency.

21—43.37(201A) Labeling. Agricultural liming material shall not be offered for sale, sold or otherwise distributed in this state unless a label accompanies the agricultural liming material which provides the identification of the type of agricultural liming material in accordance with rule 43.30(201A).

21—43.38(201A) Toxic materials prohibited. It shall be unlawful for any manufacturer or producer of agricultural liming material or specialty limestone to sell, distribute or offer for sale any agricultural liming material or specialty limestone which contains toxic materials in quantities injurious to plant, animal, human or aquatic life or which causes soil or water contamination. The secretary may require additional laboratory analysis be conducted and results submitted to the department by the manufacturer or producer of agricultural liming material or specialty limestone to determine that the product does not contain an injurious quantity of toxic materials.

21—43.39(201A) Added materials. It shall be unlawful to sell, distribute or offer for sale any agricultural liming material or specialty limestone which contains other added materials unless the added materials are registered and guaranteed as provided in Iowa Code section 200.5(1), except binding materials used in the production of pelletized lime as defined in rule 43.30(201A).

These rules are intended to implement Iowa Code chapters 200, 201, and 201A.

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CHAPTER 47
ORGANIC CERTIFICATION AND ORGANIC STANDARDS

21—47.1(190C) Purpose. In enacting the organic agricultural products Act of 1998, Iowa Code chapter 190C, the Iowa legislature has recognized a variety of needs. These include the need for protection of farmers and consumers with regard to marketing of agricultural products labeled organic in the state of Iowa; the need to define organic agriculture standards that, upon implementation, will promote and enhance agro-ecosystem health, biological diversity and holistic farming practices; and the need to maintain the integrity of organic standards as developed, upheld and perceived by the organic industry. As such, standards relating to the production, processing and handling of organic products have been established through the enactment of the organic agricultural products Act of 1998 and this chapter.

The Act is intended to encourage and enable Iowans to produce agricultural products for the organic market by setting attainable standards and a system of verification of compliance with these standards through a state organic certification program. The department believes that compliance with the Act and this chapter will enhance the quality of organically produced agricultural products and promote interstate and international markets.

The Act establishes the department as a certification agency. However, the Act recognizes the role of private certification agencies providing organic certification services in the state. Private certification agencies should be informed that Iowa producers, processors and handlers certified by such agencies must be in compliance with the Act and this chapter.

Consumers will have a higher level of protection against residues in foods labeled organic than they have with all other foods which must only meet EPA minimum standards. The department recognizes that organic growers are striving to protect and improve the integrity of their products and that testing may be conducted to verify compliance with Iowa Code chapter 190C and this chapter.

The department recognizes that the National Organic Program has not been implemented at the writing of this chapter but that once implemented, USDA accreditation of private and state certification agencies will be required pursuant to the Organic Foods Production Act of 1990. Private certification agencies may provide certification services in Iowa prior to such accreditation being made available by USDA. Once accreditation is available, private certification agencies shall attain USDA accreditation as required by USDA to continue to provide certification services in the state.

The department acknowledges that this chapter is intended to be reasonably consistent with industry, national and international organic standards as established by private certification agencies and international accrediting bodies.

This chapter shall be understood to apply to producers, processors, and handlers of agricultural products advertised or sold as organic. Future amendments to this chapter may be necessary upon the implementation of the National Organic Program.

21—47.2(190C) Definitions. As used in this chapter, the following definitions apply:

"Accreditation" means a procedure by which an authoritative body gives a formal recognition that a body or person is competent to carry out specific tasks.

"Accredited certification agency" means a body, state or private, that has been authorized by the USDA Secretary of Agriculture to conduct certification activities as a certifying agent pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) upon implementation of the National Organic Program.

"Agricultural product/product of agricultural origin" means any product or commodity of agriculture, raw or processed, including any commodity or product derived from livestock, that is marketed for human or livestock use or consumption.

"Allowed" means materials and practices which may be used for the production of organic crops, livestock and processed products with no restrictions.

"Animal" means any mammals, birds, or insects including cattle, sheep, goats, swine, poultry, equine, domesticated game, and bees.

"Animal manure" means excreta of animals, together with whatever bedding materials are used to maintain proper sanitary and health conditions.

"Annual crop" means any crop that is harvested from the same planting during the same crop year and that does not produce crops in subsequent years.

"Antibiotic" means any of various substances, such as penicillin or streptomycin, that are used to inhibit or destroy the growth of microorganisms in the prevention and treatment of diseases.

"Application assistance" means the distribution, collection and review of application materials for completeness, including initiating contact with members to report missing paperwork and incomplete data.

"Application materials" means the application for organic certification including the organic plan, inspection report, and all other materials necessary to determine compliance with Iowa Code chapter 190C and this chapter.

"Audit" means a formal examination and verification of organic practices to determine whether such practices comply with organic standards.

"Audit trail" means a comprehensive system of documentation which verifies the integrity of organic products or ingredients, from production through harvest, storage, transport, processing, handling, and sales.

"Authorized certification agent" means the department's organic agriculture bureau, which shall serve as a certification agent on behalf of and as authorized by the secretary of agriculture pursuant to Iowa Code section 190C.4(2).

"Breeding" means the selection of plants or animals to reproduce desired characteristics in succeeding generations.

"Buffer zone" means a clearly defined and identifiable boundary area bordering an organic production unit that is established to limit inadvertent application or contact of prohibited substances from an adjacent area not under organic management.

"Certificate (organic)" means an annual written assurance which identifies the name and address of the entity certified, effective date of certification, expiration date of certification, certificate number, types of products and processes certified, name and address of certification agency, and standards to which the entity is certified.

"Certification" means the annual procedure by which an independent third party gives written assurance that a clearly identified production or processing system has been methodically assessed and conforms to organic standards.

"Certification seal" means a certification agency's logo, sign or mark which is used to identify products or operations certified as in compliance with the certification agency's standards.

"Certified organic farm" means a farm, or portion of a farm, or site where agricultural products or livestock are produced, that is certified by a certifying agency under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) as utilizing a system of organic farming under the same title.

"Certified organic handling operation" means any operation, or portion of any handling operation, that is certified by the certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) as utilizing a system of organic handling described under the same title.

"Certified organic product" means a product which has been produced, processed or handled in conformance with Iowa Code chapter 190C and this chapter and as verified by the existence of a valid organic certificate.

"Certified organic wild crop harvesting operation" means a clearly identified wild crop harvesting site or operation that is certified by a certification agency and is in compliance with Iowa Code chapter 190C and this chapter.

"Commercially available" means the documented ability to obtain a production input or ingredient in an appropriate form, quality and quantity to be feasibly and economically used to fulfill an essential function in a system of organic farming, processing or handling.

"Commingling" means the physical contact between nonpackaged or permeably packaged organic products and nonorganic products during production, processing, transportation, storage, or handling.

"Compost" means a stabilized product of controlled decomposition of an appropriate mixture of nitrogen and carbon-bearing materials to produce humus as a soil conditioner or fertilizer.

"Conversion (transition)" means the act of implementing organic management practices in accordance with organic standards.

"Conversion period (transition period)" means the time between the start of organic management and certification of the crop or livestock production system as organic.

"Critical control point" means a point in a food process used by a certified organic handler when there is a high probability that improper control may cause, allow, or contribute to a hazard, a loss of organic integrity of the food, or to filth in the final food or decomposition of the final food.

"Crop" means a plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

"Crop rotation" means the practice of alternating annual with annual and perennial crops grown on a specific field in a planned pattern or sequence so that crops of the same species or family are not grown on the same field during consecutive crop years.

"Crop year" means the normal growing season for a given crop.

"Cultural practices" means management-intensive methods which are used to enhance crop or livestock health or prevent weed, pest or disease problems without the use of external inputs including, but not limited to, selection of appropriate varieties and breeds; selection of appropriate planting sites; proper timing and density of plantings; construction of livestock facilities designed to optimize animal health; and proper stocking rates.

"Department" means the Iowa department of agriculture and land stewardship.

"Detectable residue level" means the level at which the presence of a pesticide, heavy metal, genetically engineered organism or other substance can be verified using current technology.

"Distributor" is a business that purchases product under its own name, usually from shippers, processors, or other distributors, and generally sells outside its local area.

"Drift" means the physical movement of prohibited pesticide, or fertilizer droplets or granules from the intended target site onto a certified organic field or farm, or portion thereof.

"Extract" means the act of producing a substance by dissolving the soluble fractions of a plant, animal or mineral in water or another solvent; or the product thereof.

"Farm" means an agricultural operation maintained for the purpose of producing agricultural products.

"Feed" means food for livestock, excluding mineral and vitamin supplements and feed additives.

"Feed additive" means a substance or combination of substances added to feed in micro quantities to fulfill a specific need, i.e., nutrients in the form of amino acids, minerals, and vitamins.

"Feed emergency" means a temporary unplanned shortage of certified organic feed due to conditions that are entirely beyond an operator's control.

"Feed supplement" means a feed used with another feed to improve the nutritive balance or performance of the total ration and intended to be:

1. Diluted with other feeds when fed to livestock;
2. Offered free choice with other parts of the ration if separately available; or
3. Further diluted and mixed to produce a complete feed.

"Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use and claimed to have value in promoting plant growth.

"Fiber" means a natural agricultural filament, as of cotton, flax, hemp or wool, including material made of such filaments.

"Field" means an area of land identified as a discrete and distinguishable unit within a farm operation.

"Fogging" means the application of a liquid or solid insecticide which is vaporized by heat or atomization to penetrate free air space to kill pests.

"Food" means a material, usually of plant or animal origin, containing or consisting of essential body nutrients, as carbohydrates, fats, proteins, vitamins, or minerals, that is taken in and assimilated by an organism to maintain life and growth.

"Food additive" shall have the same meaning for purposes of this chapter as within the Federal Food, Drug and Cosmetic Act.

"Forage" means feed for livestock, often consisting of coarsely chopped leaves and stalks of grasses and legumes.

"Fumigation" means application of a gas, such as methyl bromide, to a sealed space to permeate areas and products to kill all pests, including eggs and larvae.

"Fungicide" means any substance that kills or inhibits the growth of fungi or molds.

"Genetically engineered/modified organisms (GEO/GMO)" means all organisms, and products thereof, produced through techniques in which the DNA has been altered in ways that do not occur under natural conditions or processes. Techniques of genetic engineering/modification include, but are not limited to: recombinant DNA, cell fusion, microinjection and macro injection, encapsulation, gene deletion, introduction of a foreign gene and changing the position of genes. Genetically engineered organisms do not include organisms resulting from techniques such as breeding, conjugation, fermentation, hybridization, in-vitro fertilization and tissue culture.

"Handle" means to sell, process, package or store agricultural products.

"Hazard" means a probability that a given pesticide will have an adverse effect on people or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

"Herbicide" means a substance used to kill or destroy plants, especially weeds.

"Horticultural crops" means crops intended for human consumption, including vegetables, fruits, and herbs.

"Ingredient" means any substance, including a food additive, used in the manufacture or preparation of a food and present in the final product, although possibly in a modified form.

"Insecticide" means a substance used to kill insects.

"Inspection" means the on-site examination of production, handling and management systems to assess if performance of the operation is in compliance with prescribed organic standards.

"Inspector" means a person who performs inspections on behalf of a certification agency.

"Ionizing radiation (irradiation)" means radionuclides (such as cobalt-60 or cesium-137) capable of altering a food's molecular structure for the purpose of controlling microbial contaminants, pathogens, parasites and pests in food; preserving a food; or inhibiting physiological processes such as sprouting or ripening.

"Labeling" means any commercial message, written, printed or graphic, that is present on the label of a product, accompanies the product, or is displayed near the product, for the purpose of promoting its sale or disposal.

"Manure - green" means a crop that is incorporated into the soil for the purpose of soil improvement.

"Manure - raw" means animal excreta, possibly including bedding materials, which has not been composted or otherwise decomposed.

"Manure re-feeding" means the practice of feeding to livestock animal waste that has been processed for such use. This practice is prohibited in organic livestock production.

"Marketing" means holding for sale or displaying for sale, offering for sale, selling, delivering or placing on the market.

"National List" means a list of approved and prohibited substances that shall be included in the standards for organic production and handling as established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) in order for such products to be sold or labeled as organically produced under this title.

"Natural" means present in or produced by nature; nonsynthetic.

"Organic agriculture" means a holistic production management system which promotes and enhances agro-ecosystem health, including biodiversity, biological cycles and soil biological activity; emphasizes the use of management practices over the use of off-farm inputs; and utilizes cultural, biological and mechanical methods as opposed to synthetic materials.

"Organically produced" means an agricultural product that is produced and handled in accordance with Iowa Code chapter 190C and this chapter.

"Organic good manufacturing practices" means practices which are followed by processors and handlers of organic food products.

"Organic integrity" means the inherent qualities of an organic product which are obtained through adherence to organic standards at the production level, and which must be maintained from production to the point of final sale in accordance with organic standards, in order for the final product to be labeled or marketed as organic.

"Organic plan" means a written plan for management of an organic crop, livestock, wild harvest, processing or handling operation that has been agreed to by the operator and the certification agency which specifies the steps necessary for the operation to be in compliance with organic standards.

"Packaging" means materials used to wrap, cover or contain an agricultural product.

"Packer" means an operation which receives raw agricultural products and packs the products for shipping.

"Parallel production" means the simultaneous production, processing or handling of organic and nonorganic (including transitional) crops, livestock and other agricultural products of the same or similar (indistinguishable) varieties.

"Parasiticide" means a substance or compound used to kill parasites, either internal or external.

"Perennial crop" means any crop that can be harvested from the same planting for more than one crop year, or that requires at least one year after planting before harvest.

"Person" means an individual, group of individuals, corporation, association, organization, cooperative or other entity.

"Pest" means an injurious or unwanted plant or animal.

"Pesticide" means any substance which alone, in chemical combination, or in any formulation with one or more substances, is defined as a pesticide in the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.).

"Planting stock" means any plant or plant tissue, including rhizomes, shoots, leaf or stem cuttings, roots or tubers used in plant production or propagation.

"Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, dehydrating, freezing, or otherwise manufacturing and includes the packaging, canning, jarring or otherwise enclosing of food in a container.

"Processing/on-farm" means the processing of organic agricultural products at the same location where they were produced.

"Processor" means a company which cooks, bakes, heats, dries, mixes, grinds, churns, separates, extracts, cuts, ferments, eviscerates, preserves, dehydrates, freezes, otherwise manufactures, packages, cans, jars, or otherwise encloses food in a container.

"Producer" means a person who engages in the business of growing or producing food or feed.

"Production" means all operations undertaken to grow or raise agricultural products on the farm, including initial packaging and labeling of the product.

"Prohibited" means a substance or practice which is not allowed to be used in any aspect of organic production, processing or handling.

"Records" means any information in written, visual or electronic form that documents the activities undertaken by producers, processors, and handlers demonstrating compliance with organic standard requirements.

"Repacker" means a company which receives products from growers or other sources, removes the products from the original container, may or may not sort the product, and repacks the product for resale either in the original container or in a different container.

"Residue testing" means a test used to verify the presence of a specified level of a substance.

"Restricted (regulated)" means substances or practices which may be used by organic farm and handling operations only by following prescribed variances, such as prior approval by the certification agency.

"Row crops" means crops planted and grown in rows for intensive summer production including, but not limited to, corn, soybeans, sorghum, or sugar beets, primarily destined for livestock or processing for human consumption.

"Sanitize" means to adequately treat food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or integrity of the organic food.

"Seedling - organic" means an annual seedling grown using organic methods and transplanted to raise an organic agricultural product.

"Slaughter stock" means any animal that is intended to be slaughtered for human consumption.

"Sludge (biosolids)" means semisolid residuals produced by municipal wastewater treatment processes.

"Soil amendment" means a substance applied to the soil to improve physical qualities or biological activity; complement or increase soil organic matter content; or complement or adjust a soil nutrient level.

"Split operation" means an operation that produces or handles nonorganic agricultural products in addition to agricultural products produced organically.

"Suspension of certification" means an action taken by a certification agency that results in the loss of ability of a farm, wild crop harvesting, processing or handling operation to market its products as organic.

"Synthetic" means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

"Treated" means the application of an active synthetic substance to seeds, planting stock or other inputs used in farming.

"Trucker" means a handling operation which transports products between farms, processing plants, other handling operations, or other facilities. A trucker does not open product containers or mix, combine, or otherwise handle the product while it is in the trucker's custody.

"Untreated" means seeds, planting stock or other inputs to which no active synthetic materials have been applied.

"Vaccine" means a diluted suspension of killed or live microorganisms, such as viruses or bacteria, incapable of inducing severe infection but capable when inoculated of counteracting the disease-causing organism.

"Wild harvested" means plants or portions of plants that are collected or harvested from defined areas of land which are maintained in a natural state and are not cultivated or otherwise managed.

STATE CERTIFICATION PROGRAM

21—47.3(190C) State certification agent. The department shall serve as certification agent on behalf of and as authorized by the secretary of agriculture pursuant to the authority of Iowa Code section 190C.4(2).

47.3(1) *Certificate.* The department shall issue a certificate verifying compliance with Iowa Code chapter 190C and this chapter to applicants of the state organic certification program that have been approved for certification, according to Iowa Code chapter 190C and this chapter, by the organic standards board and have paid required fees.

47.3(2) *Expiration of certification.* Certification will expire one year from date of issuance pursuant to Iowa Code section 190C.13(1)*"a."* A temporary extension of certification may be granted as deemed necessary by the department for a period not to exceed 90 days.

47.3(3) *General certification requirements.* In order to receive and maintain state organic certification from the department, producers, processors and handlers of organic agricultural products must apply for organic certification with the department and submit all required materials, comply with Iowa Code chapter 190C and this chapter, permit the department to access the operation and all applicable records as deemed necessary, comply with all local, state and federal regulations applicable to the conduct of such business, submit all applicable fees to the department pursuant to Iowa Code section 190C.5(1) and this chapter, and receive approval for certification by the organic standards board.

47.3(4) *Application for state organic certification.*

a. Application for state certification shall be completed and submitted with required application materials and fees to the department on forms furnished by the department. Applications must be received by the deadline date as published by the department in the application packet. Applications submitted to the department after published deadline date may be charged a late fee, and processing of such applications may be subject to delays or the applications may not be processed at all.

b. The department pursuant to Iowa Code section 190C.13 shall review all applications including applicant's organic plan and inspection report. The department shall forward completed application materials to the organic standards board review committee.

47.3(5) *Organic plan.* Producers, processors or handlers seeking organic certification from the department shall submit an organic plan to the department.

a. The organic plan must:

(1) Be agreed to by the operator and the department pursuant to Iowa Code section 190C.12(2)*"c"*;

(2) Address and meet the requirements of Iowa Code chapter 190C and this chapter;

(3) Include methods used and those intended for use to ensure that the agricultural products are produced, handled, and processed according to requirements established by the department pursuant to Iowa Code chapter 190C and this chapter; and

(4) Be implemented and updated annually.

b. The department shall be informed of changes to the organic plan which may affect the conformity of the operation to the certification standards at any time during the certification process and after such certification is granted.

47.3(6) *Inspections.* The department, pursuant to Iowa Code section 190C.4(1)*"a"* and this chapter, shall provide annual inspections of operations seeking state organic certification as the secretary's authorized agent pursuant to the authority of Iowa Code section 190C.4(2). The inspector shall write and submit to the department a report of findings.

47.3(7) *Records.* Records shall be maintained according to subrule 47.5(1).

47.3(8) *Certification review committee.*

a. The certification review committee shall be composed of five board members, with the remaining members serving as alternates. Positions shall be representative of the total make-up of the board.

b. The certification review committee members shall not have a personal or professional interest in the result of the applicant's request for certification. A member having an interest shall not participate in any action of the certification review committee relating to the application. The certification review committee's procedures shall be reviewed as deemed necessary by the department.

c. The certification review committee members shall serve two-year staggered terms.

d. If deemed necessary, a second certification review committee shall be established under these same guidelines.

47.3(9) *Certificate of compliance.*

a. The department shall provide to the successful applicant an official certificate recognizing compliance with Iowa Code chapter 190C and this chapter.

b. The state-certified party shall use certification only to indicate that products are certified as being produced, processed and handled in conformity with the standards promulgated in Iowa Code chapter 190C and this chapter.

c. The state-certified party shall not use its state organic certification status in such a way as to bring the department into disrepute and shall not make any statement regarding such certification in a way that the department may consider misleading or unauthorized.

d. The state-certified party shall inform the department of any changes in the organic plan, such as production changes, or intended modification to the product(s) or manufacturing process which may affect the conformity of the operation to the certification standards. If such is the case, the certified party may not be allowed to release such products as certified organic bearing the state seal until the department has given approval to do so.

47.3(10) *Use of state seal.* For the promotion or sale of organic products, only those producers, handlers and processors certified as organic by the department are entitled to utilize the state seal attesting to state of Iowa organic certification. In addition, the statement "Produced (processed if processor) in accordance with the State of Iowa Organic Agricultural Products Act of 1998" may only be used on the label by state-certified operations. The seal and statement may be used together on the same label or either one may be used by itself. The seal and statement shall not be changed except to increase or decrease size as necessary. Where a party maintains organic certification with a private certification agency and additionally with the department, the private certification agency's certification seal may appear on the same label with the state of Iowa certification seal.

47.3(11) *Transfer of organic product.* A certified operator, selling a quantity of organic agricultural product, shall document, according to department policy as approved by the board, that the product being sold originated from the certified operation. The document shall be maintained as part of required record keeping.

47.3(12) *Testing.* Residue testing may be conducted by the department in the case of complaint, suspected contamination, or suspected fraud. The party in control of the site being tested shall pay the department for the cost incurred from testing only if residue is confirmed. Cost of negative test results shall be paid by the department.

47.3(13) *Fees.* Fees are established for application, inspection, and certification to support costs associated with activities necessary to administer this program pursuant to Iowa Code sections 190C.5(1) to 190C.5(3). The applicant shall submit all three fees to the department for the specific amount and at the appropriate time as specified in this rule.

a. Application fee. A fee of $50 shall accompany the application for certification. An additional late fee of $25 shall accompany renewal applications submitted after the published deadline date.

b. Inspection fee.

(1) The inspection fee shall be submitted before the inspection but only after the application has been reviewed and found to qualify for an inspection. This fee covers the cost of providing the inspection. If the actual cost of the inspection exceeds the amount, the applicant shall be required to pay the balance.

(2) Schedule of inspection fees.

1. On-farm producer inspection fee of $175 shall be paid by all production operations or combination of production operations.

2. On-farm-processing inspection fee of $100 shall be paid by production operations seeking certification of product-related processing operation. Simple washing, drying and packaging shall not constitute processing for purposes of fee assessment.

3. An inspection fee of $300 shall be paid by processor, handler and broker operations.

c. Certification fees.

(1) Certification fees may be adjusted annually pursuant to Iowa Code section 190C.5(2). The certification fee provides the operation with one year of state organic certification. Crops certified but not sold during the year of certification may be sold as certified as long as storage and handling of such crops are maintained according to Iowa Code chapter 190C and this chapter. The certification year shall begin the date that certification is granted.

(2) Certification fees shall be paid in addition to the application fee and inspection fee. Certification fees are due and payable after certification is granted to the applicant. Fees may be paid quarterly, biennially or annually. No transaction certificate will be issued if payments are delinquent.

(3) Schedule of certification fees.

1. Vegetables, herbs and spice crops—field production. Vegetables, herbs and spice crops are assessed a fee of $25 per acre with a minimum of a ½-acre plot size. Production area shall include actual production acres.

2. Vegetables, herbs and spice crops—greenhouse production.

Less than 1,000 square feet	$20
1,001 to 3,000 square feet	$40
3,001 to 5,000 square feet	$60
Each additional 2,000 square feet	$20

3. Tree crops. Fees are assessed on a per acre basis.

Fruit and nut crops	$15

4. Farm crops. Fees are assessed on a per acre basis for each harvested crop. Green manure crops are not assessed.

All corn varieties	$2.50
Soybeans	$4.00
Small grains	$1.00
Forage	$ .50
Other crops	$1.20

5. Dairy, livestock and poultry. Livestock requiring assessment shall include all breeding stock and produced stock for the year unless otherwise stated. If all progeny are not born at the time of inspection, an estimate shall be used. Purchased stock, whether breeding or feeder stock, shall be assessed when the transaction certificate is issued. Fees are assessed on a per head basis for larger species and a per hundred head basis for smaller species.

Livestock - Dairy (fees are assessed only on animals in production)	
Cattle	$10.00
Goats	$ 1.00
Sheep	$ 1.00
Livestock	
Beef, buffalo, ratites and dairy heifers	$ 1.00
Swine	$ .25
Sheep and goats	$ .25
Poultry (per 100)	
Slaughter chickens	$ 1.00
Slaughter turkeys	$ 5.00
Layers	$10.00

6. Apiculture. Fees are assessed on a per colony basis.

Each colony	$.50

7. Aquaculture.

Brood stock	$.50 per head
Eggs through stockers	.25 per thousand head
Food size and above	.05 per 100 pounds

8. On-farm processing. This fee schedule shall apply to those operations processing products within the farm unit. Fees are based on gross organic sales from previous year or the projected estimated gross organic sales if first year of organic sales.

Estimated sales	
$0 - $100,000	$100
$100,001 - $250,000	$250
$250,001 - $500,000	$500
$500,001+	Refer to processor fee schedule.

9. Processor. Fees are based on gross organic sales from previous year or the projected estimated gross organic sales if first year of organic sales.

Estimated sales	
$0 - $250,000	$ 250
$250,001 - $500,000	$ 500
$500,001 - $1 million	$1,000
$1,000,001 - $2 million	$2,000
$2,000,001 - $3 million	$3,000
Each additional million	$1,000

21—47.4(190C) Regional organic associations (ROAs). With approval by the board, the department may register and authorize a regional organic association to assist the organic standards board by providing application assistance to its members requesting application assistance.

47.4(1) *Registration and authorization.* Regional organic associations must be registered and authorized by the department in order to assist the organic standards board pursuant to Iowa Code section 190C.6.

a. Registration. To register with the department, the regional organic association must:

(1) Maintain a minimum of 25 members;

(2) Sign and submit to the department a regional organic association declaration as provided by the department;

(3) Submit, to the department, bylaws and ongoing changes to the bylaws;

(4) Submit verification of regional organic association liability insurance; and

(5) Successfully register annually with the department.

b. Authorization. For authorization to be granted, the following requirements must be met:

(1) The regional association shall sign a memorandum of understanding with the department specifying functions to be performed by the association related to application assistance; and

(2) The regional association shall receive from the department a letter of authorization to provide application assistance upon approval by the organic standards board.

47.4(2) *Functions.*

a. ROAs, reviewing member application materials for submission to the department, may:

(1) Provide to the department and the board a summary of the member's application;

(2) Identify any unresolved shortcomings in the application; and

(3) Indicate if the application appears to meet the Iowa organic standards promulgated in Iowa Code chapter 190C and this chapter.

b. Requirements.

(1) Application assistance provided by ROAs shall be conducted by association staff or association board members; and

(2) Application materials received by the ROA for submission to the department shall be forwarded along with the summary to the department. The application fee for state organic certification shall be paid with a check made payable to the department by the individual member applying for state certification. The check shall be submitted with the application.

47.4(3) *Prohibited.*

a. ROA staff or ROA board members providing application assistance for their members shall have no personal or commercial interest in the outcome of a member's application for state certification.

b. ROAs shall not amend member documents prior to submitting them to the department.

CERTIFICATION REQUIREMENTS IN IOWA

21—47.5(190C) Organic certification. Producers of agricultural products that are labeled, sold, or advertised as organic in the state of Iowa, and handlers who take legal title and process agricultural products that are labeled, sold, or advertised as organic in the state of Iowa must be certified, unless otherwise stated in this chapter, by the department or an accredited private certification agency as defined in rule 47.2(190C) and must comply with Iowa Code chapter 190C and this chapter.

Parties certified by a private certification agency are not required to certify additionally with the department. However, individuals seeking certification only from a private certification agency are not relieved from the responsibility to understand and comply with Iowa Code chapter 190C and this chapter. In any instance, where a particular organic standard held by a private certification agency differs from a standard held by the state, the operator must comply with the state standard if it is more stringent.

47.5(1) *Records.*

a. Records shall include, but not be limited to, documentation of inputs, practices and procedures utilized in the production, processing and handling of organic agricultural products as well as yield, storage and sales information. Additional records may be required as deemed necessary by the department to determine compliance with Iowa Code chapter 190C and this chapter.

b. Records and inventory control procedures must be detailed enough to trace all raw materials from the supplier, through the entire plant process, and on through the distribution system to the retailer, using lot numbers, date codes or a similar product tracking system.

c. Records must be maintained for five years and be made available to the department upon request.

d. The certified party shall keep a record of all complaints made known to that party relating to a product's compliance with requirements to the relevant standard and to make these records available to the department upon request. The certified party shall take appropriate action with respect to such complaints and any deficiencies found in products or services that affect compliance with the requirements for certification, and all such actions shall be documented and available upon request by the department.

e. Records of inputs applied to nonorganic fields or livestock in split or parallel operations must be maintained and made available during inspections. This applies to all fields in the operation whether leased or owned.

47.5(2) *Private certification agencies.* Accredited private certification agencies as defined in rule 47.2(190C) are recognized by the department as providers of organic certification in the state.

a. Certification standards utilized by such agencies to certify Iowa producers, processors and handlers shall not be in violation of Iowa Code chapter 190C and this chapter.

b. A memorandum-of-understanding document, available from the department, shall be signed by the private certification agency intending to provide organic certification services in the state and submitted to the department.

47.5(3) *Document review.* Parties who have attained organic certification from a private certification agency may at a later date during that same year request the department to provide a document review. The document review shall be limited to a specific quantity of product for the purpose of attaining the state organic seal for that sale only. All application records and the inspector's report must be submitted to the department from the private certification agency at the request of the certified party. The department and organic standards board shall review this request only after a copy of the party's organic certificate has been received by the department from the private certification agency under which organic certification has been attained. The department may inspect the organic products in question and any facet of the operation in addition to collecting various samples for analysis if deemed necessary. Document review approval shall result in the issuance of a state certification seal from the department only for the specific quantity for which the review was sought. A fee shall be charged to the party requesting the review and the fee shall be paid to the department prior to the issuance of the state certification seal.

47.5(4) *Source of certified inputs.*

a. In-state source. Inputs that are certified by a private certification agency holding a memorandum of understanding with the department may be used in the production of crops, livestock and processed products without prior approval from the department.

b. Out-of-state source. Inputs that are obtained from out-of-state sources but within the United States shall be certified organic by certification agencies holding a memorandum of understanding with the department or be accredited by the USDA, pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.), upon implementation of the National Organic Program. Until the National Organic Program is implemented, the approval of out-of-state certified organic inputs shall be reviewed prior to use by the department and the board on a case-by-case basis.

c. Source outside the United States. Inputs obtained from sources residing outside the United States must at minimum meet the requirements of the Organic Foods Production Act of 1990, shall be certified by a certification agency and shall be reviewed for approval on a case-by-case basis.

d. Records of the source and use of such inputs shall be maintained.

47.5(5) *Inspections.*

a. Scheduled. Producers, processors and handlers applying for organic certification must be verified annually through an on-site inspection and comprehensive review of the operation by an accredited certification agency. Individuals seeking certification shall make all necessary accommodations for the conduct of the evaluation, including provision for examining records and access to all areas, and personnel for the purposes of evaluation and resolution of complaints. The evaluation may include, but is not limited to, testing, inspection, assessment, surveillance, and reassessment.

b. Unscheduled. All parties making an organic claim may be subject to an unscheduled on-site inspection, review of records and sampling if deemed necessary by the department pursuant to Iowa Code sections 190C.4(2), 190C.22(2) and 190C.22(3) to verify compliance.

47.5(6) *Organic label.* All organic products produced, processed and labeled in Iowa must meet applicable state and federal labeling regulations and organic standards as promulgated in Iowa Code chapter 190C and this chapter.

47.5(7) *Enforcement and investigations.* The department and the attorney general shall enforce Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.21.

47.5(8) *Complaints.* Any person may submit a written complaint to the department regarding a suspected violation of Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.22(2). Such signed complaints shall be submitted on the required form provided by the department upon request.

47.5(9) *Disciplinary action.* Intentional fraud or inadvertent violation of Iowa Code chapter 190C and this chapter may result in suspension of certification or decertification. If inadvertent violations are not corrected as required by the certification agency or in the case of suspected fraud, and the fraudulent activities are substantiated, the operation may be decertified. Upon suspension, the certified party must discontinue the use of all labels or advertising materials that contain any reference to organic certification. In addition, in the case of decertification, the decertified party shall return the organic certificate to the certification agency.

47.5(10) *Appeals.* Appeal procedures are established pursuant to Iowa Code section 190C.3(6) under 21—Chapter 2. The organic standards board shall have final agency action, subject to the parameters of Iowa Code chapter 17A. The appeals committee shall be comprised of board members who did not serve on the certification review committee for the particular case in question and shall have no conflict of interest in the matter. Procedures and restrictions concerning the hearing of appeals shall apply.

a. Written appeal. Except as specifically provided in the Iowa Code or elsewhere in the Iowa Administrative Code, a person who wishes to appeal an action or proposed action of the department which adversely affects the person shall file a written appeal with the department within 30 calendar days of the action or notice of the intended action. A written notice of appeal shall be considered filed on the date of the postmark if the notice is mailed. The failure to file timely shall be deemed a waiver of the right to appeal. Appeal will first go to the certification review committee. The certification review committee will determine if the party's claim has sufficient merit to overturn the earlier denial in a timely manner. If this is not the case, however, the appeal will be forwarded from the certification review committee to the appeals committee.

b. Records. Records of all appeals, complaints and disputes, and remedial actions relative to certification shall be maintained by the department for a minimum of ten years. Records shall include documentation of appropriate subsequent action taken and its effectiveness.

47.5(11) *Parties exempted from organic certification.*

a. Exempted parties.

(1) A person who receives $5000 or less in annual gross income from the sale of agricultural products shall be exempt from fees and mandatory organic certification.

(2) Final retailers of agricultural products who do not process agricultural products are exempted from organic certification in the state of Iowa. Handlers who do not process agricultural products are exempt from certification.

b. The exempted producer or handler selling agricultural products as organic shall demonstrate compliance with Iowa Code chapter 190C and this chapter by implementation and documentation of the following measures:

(1) Submit to the department a signed Exempt Party Declaration form, as provided by the department, attesting to knowledge of and compliance with Iowa Code chapter 190C and this chapter;

(2) Submit a $10 processing fee with the declaration to the department;

(3) Maintain records adequate to verify compliance and trace an organic product from production site to sale for consumption. Records must be kept for five years.

ORGANIC STANDARDS

21—47.6(190C) Crops.

47.6(1) *Crop production requirements.* Prohibited materials, including prohibited fertilizers and pesticides, may not be used in the production of organic crops pursuant to Iowa Code chapter 190C and this chapter.

47.6(2) *Inputs.*

a. All natural materials used in the production of organic agricultural products are permitted except those listed as prohibited on the National List or otherwise prohibited or regulated by Iowa Code sections 200.5 and 206.12 and this chapter.

b. Synthetic materials are prohibited except if listed as allowed on the National List.

c. Genetically modified crops are prohibited in organic crop production.

47.6(3) *Split operations.* Split operations shall be allowed but segregation plans and applicable logs must be followed and documented for organic and nonorganic crops. The operation must maintain, but not be limited to, the following documents and logs addressing the following procedures: cleaning, spraying, purging, separate storage and separate transportation. Appropriate physical facilities, machinery and management practices shall be established to prevent commingling of nonorganic and organic products or contamination by prohibited substances.

47.6(4) *Buffer zone.*

a. Requirements.

(1) Buffer zones, a minimum of 30 feet, must be maintained between certified organic crops and areas treated with prohibited substances. A vegetative solid-stand windbreak a minimum of 15 feet tall may be substituted for a 30-foot buffer zone.

(2) If crops are grown in this buffer zone, such crops shall not be labeled, sold or in any way represented as organic.

(3) Crops harvested from buffer zones shall be kept separate from organic crops, and appropriate designated storage areas shall be clearly identified and records maintained to sufficiently identify the disposition of nonorganic product.

b. Recommendations.

(1) Planting of windbreaks and hedgerows is encouraged to help reduce spray drift from neighboring farms and wind damage to crops.

(2) The producer should notify neighbors, county roadside management officials, railroads, utility companies and other potential sources of contaminants. The producer should provide such individuals with maps of organic production areas, request individuals not to spray adjacent areas, and request to be informed if prohibited materials are applied to land adjacent to organic production areas.

47.6(5) *Testing.* Residue testing shall be conducted by the certification agency or its representative in the case of probable contamination.

47.6(6) *Drift.*

a. The department's organic agriculture bureau shall be notified by the party in control of the site of suspected pesticide drift incidences onto certified organic land or land which is under consideration for organic certification. The department may require residue testing to make a determination regarding certification.

b. In the case of drift, the affected party may file a complaint under Iowa Code section 206.14 with the department's pesticide bureau.

47.6(7) *Runoff and flooding.* Records must be kept regarding land that is subject to runoff or flooding. The department may require testing to make a determination regarding certification.

47.6(8) *Conversion to organic.* There shall be no use of prohibited materials for three years prior to the harvest of the first organic crop pursuant to Iowa Code section 190C.12(2)*"b"* and this chapter.

47.6(9) *Organic farm plan.*

a. Requirements.

(1) Producers of organic agricultural products, including wild crops and specialty crops, shall complete and submit an organic farm plan to the certification agency.

(2) The organic farm plan must be approved by the certification agency and updated annually.

(3) The certification agent shall be notified of all changes to the organic farm plan.

(4) The organic farm plan must address the key elements of organic crop production: soil and crop management, resource management, crop protection, and maintaining organic integrity through growing, harvesting, and postharvest operations.

(5) The plan must list total acreage of the operation and the types of crops grown, a history of crop practices and inputs, and current and intended practices.

(6) The plan shall include a description of practices that provide physical barriers, diversion of runoff, buffer areas, notification of neighbors, posting of borders or other means to prevent the application of prohibited substances to the land on which organically produced crops are grown.

(7) The producer shall submit the organic farm plan questionnaire provided by the certification agent and include adequate maps of all parcels farmed under the producer's control, with five-year histories of all parcels. The maps shall identify plots or fields by identification number and acreage size.

(8) The questionnaire shall be used to report methods and materials planned for use in the production of organic products.

(9) The applicant shall specify conversion plans for nonorganic fields in transition to organic including a rotation or land use plan for the upcoming three years.

(10) Adjoining land shall be identified and nonorganic or organic practices of the adjoining party noted.

b. Recommendations.

(1) A commitment to long-term soil improvement and fertility and protection from soil loss should be reflected in the plan; for example, winter cover crops are recommended.

(2) Postharvest procedures, and handling and storage equipment should be addressed.

47.6(10) *Biological diversity.* Biological diversity should be established, maintained and enhanced through the use of practices that are appropriate to the site and type of operation. Where possible and practical, preservation of nonagricultural areas, such as hedgerows, native prairies, wetlands and woodlands, is encouraged.

47.6(11) *Rotations.* For the production of annual crops, rotations are required for soil improvement, and disruption of weeds, insects, diseases and nematodes. A crop rotation including, but not limited to, sod, legumes, or other nitrogen fixing plants, and green manure crops shall be established. An approved crop rotation must be used from the start of transition to certified organic.

a. Annuals.

(1) Agronomic row crops. The same annual crop shall not be planted on the same field for more than four years out of a six-year period.

EXEMPTION: A four-year out of five-year rotation is permitted if a viable legume green manure has been incorporated during the five-year rotation.

(2) Horticultural crops. The same annual crop shall not be planted on the same field for more than four years out of a five-year period.

b. Perennials. Perennial systems shall include a plan for biodiversity in the system, including the use of cover crops, mulches, or grass cover. At the end of a perennial crop life cycle that exceeds four years, an annual cover crop must be planted, prior to planting another perennial crop. Replacement of individual stock is permitted without following replaced individual stock with a cover crop. For a perennial crop with a life cycle of less than four years, a cover crop must be planted at least once every five years. Permanent pastures are exempt from rotation standards.

c. Exemption. Rotation of crops may be affected by weather and other unforeseen circumstances. In the case where such circumstances cause a rotation to be out of compliance with this rule, the new rotation plan shall be approved by the certification agency prior to the implementation of the proposed changes.

47.6(12) *Tillage and cultivation.* Tillage and cultivation implements and practices shall be selected and used in a manner that does not result in long-term degradation of soil physical quality or result in excessive erosion.

47.6(13) *Soil fertility and crop nutrient management.* Plant or animal materials may be used to replenish soil organic matter content, provide essential crop nutrients and enhance soil biological activity. Plant or animal materials shall be used in a manner that does not significantly contribute to water contamination or soil contamination or degradation. It is recommended that plant and animal materials be attained from an organic source if possible. If unavailable, such materials may be attained from a nonorganic source. Nonorganic animal materials should be composted, if possible; otherwise, treated as raw manure.

a. Compost. The use of compost is permitted. Manure which has been composted shall not be subject to the raw manure restrictions stated in this rule. This may be achieved by composting for a minimum of six weeks, during which compost piles are managed so that they reach 140 degrees F for a minimum of three days.

b. Raw manure. To avoid runoff, raw manure should not be applied when the soil is saturated, frozen or covered with snow. Raw manure must be applied at least 120 days prior to harvest for crops grown for direct human consumption except for tree crops and crops of which the edible portion is covered by a husk, pod or shell, in which case raw manure could be applied up to 90 days prior to harvest.

c. Amendments. All natural substances are permitted except those listed as prohibited on the National List. Synthetic substances are prohibited except if listed as allowed on the National List.

d. Mulch. The use of plant materials as mulch is permitted. Plastic or synthetic mulch is permitted only if the mulch is completely removed from the field and properly stored or disposed in proper facilities at the end of each growing or harvest season. Plastic mulch that photo-degrades is prohibited.

47.6(14) *Seeds, seedlings and plant stock.*

a. Annuals. Organically produced seeds and planting stock, including annual seedlings, transplants, bulbs, and tubers, shall be used, except that:

(1) Nonorganically produced seeds, bulbs, and tubers may be used to produce an organic crop when an equivalent organically produced variety is commercially unavailable, with the exception of seeds used for sprouts, which must be organic.

(2) Treated seeds, bulbs, and tubers are allowed only when untreated seeds of the same variety are documented as commercially unavailable, required by phytosanitary regulations, or unanticipated or emergency circumstances make it unfeasible to obtain untreated seeds or other annual planting stock. Pelletized seed is allowed unless it contains prohibited substances.

(3) Nonorganically produced annual seedlings and transplants are allowed only in cases where organic seedlings or planting stock has been destroyed by a natural disaster or other unanticipated circumstances. Such an emergency shall be documented.

b. Perennials. Nonorganic produced planting stock may be used as planting stock to produce a perennial crop which may be sold, labeled, or represented as organically produced only after the planting stock has been maintained under a system of organic management on a certified organic farm for a period of no less than one year.

c. Prohibited.

(1) All genetically engineered seeds, seedlings, and planting stock are prohibited.

(2) Plastic polymer pelletization of seed is prohibited.

47.6(15) *Pest management.* The prevention or control of pests, weeds and diseases in crops may include, but not be limited to, crop rotation, soil fertility management practices, sanitation methods, cultural practices, seed and plant selection, mulch, beneficial insects, mechanical or physical controls, traps, lures, mating disruption and repellants. All materials used for pest management shall meet the following conditions:

1. Natural substances are permitted except those listed as prohibited on the National List; and
2. Synthetic substances are prohibited except if listed as allowed on the National List.

The anticipated practices to prevent or control pests, weeds and diseases shall be described in the organic farm plan. A follow-up plan shall be maintained to document actual practices used.

47.6(16) *Water.*

a. Irrigation. Prohibited materials shall not be added to irrigation water. Crops grown using water that is suspected of containing prohibited materials resulting from unavoidable residual environmental contamination shall be tested, and test results will be used in making a determination regarding certification. Prohibited substances cannot be used to clean irrigation systems.

b. Postharvest handling. Water used to wash crops must meet criteria of the Safe Drinking Water Act. Chlorine use shall not exceed maximum residual disinfectant limit so established at 4 mg/L.

47.6(17) *Specialty crops.*

a. Greenhouse production. Greenhouses operated as in-ground or permanent soil systems or bench systems are permitted and shall comply with Iowa Code chapter 190C and this chapter including the use of materials for pest management, rooting hormones and plant production, which must be listed as allowed on the National List. Potting soils, soil receptacles, water and greenhouse structural materials shall not contain prohibited materials. Plants and soil shall not come into contact with soils treated with prohibited substances. Light sources for greenhouses may be natural or artificial.

b. Mushrooms. Organic mushrooms may be grown indoors or outdoors. Organic mushrooms shall be produced, harvested and handled according to Iowa Code chapter 190C and this chapter. All sources of spawn and substrate shall be documented. Noncomposted substrate shall be organically produced. Spawn may be cultured on nonorganic grain, but prohibited materials shall not be applied during spawn production.

c. Sprouts. Sprouts may be grown in soil or without soil. Seeds grown and sold as sprouts must be from an organic seed source. Water used for organic sprout production must meet criteria of the Safe Drinking Water Act. Chlorine use shall not exceed maximum residual disinfectant limit so established at 4 mg/L. Seed used for sprouts may be treated with the following materials and methods to prevent food-borne pathogens: heat, hydrogen peroxide and if required by applicable government agency, soaking in water solution of chlorine not to exceed 2000 mg/L, to be followed by a five-minute rinse in potable water.

21—47.7(190C) Livestock.

47.7(1) *Organic livestock production requirements.* Prohibited materials may not be used in the production of livestock and livestock products pursuant to Iowa Code chapter 190C and this chapter. All substances used in the production of livestock and livestock products must be certified organic and used in accordance with this chapter. Natural substances may be used unless listed as prohibited on the National List. Synthetic substances are prohibited except if listed as allowed on the National List.

47.7(2) *Prohibited.*

a. Genetically engineered organisms are prohibited in the breeding or production of organic livestock.

b. Livestock shall not be transferred between organic and nonorganic management for the purpose of circumventing any provision of Iowa Code chapter 190C and this chapter.

47.7(3) *Split operations.* Split operations shall be allowed, but segregation plans and applicable records must be followed and documented. All animals in both the nonorganic and organic herds shall be uniquely identified, and detailed records on the origin and production history of each animal must be kept. In poultry production, nonorganic and organic flocks must be kept in separate, clearly marked facilities. Each storage facility for feed, grain, or any other controlled input must be clearly marked "nonorganic" or "organic." Appropriate physical facilities, machinery and management practices shall be established to prevent commingling of nonorganic livestock and livestock products with organic livestock and livestock products or contamination by prohibited substances.

47.7(4) *Pasture.*

a. Requirement. Pastures must be managed to minimize risk of contamination by prohibited substances.

b. Recommendation. The establishment of livestock fence located an appropriate distance inward from the pasture border to prevent border grazing or a solid-stand windbreak along the pasture border is recommended.

c. Permissible.

(1) Livestock may graze cropland buffer zones only if an entire field is opened to grazing, as when livestock are allowed to glean a field after harvest.

(2) Livestock may graze up to a pasture border only if no more than 10 percent of the total pasture, accessible for grazing, is contiguous to areas treated with prohibited substances. The contiguous area is calculated as 30 feet multiplied by the length of the pasture perimeter that borders an area treated with prohibited substances.

d. Disqualification. Evidence that the pasture has been contaminated with a prohibited substance shall lead to disqualification of that pasture. The livestock or offspring may be disqualified if allowed to continue to graze pasture that has been disqualified.

47.7(5) *Organic livestock plan.* Producers of organic livestock and livestock products shall complete and submit an organic livestock plan to the certification agency.

a. The organic livestock plan must be approved by the certification agency and updated annually.

b. The plan shall list number and type of livestock.

c. The plan shall include a description of practices implemented in the production of livestock related to origin of livestock, feed, supplements, pasture, shelter, water, health care, living conditions, physical alterations and reproduction.

d. The producer shall submit the organic livestock plan questionnaire provided by the certification agent. The producer shall submit adequate maps of areas and buildings used for livestock. The certification agent shall be notified of all substantial changes to the organic livestock plan.

47.7(6) *Origin of livestock.*

a. Poultry. Poultry from which meat or eggs will be sold as organic must be raised according to Iowa Code chapter 190C and this chapter beginning no later than the second day of life and from that point on.

b. Slaughter stock and livestock used for the production of nonedible livestock products. Such livestock must be raised according to Iowa Code chapter 190C and this chapter and must be the progeny of female breeder stock that has been under organic production methods from the last one-third of gestation.

c. Dairy livestock: cows and other dairy livestock. Dairy replacement stock must be raised according to Iowa Code chapter 190C and this chapter from the time such stock are brought onto an organic farm and for not less than 12 months immediately prior to the sale of milk or milk products from such stock labeled as organic.

47.7(7) *Feed requirements.*

a. All certified organic livestock shall be fed certified organically produced and handled feeds according to the animal's stage of production. Any feed or forage purchased off farm must be certified as meeting the requirements of Iowa Code chapter 190C and this chapter. Pasturelands on which livestock are grazed or pastured shall be certified, and the organic plan shall contain management measures designed to enhance soil fertility and rangeland health as approved by the certification agency.

b. Access to managed pasture shall be provided for ruminant animals. Exceptions shall only be allowed for:

(1) Inclement weather;

(2) Conditions where the health, safety or well-being of the animal or a person could be jeopardized;

(3) The protection of plant, soil or water quality; or

(4) Animal's stage of production.

c. When pasture is not available to ruminant animals for any of the above reasons, certified organic forage must be made available.

47.7(8) *Feed emergency.*

a. To qualify for an emergency exemption from organic feed requirements, the operator must:

(1) Establish an emergency feed plan in the organic livestock plan;

(2) Document efforts made to obtain organic feed in advance of the depletion of feed reserves;

(3) Document that the feed emergency is regional in scope; and

(4) Receive approval from the certification agency.

b. In the case of a feed emergency, the operator must notify the certification agency of the emergency and shall obtain feed based on the following order of preference:

(1) Certified organic feed;

(2) Noncertified organic feed;

(3) Feed grown under organic management for two years;

(4) Feed grown under organic management for one year;

(5) Nonorganic feed.

c. Transitional or nonorganic feed should be fed first to animals furthest away in time from production of products intended to be sold as organic.

47.7(9) *Prohibited.* The following substances or methods are prohibited for the feeding of organic livestock:

a. Any synthetic substance that is not listed as allowed on the National List for organic livestock production. Any natural substance listed as prohibited on the National List.

b. The use of the following for the purpose of stimulating the growth or production of livestock is not allowed:

(1) Hormones or growth or production promoters whether implanted, injected, or administered orally;

(2) Antibiotics or other animal drugs; and

(3) Synthetic amino acid additives, vitamins or trace elements fed above levels needed for adequate nutrition.

c. Plastic pellets for roughage.

d. Manure re-feeding.

e. Feed formulas containing urea.

f. Any feed made from meal that has been extracted by the use of synthetic solvents, e.g., hexane.

g. Medicated feeds and medicated milk replacers.

h. Synthetic silage and forage preservatives.

i. Livestock slaughter by-products fed to mammals.

j. Genetically engineered organisms, including their derivatives, in feed, feed supplements or feed additives.

47.7(10) *Feed additives and supplements.*

a. Feed additives fed to organic livestock shall meet the following requirements:

(1) Feed additives that are nonsynthetic shall be from any source, provided that the additive is not listed as prohibited on the National List;

(2) Synthetic feed additives must be listed as allowed for organic livestock on the National List;

(3) Any source of feed salt is allowed;

(4) Natural minerals, such as limestone, dolomite, marl, magnesium oxide, greensand and kelp are allowed; and

(5) Synthetic vitamins and trace elements, such as selenium, that are listed as approved for livestock on the National List may be fed to livestock under organic management only as necessary for the purpose of fulfilling the nutritional requirements of the livestock.

b. Feed supplements fed to organic livestock shall be certified organically produced.

47.7(11) *Livestock health care.* Producers must maintain a production environment that promotes livestock health and limits livestock stress.

a. Organic livestock producers shall be required to take all necessary steps to maintain the health of their animals. This may include, but is not limited to:

(1) Balanced, complete nutrition;
(2) Selection and breeding of animals for resistance and immunity to disease;
(3) Proper sanitation and hygiene;
(4) Exercise, freedom of movement, and reduction of stress;
(5) Pasture management;
(6) Quarantine of incoming stock;
(7) Vaccinations; and
(8) Administration of veterinary biologics, vitamins and minerals.

b. Livestock producers are required to manage livestock to reduce the risk of parasite infestation through cultural and biological practices, which may include, but are not limited to:

(1) Quarantine and fecal examination for all incoming stock;
(2) Pasture rotation and management;
(3) Periodic fecal examinations and culling seriously infested livestock;
(4) Vector and intermediate host control;
(5) Release of beneficial organisms; and
(6) Natural dusting wallows for poultry.

c. In the event of sickness or infestation with parasites, organic producers are permitted to use the following:

(1) Nonsynthetic substances that are not listed as prohibited on the National List; or
(2) Synthetic substances that are listed as allowed for organic livestock production on the National List.

d. Any appropriate medication must be used to restore an animal to health when methods acceptable to organic production fail. If a prohibited material is used on an animal, that animal cannot be used thereafter for organic production or be sold, labeled or represented as organic until such animal meets requirements of Iowa Code chapter 190C and this chapter.

e. The following livestock health care substances and methods are prohibited:

(1) Any synthetic substance that is not listed as allowed for organic livestock production on the National List;
(2) Any natural substance that is listed as prohibited on the National List;
(3) Antibiotics; and
(4) Administration of any medication, other than vaccinations, in the absence of illness, including hormones for breeding purposes.

f. The action of a producer to withhold treatment to maintain the organic status of an animal which results in the otherwise avoidable suffering or death of an animal shall be grounds for decertification.

47.7(12) *Living conditions.* Certified organic livestock operations shall be based on a system that maximizes animal health and allows for the natural behavior of animals.

a. Such a production environment must include the following:

(1) Access to shade, shelter, water, fresh air, the outdoors, and direct sunlight suitable to the species, the stage of production, the climate, and the environment;
(2) Adequate clean and dry bedding, appropriate to the husbandry system, provided that if the bedding is typically consumed by the animal species, it complies with the organic feed standard; and
(3) A housing design which provides for an animal's natural maintenance, comfort behaviors and the opportunity to exercise; temperature levels, ventilation and air circulation suitable to the species; the reduction of potential for livestock injury; and free access to a floor surface that is predominantly grass, shavings, dirt or other nonartificial bedding.

b. Proper livestock health management may include periods of time when livestock are housed indoors. Temporary indoor housing may be justified for:

(1) Inclement weather;

(2) Conditions where the health, safety or well-being of the animal or persons could be jeopardized;

(3) The protection of plant, soil or water quality; or

(4) Animal's stage of production.

c. The following living conditions are prohibited for organic production:

(1) Continuous confinement; and

(2) Cages for poultry.

47.7(13) *Manure management.* Manure management practices used to maintain any area in which livestock are housed, pastured or penned shall be implemented in a manner that:

a. Minimizes soil and water degradation;

b. Does not significantly contribute to contamination of water by nitrate and bacteria, including human pathogens;

c. Optimizes recycling of nutrients; and

d. Does not include burning or any practice inconsistent with organic standards.

47.7(14) *Physical alterations.* Physical alterations must be conducted for the animal's ultimate benefit or identification, and these practices shall be administered in ways that minimize pain and stress.

a. Restricted. Beak trimming of poultry may be done only if the following conditions are met:

(1) Beak trimming may be done no later than ten days after hatching;

(2) No more than one-third of the beak may be removed;

(3) Beak trimming may be done only for protection of the flock; and

(4) Beak trimming may be done only in conjunction with good organic management practices as defined by these standards.

b. Prohibited. The following physical alterations are not allowed:

(1) Tail cutting, with the exception of sheep;

(2) Wing burning; and

(3) Toe clipping of poultry.

47.7(15) *Reproduction.* Natural service is preferred. Artificial insemination is allowed. Embryo transfer and cloning are prohibited.

47.7(16) *Records.*

a. Records must be maintained which permit tracing the sources and numbers of all animals, and sources and amounts of all feeds, feed supplements, feed additives and medications.

b. Organic livestock must be traced from birth to slaughter.

c. Livestock health records which show all health problems and the practices and materials used for treatment must be maintained.

d. With the exception of poultry and other small animals, if animals are not individually identified by numbered tags, then each animal that is treated with a veterinary drug must be clearly identified with a tag that corresponds to a record of the material used and date of treatment.

e. Poultry or rabbits and other small animals that are not identified by individual tags are to be tracked by lots or other applicable units, wherein each animal has received the same inputs and treatment.

47.7(17) *Slaughter.*

a. Animal stress and accidental mortality must be minimized during loading, unloading, shipping, holding and slaughter.

b. Slaughter must occur under sanitary conditions and in accordance with all applicable federal and state laws and regulations.

c. Organic animals and animal products must be clearly identified and segregated to prevent commingling with nonorganic animals and animal products.

21—47.8(190C) Apiculture. Honey and other bee products may be labeled, promoted and sold as organic if the operation is certified organic according to Iowa Code chapter 190C and this chapter, particularly standards as promulgated in this rule. In addition, all practices shall be in compliance with Iowa Code chapter 160 and 21—Chapter 22.

47.8(1) *Organic apiculture plan.* Producers of organic bee products shall complete and submit an organic apiculture plan to the certification agency.

a. The organic apiculture plan must be approved by the certification agency and updated annually.

b. The plan shall list number and location of colonies.

c. The plan shall include a description of practices implemented in the production of beehive products related to origin of colony, feed, water availability and health care.

d. The producer shall submit the organic apiculture plan questionnaire provided by the certification agent and include adequate maps of areas and buildings used for beehives. The certification agent shall be notified of all substantial changes to the organic apiculture plan.

47.8(2) *Feed requirements.*

a. Colonies shall be given supplemental feeding when needed, but feeding is prohibited when honey supers are in place.

b. Feeding of colonies to build food reserves for the winter may be undertaken. Such feeding must be carried out between the last honey harvest and prior to the next surplus honey flow.

c. Supplemental feed should be derived from organic honey or organic sugar syrup.

d. Bees from which organic honey and other products are harvested shall have access to forage produced in accordance with Iowa Code chapter 190C and this chapter.

47.8(3) *Prohibited.*

a. All synthetic substances except if listed as allowed on the National List.

b. Natural substances listed as prohibited on the National List.

c. Antibiotics and sulfa products.

d. Fluvalinate (Apistan strips), coumaphos (CheckMite+ strips) and other prohibited pesticides shall not be used in organic apiaries.

e. Bee repellants.

47.8(4) *Source of colonies.*

a. Bee colonies should be established on new frames and foundation to reduce risk of contamination by pesticides, antibiotics and comb-borne bee diseases which have a potential to be carried over in used equipment. Used deeps and supers, excluding used frames, may be used if sanitized appropriately before use.

b. The source of adult bees for establishing colonies shall be from package bees as defined by Iowa Code section 160.1A(4) or splits (nucs) made from the operator's own organic colonies, or from another organic beekeeping operation.

47.8(5) *Apiary location.*

a. Apiary shall be located on certified organic land.

b. Apiary shall not be located within two miles of:

(1) A sanitary landfill;

(2) An incinerator;

(3) A power plant;

(4) A golf course treated with prohibited substances;

(5) A town, city or village;

(6) A crop sprayed with prohibited substances during the bloom period; and

(7) Other sources of contamination.

c. If pollen is sold or labeled as organically produced, the apiary shall be located two miles from genetically modified crops.

d. Organic apiaries should be located as far as possible from nonorganic apiaries.

47.8(6) *Split operation.* Split operations shall be allowed but segregation plans and applicable records must be followed and documented. Organic colonies and nonorganic colonies shall be maintained in separate apiaries. All colonies in both the nonorganic and organic apiaries shall be uniquely identified, and detailed records must be kept on the origin and production history of each colony. Appropriate physical facilities, equipment and management practices shall be established to prevent commingling of nonorganic beehive products and organic products or contamination by prohibited substances.

47.8(7) *Health care.*

a. A high level of hygiene practices, when handling bee colonies and bee equipment in an organic operation, is required to minimize the need for antibiotic treatments, since the use of antibiotics is prohibited in the production of organic beehive products.

b. It is recommended that used supers and deeps, excluding frames, not be introduced into the organic apiary from a nonorganic beekeeping operation. Selling and exchanging of used beekeeping equipment may pose a great risk of transferring comb-borne bee diseases.

c. Efforts must be made to minimize stress to colonies by locating apiaries in sheltered areas, maintaining equipment in good condition and winterizing beehives. Empty beehive equipment shall be stored in a dry, pest-free place that does not contain prohibited materials.

d. The operator should implement the following practices:

(1) Use hardy breeds that adapt well to the local conditions;

(2) Replace queen bees regularly;

(3) Destroy contaminated materials;

(4) Renew beeswax regularly; and

(5) Maintain sufficient stores of pollen and honey in the hive.

e. American foulbrood. If a colony becomes infected with American foulbrood disease, the colony, along with all woodenware and comb, must be destroyed by burning.

f. Parasites. Colonies shall be treated for parasitic mites using the best available organic methods. Treatments may include, but are not limited to, the use of herbal and vegetable oils during nonhoney flow periods. Colonies so treated may remain in the organic apiary, and honey and other beehive products may be marketed as organic. All synthetic substances except if listed as allowed on the National List are prohibited. Natural substances are permitted unless otherwise listed as prohibited on the National List.

g. To aid in reducing Varroa mite populations, nonchemical cultural practices are encouraged, such as drone brood trapping and the use of a screen-modified bottom board in the beehives.

47.8(8) *Product handling.*

a. An operation which processes or handles organic beehive products must be in compliance with all applicable handling requirements of this rule.

b. If a facility processes both organic and nonorganic hive products, all equipment must be completely emptied and cleaned prior to processing organic hive products.

c. Equipment which comes in contact with organic honey must be made of stainless steel, glass, or other food grade materials.

21—47.9(190C) Aquaculture. Organic aquaculture operations shall be managed for optimum use of nutrients and minimizing waste. Diversified farms, including more than one species, and recycling freshwater effluent into cropping systems can help accomplish these goals. If effluent from tanks cannot be recycled, settling ponds may be required to avoid discharging effluent with an excessive nutrient loading.

47.9(1) *Animal stock.* Fish acquired for the purpose of selling as organic must be raised on the farm in accordance with organic standards promulgated in these rules.

a. New stock must be acquired from certified organic aquaculture operations.

b. Brood stock must be raised as organic during the entire period of gestation for juveniles to be sold as organic.

c. Off-farm fish not certified organic must be temporarily held in an isolation tank for a period of three weeks and fed only organic feed before introduction into certified organic tanks.

d. Fish must be raised as organic for a period of at least three-quarters of their life span (e.g., fish sold as three-month-olds must have been raised as organic for a minimum of 68 days) in order to be sold as organic.

47.9(2) *Site selection.* Aquaculture tanks should not be located in sites open to pesticide drift or other harmful contaminants. During operation, basic water quality sampling for pH, oxygen, nitrogenous wastes, and toxins should be conducted by the operator. Operations must be in compliance with all local, state and federal health agency water quality regulations.

47.9(3) *Feed and supplements.*

a. Fish must be fed 100 percent organic feed, including grains, sprouted grains, and other plant products that are certified organic.

b. Fishmeal and fish oil must be sourced from certified organic fish farms, not wild-caught fish.

c. No more than 20 percent fishmeal by weight is allowed in feed mix.

d. Artificial colors, binders and synthetic astaxanthin are prohibited.

e. Supplements must come from natural sources.

f. Antibiotics are prohibited in certified organic production.

g. The final feed mix should be free from vermin and microbial contaminants, such as aflatoxins and plant diseases.

h. Feed to aquaculture animals should be reduced or eliminated for a period of 48 hours prior to harvest to improve water quality and enhance depuration of the animal's digestive tract for improved food quality.

47.9(4) *Harvesting and postharvest handling.*

a. All certified organic aquaculture products must be rinsed with potable water immediately after harvest and safely stored and transported according to local, state and federal health agency rules.

b. Operators shall refer to the National List to determine which supplements, such as natural yeast, enzymes, vitamins, and minerals, are allowed in organic aquaculture.

21—47.10(190C) Handling and processing of organic agricultural products.

47.10(1) *Handlers.* Handlers of organic products shall be responsible for maintaining the organic integrity of the organic products they handle. Handlers who take legal title and who process organic products, including livestock feed, must be certified. This group may include retailers, distributors, food services, jobbers, packers and shippers.

47.10(2) *Handlers not taking legal title.* The activity of individuals or businesses that do not take legal title to organic products but act as agents, licensees, employees, contractors, or subcontractors, co-packers or co-processors and that process, package, or store organic agricultural products for a certified organic farming or handling operation must be covered by the certification of that organic farming or handling operation. Such activity must be described in the organic handling plan and shall be inspected and scrutinized with the same rigor and the same standards as certified entities as part of the certification requirement of the certified organic operation for which a handler acts as agent, licensee, employee, contractor, or subcontractor, co-packer or co-processor. Handlers that are not required to be certified include brokers, commission merchants, and truckers that do not take legal title to organic products.

47.10(3) *Certification requirements for handling and processing operations.*

a. Organic handling or processing plan. An organic handling or processing plan must be completed and submitted to the certification agency by the organic handler. The plan shall be reviewed by the certification agency that shall determine if the plan meets the requirements of the program. Operators must notify the certification agency of proposed changes to the organic handling plan. An organic handling plan shall contain provisions designed to ensure that agricultural products sold or labeled as organically produced are handled in a manner that maintains the integrity of the organic product according to Iowa Code chapter 190C and this chapter. The plan must address all elements of organic handling that are applicable to a particular handling operation, including but not limited to the handling system description, schematic flow charts, procedures for ensuring organic integrity, material inputs, ingredients, ingredient and finished product storage, transportation, records and good manufacturing practices.

b. Good manufacturing practices. Organic handlers and processors must comply with the current good manufacturing practices specified in 21 Code of Federal Regulations 110 (April 1, 1998). In addition, organic handlers and processors must comply with all other federal, state, and local food handling regulations and the following:

(1) Cleanliness. Necessary precautions must be taken to protect against contamination of food, food-contact surfaces, or food-packaging materials by microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, medicines applied to the skin, synthetic substances, and natural substances listed as prohibited on the National List.

(2) Education and training. Food handlers and supervisors should receive appropriate training in proper food handling techniques, proper organic handling techniques, and food-protection principles and should be informed of the danger of poor personal hygiene and unsanitary practices.

(3) Plant construction and design. Plant construction and design must permit the taking of proper precautions to reduce the potential for contamination of food, food-contact surfaces, or food-packaging materials by pests, microorganisms, chemicals, filth, synthetic substances, and natural substances listed as prohibited on the National List.

(4) Pest management. Organic handling operations shall implement structural pest management programs which emphasize exclusion, sanitation, restriction of pest habitat, monitoring, and use of least toxic pest control substances and shall be reflected in a pest management plan. Pest control substances that are not included on the National List of approved synthetic substances or that are included on the list of prohibited natural substances shall not be used during the processing, packing, or holding of organically produced human food and animal feed. Should the use of prohibited pest control substances be required to control an infestation, all organic food and feed must be removed from the facility before and during the application of the prohibited pest control substance. Organic food and feed may be brought back into the facility when there is no danger of contamination of the organic food with the prohibited pest control substance. For pesticides applied by fogging, broad surface treatment, or spot treatment, 72 hours must elapse prior to the reintroduction of organic ingredients, products or packaging to the treated area. For areas treated by fumigation, 120 hours must elapse prior to the reintroduction of organic ingredients, products or packaging to the treated area. All food-contact surfaces exposed to pesticides must be cleaned before organic handling resumes.

(5) Sanitation of food-contact surfaces. Treatment of food-contact surfaces, including utensils and food-contact surfaces of equipment, with cleaning compounds and sanitizers must be done in such a way as to prevent the loss of organic integrity. Extra rinses, flushes, purges and testing may be required prior to the production of organic products.

(6) Boiler water additives. Residues of boiler water additives must be prevented from contacting organically produced food by the use of steam without entrained water, steam filtering, or other means.

(7) Waste management. Wastes shall be managed so as to prevent environmental degradation, including contamination of groundwater and surface water. Wastes shall be contained so as not to attract pests or present a contamination potential to organic products.

(8) Transportation. Organic products shall be transported in containers which are free of odors and residues of prohibited substances and products which could compromise the integrity of the organic products.

47.10(4) *Prohibited.*

a. Chemicals used in washing/peeling. Synthetic substances or natural substances listed as prohibited on the National List shall not be used to wash, peel, or otherwise prepare organically produced raw agricultural products or organic food, unless they are required by federal, state, or local food-handling regulations.

b. Water used in handling. Water that contacts nonorganically produced raw agricultural products during handling operations such as washing, floating, rinsing, or cooling must not be used for handling of organically produced raw agricultural products. If necessary, organic agricultural products shall be processed before nonorganic products to comply with this requirement.

c. Ionizing radiation. Ionizing radiation for the purpose of killing insects or microorganisms in the food or for preserving food shall not be used in the handling of organic food. Use of X-rays for inspection of organic food, as in metal detectors, is allowed.

d. Recombinant DNA technology. Organisms that are created through the use of recombinant DNA technology, or products of such organisms, shall not be used as ingredients or processing aids in the handling of organic products.

47.10(5) *Prevention of commingling.* Safeguards to prevent the commingling of organic products with nonorganic products or prohibited substances shall be established.

47.10(6) *Records.* Records and inventory control procedures must be adequate to trace all ingredients and products from the supplier through the entire production system, including packaging and storage, and on through distribution, sales and transport, using lot numbers, date codes, or a similar product tracking system. Organic handlers must retain valid proof of certification for all organic ingredients. Detailed written information on all ingredients, additives, and processing aids used in the production of products must be maintained. A description of the system of internal record keeping that documents the movement of each specific lot of organic food through each step of the handling operation shall be maintained.

21—47.11(190C) Composition and labeling for finished multi-ingredient products.

47.11(1) *Labels.*

a. All organic agricultural food products must be labeled in accordance with Title 21, Part 101 of the FDA Administration Code of Food Requirements and the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.). Labels of all organic food products must contain the certification agency name. Labels may contain agency seal or logo.

b. The following apply to manufactured products labeled as "organic" on the principal display panel:

(1) For a product to be labeled "organically produced," 95 percent of the multi-ingredient finished product either by weight or volume, whichever is more appropriate, must be comprised of certified organically produced ingredients.

(2) Ingredients that are nonsynthetic and not organically produced and are included on the National List of substances approved for processed food may be used, provided that they represent no more than 5 percent of the total weight of the finished product, excluding water and salt.

47.11(2) *Prohibited.*

a. Organic and nonorganic forms of the same agricultural ingredient shall not be combined in a product sold, labeled or represented as "organic" or "made with organic ingredients" if the ingredient is represented as organic in the ingredient statement.

b. The term "organic when available" shall not be used on such organic agricultural products.

c. Any nonsynthetic substance that is on the National List of prohibited nonsynthetic substances.

d. Any ingredient known to contain excessive levels of nitrates, heavy metals, or toxic residues.

e. Any sulfites, nitrates, and nitrites.

f. Any ingredient produced using synthetic volatile solvents or propylene glycol.

g. Any packaging materials, storage containers or bins that contain synthetic fungicides, preservatives, fumigants, or prohibited substances which may contaminate organic products.

h. Any packaging materials that had previously been in contact with any prohibited substance in such a manner as to compromise the integrity of an organic product.

i. Any water that does not meet the requirements of the Safe Drinking Water Act.

j. Ionizing radiation, including ingredients which have been subjected to ionizing radiation.

k. Genetically engineered organisms and their products.

21—47.12(190C) Packaging.

1. Packaging materials for organic food products must be food grade and must not contaminate the organic product.
2. Packaging must be free of prohibited substances such as fungicides, preservatives, and fumigants.
3. Aluminum, tin and solder shall not be used unless those substances are between pH 6.7 and 7.3.

21—47.13(190C) List of substances.

47.13(1) The department shall adopt the National List of substances, allowed or prohibited for organic production and handling of products sold or labeled as organically produced, pursuant to the Organic Foods Production Act of 1990 and promulgated by the National Organic Program upon its implementation.

47.13(2) The list established shall contain an itemization, by specific use or application, of each synthetic substance permitted, or each natural substance prohibited, according to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

47.13(3) Until such time that the National Organic Program is implemented, substances allowed or prohibited shall be determined by reference to the generic materials list published by the Organic Materials Review Institute (OMRI). Generic lists published by other organizations may be reviewed by the board for acceptability on a case-by-case basis. In any case, only those substances may be used which are in compliance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

These rules are intended to implement Iowa Code chapter 190C.

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CHAPTER 34
ACQUISITION NEGOTIATION STATEMENT OF RIGHTS

61—34.1(78GA,HF476) Statement of property owner's rights. 1999 Iowa Acts, House File 476, section 3, mandates that an acquiring agency provide a statement of rights to owners of record who may have all or a part of their property acquired by condemnation. It also directs the attorney general to adopt rules prescribing a statement of rights which an acquiring agency may use to meet its obligation. Pursuant to that directive, the following statement of property owner's rights is adopted:

STATEMENT OF PROPERTY OWNER'S RIGHTS

Just as the law grants certain entities the right to acquire private property, you as the owner of the property have certain rights. You have the right to:

1. Receive just compensation for the taking of property. (Iowa Constitution, Article I, section 18)
2. An offer to purchase which may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code section 6B.45 as amended by 1999 Iowa Acts, House File 476, section 18; Iowa Code section 6B.54 as amended by 1999 Iowa Acts, House File 476, section 20)
3. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based not less than ten days before being contacted by the acquiring agency's acquisition agent. (Iowa Code section 6B.45 as amended by 1999 Iowa Acts, House File 476, section 18)
4. An opportunity to accompany at least one appraiser of the acquiring agency who appraises your property when an appraisal is required. (Iowa Code section 6B.54)
5. Participate in good-faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (1999 Iowa Acts, House File 476, section 3)
6. A determination of just compensation by an impartial compensation commission and the right to appeal its award to the district court if you cannot agree on a purchase price with the acquiring agency. (Iowa Code section 6B.4; Iowa Code section 6B.7 as amended by 1999 Iowa Acts, House File 476, section 8; Iowa Code section 6B.18)
7. A review by the compensation commission of the necessity for the condemnation if your property is agricultural land being condemned for industry. (1999 Iowa Acts, House File 476, section 7)
8. Payment of the agreed upon purchase price or, if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code section 6B.25; Iowa Code section 6B.26; Iowa Code section 6B.54(11))
9. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code section 6B.33 as amended by 1999 Iowa Acts, House File 476, section 15; Iowa Code section 6B.54(10))
10. Reimbursement of certain litigation expenses: (a) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (b) if the award on appeal in court is more than the compensation commissioners' award. (Iowa Code section 6B.33)
11. At least 90 days' written notice to vacate occupied property. (Iowa Code section 6B.54(4))
12. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for and amount of the payments. (Iowa Code section 316.9; Iowa Code section 6B.42 as amended by 1999 Iowa Acts, House File 476, section 17)

The rights set out in this statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

61—34.2(78GA,HF476) Alternate statement of rights. Rule 61—34.1(78GA,HF476) is not intended to prohibit acquiring agencies from providing a statement of rights in a different form, a more detailed statement of rights, or supplementary material expanding upon an owner's rights.

These rules are intended to implement 1999 Iowa Acts, House File 476, section 3.

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CHAPTER 23
IOWA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

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

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

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

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

"CDBG" means community development block grant.

"EDSA" means economic development set-aside.

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

"IDED" means the Iowa department of economic development.

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

"PFSA" means public facilities set-aside.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23.4(5) *Contingency funds.* IDED reserves the right to allocate up to 5 percent of funds for projects dedicated to addressing threats to public health and safety and opportunities that would be foregone without immediate assistance.

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

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

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

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

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

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

1. Primarily benefit low- and moderate-income persons. To address this objective, 51 percent or more persons benefiting from a proposed activity must have incomes at or below 80 percent of the area median income.
2. Aid in the prevention or elimination of slums and blight. To address this objective, the application must document the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community and illustrating that the proposed activity will alleviate or eliminate the conditions causing the deterioration.
3. Meet an urgent community development need. To address this objective, the applicant must certify that the proposed activity is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community and that are recent in origin or that recently became urgent; that the applicant is unable to finance the activity without CDBG assistance and that other sources of funding are not available. A condition shall be considered recent if it developed or became urgent within 18 months prior to submission of the application for CDBG funds.

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

261—23.8(15) Requirements for the public facilities set-aside fund. PFSA funds are reserved for infrastructure projects in direct support of economic development activities that shall create or retain jobs.

23.8(1) *Restrictions on applicants.*

a. The maximum grant award for individual applications is $500,000.

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

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

d. The applicant local government must contribute at least 50 percent of the total amount of funds requested.

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

f. Jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered to be new jobs created.

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

h. Applications shall include a business assessment plan, projecting for each identified business the number of jobs to be created or retained as a result of the public improvement proposed for assistance.

23.8(2) *Application procedure.* Application forms and instructions shall be available upon request from IDED, Bureau of Business Financing, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4819. An original and one copy of completed applications with required attachments shall be submitted to the same address. IDED shall accept PFSA applications at any time and shall review applications on a continuous basis. IDED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

23.8(3) *Review criteria.* IDED shall review applications and make funding decisions based on the following criteria:

1. Impact of the project on the community.
2. Number of jobs created or retained per funds requested.
3. Degree to which PFSA funding would be leveraged by private investment.
4. Degree of demonstrated need for the assistance.

IDED may conduct site evaluations of proposed projects.

261—23.9(15) Requirements for the career link program. Projects funded through the career link program assist the working poor and underemployed to obtain the training and skills necessary to move into available higher-skill, higher-paying jobs.

23.9(1) *Restrictions on applicants.*

a. Identified positions shall pay a minimum of $10 per hour plus benefits. IDED shall consider training proposals to fill occupations paying less than $10 per hour if a wage progression to $10 per hour shall be reached within 24 months of employment.

b. Applications shall include evidence of business participation in the curriculum design and evidence that a number of positions are available equal to or greater than the number of persons to be trained.

c. The proposed training period shall not exceed 12 months per individual participant. The project length shall not exceed 24 months.

d. Applicants may use awarded funds for training, transportation and child care costs. Up to 5 percent of funds may be used for administration.

e. Projects shall be designed to target the working poor.

23.9(2) *Application procedure.* Application forms and instructions shall be available upon request from IDED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4819. An original and five copies of completed applications shall be submitted to the same address. IDED shall accept career link applications at any time and shall review applications on a continuous basis until all program funds are obligated or the program is discontinued.

23.9(3) *Review criteria.* IDED shall review applications and make funding decisions based on the following criteria:

1. Quality of the jobs available and business participation.
2. Merit of the proposed training plan.
3. Degree to which career link funds are leveraged by other funding sources.
4. Merit of the recruitment/job matching plan.
5. Scope of project benefit relative to the amount of funds invested.

261—23.10(15) Requirements for the contingency fund. The contingency fund is reserved for communities experiencing a threat to public health, safety or welfare that necessitates immediate corrective action sooner than can be accomplished through normal community development block grant procedures, or communities responding to an immediate community development opportunity that necessitates action sooner than can be accomplished through normal funding procedures. Up to 5 percent of CDBG funds may be used for this purpose.

23.10(1) *Application procedure.* Those local governments applying for contingency funds shall submit a written request to IDED, Division of Community and Rural Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the situation, the project budget including the amount of the request from IDED, projected use of funds and an explanation of the reason that the situation cannot be remedied through normal CDBG funding procedures.

23.10(2) *Application review.* Upon receipt of a request for contingency funding, IDED shall determine whether the project is eligible for funding and notify the applicant of its determination. A project shall be considered eligible if it meets the following criteria:

a. Projects to address a threat to health and safety.

(1) An immediate threat to health, safety or community welfare must exist that requires immediate action.

(2) The threat must be the result of unforeseeable and unavoidable circumstances or events.

(3) No known alternative project or action would be more feasible than the proposed project.

(4) Sufficient other local, state or federal funds either are not available or cannot be obtained in the time frame required.

b. Projects to address an exceptional opportunity.

(1) A significant opportunity exists for the state that otherwise would be forgone if not addressed immediately.

(2) The opportunity is such that it was neither possible to apply to the CDBG program in a previous normal application time frame, nor is it possible to apply in a future normal CDBG application time frame.

(3) The project meets the funding standards established by the funding criteria set forth in this rule.

(4) Applicants can provide adequate information to IDED on total project design and cost as requested.

23.10(3) *Additional information.* IDED reserves the right to request additional information on forms prescribed by IDED prior to making a final funding decision. IDED reserves the right to negotiate final project award and design components.

23.10(4) *Future allocations.* IDED reserves the right to reserve future funds anticipated from federal CDBG allocations to the contingency fund to offset current need for commitment of funds which may be met by amounts deferred from current awards.

261—23.11(15) Requirements for the housing fund program. Specific requirements for the housing fund are listed separately at 261—Chapter 25.

261—23.12(15) Interim financing program. The objective of the CDBG interim financing program is to benefit persons living in eligible Iowa communities by providing short-term financing for the implementation of projects that create or retain employment opportunities, prevent or eliminate blight or accomplish other federal and state community development objectives. Up to $25 million shall be made available for grants under the CDBG interim financing program during any program year.

23.12(1) *Eligible activities.* Funds provided through the interim financing program shall be used for the following activities:

1. Short-term assistance, interim financing or construction financing for the construction or improvement of a public work.
2. Short-term assistance, interim financing or construction financing for the purchase, construction, rehabilitation or other improvement of land, buildings, facilities, machinery and equipment, fixtures and appurtenances or other projects undertaken by a for-profit organization or business or a nonprofit organization.
3. Short-term or interim financing assistance for otherwise eligible projects or programs.

23.12(2) *Restrictions on applicants.*

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

b. Applications must provide evidence that the proposed project shall be completed within 30 months of the date of grant award.

c. The amount of funds requested shall not exceed $20 million.

d. Applications must provide evidence of an irrevocable letter of credit or equivalent security instrument from an AA- or better-rated lending institution, assignable to IDED, in an amount equal to the CDBG short-term grant funds requested, plus interest, if applicable.

e. Applications must provide evidence of the commitment of permanent financing for the project.

f. Applications must include assurance that program income earned or received as a result of the project shall be returned to IDED on or before the end date of the grant contract.

23.12(3) *Application procedure.* Applications may be submitted at any time in a format prescribed by IDED. Applications shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. IDED shall make funding decisions within 30 days of a receipt of a completed application. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority.

23.12(4) *Application review.* Applications shall be reviewed and funding decisions made based on the following review criteria:

1. Degree to which CDBG funds would be leveraged by other funding sources.
2. Reasonableness of the project cost per beneficiary ratio.
3. Documented need for the CDBG assistance.

4. Degree of public benefit, as measured by the present value of proposed assistance to direct wages and aggregate payroll lost, indirect wages and aggregate payroll lost, dislocation and potential absorption of workers and the loss of economic activity.

261—23.13(15) Flood recovery fund. The flood recovery fund is reserved for communities that suffered damage from flooding in 1993. Funds are available to repair flood damage and to prevent future threat to public health, safety or welfare. The source of funds is supplemental appropriations from HUD for flood disaster relief efforts.

23.13(1) *Application procedure.* Communities in need of flood recovery funds shall submit a written request to IDED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the community's problem, the amount of funding requested, projected use of funds and an explanation of why the problem cannot be remedied through normal CDBG funding procedures.

23.13(2) *Application review.* Upon receipt of a request, IDED, in consultation with appropriate federal, state and local agencies, shall make a determination of whether the community and project are eligible for funding and notify the applicant community of its determination. A project shall be considered eligible only if it meets all of the following criteria:

1. An immediate threat must exist to health, safety or community welfare that requires immediate action.
2. The threat must be a result of flooding in 1993.
3. No known alternative project or action would be more feasible than the proposed project.
4. Sufficient other local, state or federal funds (including the CDBG competitive program) either are not available or cannot be obtained in the time frame required.

23.13(3) *Compliance with federal and state regulations.* A community receiving funds under the flood recovery fund shall comply with all laws, rules and regulations applicable to the CDBG competitive program, except those waived by HUD as a result of federal action in conjunction with the flood disaster and those not required by federal law that IDED may choose to waive. IDED shall make available a list of all applicable federal regulations and disaster-related waivers granted by Congress and relevant federal agencies to all applicants for assistance.

261—23.14(15) Disaster recovery fund. The disaster recovery fund is reserved for communities impacted by natural disasters when a supplemental disaster appropriation is made under the community development block grant program. Funds are available to repair damage and to prevent future threat to public health, safety or welfare that is directly related to the disaster for which HUD supplemental funds have been allocated to the state.

23.14(1) *Application procedure.* Communities in need of disaster recovery funds shall submit a written request to IDED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the community's problem, the amount of funding requested, projected use of funds, the amount of local funds to be provided and the percent of low- and moderate-income persons benefiting from the project.

23.14(2) *Application review.* Upon receipt of a request, IDED, in consultation with appropriate federal, state and local agencies, shall make a determination of whether the community and project are eligible for funding and notify the applicant community of its determination. A project shall be considered eligible only if it meets all of the following criteria:

1. A threat must exist to health, safety or community welfare that requires immediate action.
2. The threat must be a result of a natural disaster receiving a presidential declaration for which IDED received a supplemental HUD appropriation.
3. No known alternative project or action would be more feasible than the proposed project.
4. Sufficient other local, state or federal funds (including the CDBG competitive program) either are not available or cannot be obtained in the time frame required.

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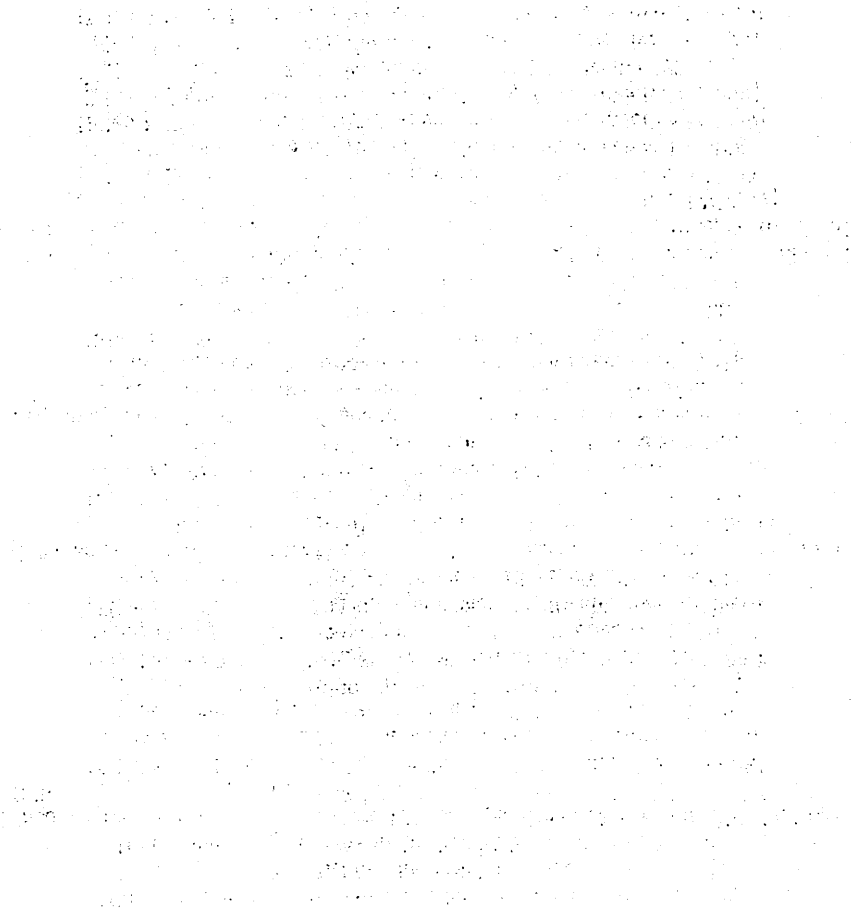

CHAPTER 25
HOUSING FUND

261—25.1(15) Purpose. The primary purpose of the housing fund, made up of federal CDBG and HOME funds, is to expand the supply of decent and affordable housing for low- and moderate-income Iowans.

261—25.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific housing activities, projects or programs assisted through the housing fund.

"Administrative plan" means a document that a housing fund recipient establishes that describes the operation of a funded activity in compliance with all state and federal requirements.

"AHTC" means affordable housing tax credits and federal tax incentives created through the Tax Reform Act of 1986 and allocated through the Iowa finance authority for affordable rental housing development.

"CDBG" means community development block grant nonentitlement program, the grant program authorized by Title I of the Housing and Community Development Act of 1974, as amended, for counties and cities, except those designated by HUD as entitlement areas.

"CHDO" means community housing development organization, a nonprofit organization registered with the Iowa secretary of state and certified as such by IDED, pursuant to 24 CFR 92.2 (April 1, 1997).

"Consolidated plan" means the state's housing and community development planning document and the annual action plan update approved by HUD.

"HART" means the housing application review team, a body of affordable housing funding agencies which meets to review housing proposals.

"HOME" means the HOME investment partnership program, authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990.

"Housing fund" means the program implemented by this chapter and funded through the state's annual HOME allocation from HUD and 25 percent of the state's CDBG allocation from HUD.

"Housing needs assessment" means a comprehensive analysis in a format that conforms to IDED guidelines of housing needs for one or more units of local government.

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

"IDED" means the Iowa department of economic development.

"IFA" means the Iowa finance authority.

"Local support" means involvement and financial investment by citizens and organizations in the community that promote the objectives of the housing activities assisted through the housing fund.

"Program income" means funds generated by a recipient or subrecipient from the use of CDBG or HOME funds.

"Recipient" means the entity under contract with IDED to receive housing funds and undertake the funded housing activity.

"Subrecipient" means an entity operating under an agreement or contract with a recipient to carry out a funded housing activity.

261—25.3(15) Eligible applicants. Eligible applicants for housing fund assistance include all incorporated cities and counties within the state of Iowa; nonprofit organizations; CHDOs; and for-profit corporations, partnerships and individuals.

1. Any eligible applicant may apply directly or on behalf of a subrecipient.
2. Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—25.4(15) Eligible activities and forms of assistance.

25.4(1) Eligible activities include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion), rental housing new construction, home ownership assistance, owner-occupied housing rehabilitation and other housing-related activities as may be deemed appropriate by IDED. Assisted housing may be single-family housing or multifamily housing and may be designed for occupancy by homeowners or tenants.

a. Assisted units shall be affordable.

(1) For rental activities, all assisted units shall rent at the lesser of the area fair market rents or 30 percent of 65 percent of the area median family income and, for projects with five or more units, 20 percent of the units shall rent at the lesser of the fair market rent or 30 percent of 50 percent of the area median family income. Assisted units shall remain affordable for a specified period: 20 years for newly constructed units; 10 years for rehabilitated units receiving $15,000 to $24,999 in assistance; and 5 years for projects receiving less than $15,000 per unit.

(2) For tenant-based rental assistance, gross rents shall not exceed the jurisdiction's applicable rent standard and shall be reasonable, based on rents charged for comparable, unassisted rental units.

(3) For home ownership assistance, the initial purchase price for newly constructed units and the after rehabilitation appraised value for rehabilitated units shall not exceed 95 percent of the median purchase price for the same type of single-family housing in the area. Assisted units shall remain affordable through resale or recapture provisions for a specified period: 5 years for projects receiving up to $15,000 in assistance per unit, and 10 years for projects receiving $15,000 to $24,999 in assistance.

(4) For owner-occupied housing rehabilitation, the after rehabilitation value of rehabilitated units shall not exceed 95 percent of the median purchase price for the same type of single-family housing in the area.

b. Assisted households shall meet income limits established by federal program requirements.

(1) For rental activities, all assisted units shall be rented to households with incomes at or below 80 percent of the area's median family income; 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with five or more units, 20 percent of the units shall be rented to households with incomes at or below 50 percent of the area's median family income.

(2) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; additionally, 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.

(3) For home ownership assistance and owner-occupied housing rehabilitation, only households with incomes at or below 80 percent of the area median family income shall be assisted.

c. IDED reserves the right to establish rehabilitation standards for projects. All rehabilitation must be done in compliance with all state and local codes, rehabilitation standards and ordinances and shall, at a minimum, meet HUD Section 8 Housing Quality Standards, 24 CFR 882 (April 1, 1997). New units must be constructed pursuant to standards specified at 24 CFR 92.251(a)(1) (April 1, 1997).

25.4(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans or other forms of assistance as may be approved by IDED.

261—25.5(15) Application procedure. All potential housing fund applicants shall complete and submit a HART form describing the proposed housing activity. If, after HART review, the proposal is determined appropriate for housing fund assistance, IDED shall inform the applicant of the appropriate application procedure by mail. The HART process must be completed as early as possible in the application procedure and within a minimum of 30 days prior to the application deadline.

25.5(1) HART forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4825.

25.5(2) HART forms are accepted year-round.

25.5(3) Applicants may request technical assistance from staff contacts in the preparation of housing fund applications.

a. If an applicant does not submit an application by the next application deadline, IDED will determine the proposal inactive and remove it from the HART files.

b. Upon the submission of a housing fund application, no additional staff assistance shall be provided during the review period.

25.5(4) Housing fund applications shall be reviewed through an annual competition. Once funds have been allocated, IDED will not accept applications seeking funding for review until the next established deadline.

25.5(5) Reserved.

25.5(6) Proposals which require both housing fund and LIHTC awards will be reviewed under a schedule and procedures to be determined under reserved subrule 25.5(5). Joint housing fund and LIHTC proposals received in advance of the deadline established by the department for such proposals will be held for review until the deadline.

261—25.6(15) Minimum application requirements. To be considered for housing fund assistance, an application shall meet the following threshold criteria:

25.6(1) The application shall propose a housing activity consistent with the housing fund purpose and eligibility requirements, the state consolidated plan and any local housing plans.

25.6(2) The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of the successful administration of prior activities or a statement that the applicant intends to contract with another entity for administrative services. IDED reserves the right to deny funding to an applicant that has failed to comply with federal and state requirements in the administration of a previous project funded by IDED.

25.6(3) The application shall provide evidence of the need for the proposed activity, the potential impact of the proposed activity and the feasibility of the proposed activity.

25.6(4) The application shall demonstrate local support for the proposed activity.

25.6(5) The application shall show that a need for housing fund assistance exists after all other financial resources have been identified for the proposed activity.

25.6(6) The application shall include a certification that the applicant will comply with all applicable state and federal laws and regulations.

25.6(7) An application for a project located in a locally designated participating jurisdiction (PJ) must show evidence of a financial commitment from the local PJ equal to 25 percent of the total HOME funds requested.

261—25.7(15) Application review criteria. IDED shall evaluate applications and make funding decisions based on general project criteria, need, impact, feasibility, and project administration based upon the specific type of project. The project criteria shall be a part of the application. A workshop will be held at least 60 days prior to the application deadline to provide information, materials, and technical assistance to potential applicants.

25.7(1) As applicable, the review criteria for homeownership assistance applications shall include the following:

a. General criteria.

1. Project objectives.
2. Total number of units and number of assisted units.
3. Project activities and cost estimates.
4. If new construction, availability of necessary infrastructure and utilities.
5. Form(s) of assistance (grants, loans, amounts).
6. Type(s) of assistance (e.g., mortgage buy-down, down payment, closing costs, and rehabilitation).
7. Median purchase price for single-family housing in the community.
8. Initial purchase price or after rehabilitation value per assisted unit.
9. Mortgage lender participation documentation and underwriting standards.
10. Methodology to determine maximum amount of conventional financing affordable to buyer.
11. Selection criteria for participants.
12. Methodology to ensure that the property will be the buyer's principal residence.
13. Rehabilitation standards to be used.
14. Project time line.

b. Need, impact and feasibility criteria.

1. Number and percentage of low- and moderate-income persons in the applicant community.
2. Evidence and documentation of need for the project.
3. Percentage of need to be met through the project.
4. Reasons mortgage applications have been denied by local lenders.
5. Housing costs, housing supply, condition of available housing, and vacancy rates.
6. If acquisition for new construction, documentation of need for new units.
7. Recent or current housing improvement activities.
8. Description of current and ongoing comprehensive community development efforts.
9. Publicity promoting the proposed project.

10. Number of potential participants and the method by which they were identified.
11. New businesses or industrial growth in the past five years.
12. Local involvement and financial support.
13. Property values compared to 1990 in project location (percent change).
14. Number of households compared to 1990 in project location (percent change).
15. Population compared to 1990 in project location (percent change).
16. Overall vacancy rate of owner-occupied units in the community (percent change).

c. Administrative criteria.

1. Plan for project administration.
2. Previous project management experience.
3. Budget for administration.
4. Resale and recapture provisions, terms, and enforcement procedures.
5. Prior funding received and performance targets completed.

25.7(2) As applicable, the review criteria for owner-occupied housing rehabilitation applications shall include the following:

a. General criteria.

1. Project objectives.
2. Area of benefit and reason for applicant selection.
3. Condition of infrastructure in the project area.
4. Form of assistance to homeowners (grants, loans, amounts).
5. Homeowner contribution methodology.
6. Selection criteria for participants.
7. Method to determine that the property is the homeowner's principal residence.
8. Proposed standards for rehabilitation.
9. Plan for properties infeasible to rehabilitate.
10. If relocation is included, estimate of available suitable replacement housing.
11. Documentation of local lender participation and underwriting criteria.
12. Method to determine after rehabilitation value.
13. Terms of affordability.
14. Use of program income.
15. Project time line.

b. Need, impact and feasibility criteria.

1. Evidence of need for the project.
2. Percentage of need to be met through the project.
3. Number and percentage of low- and moderate-income persons in the community.
4. Housing costs, housing supply, condition of available housing, vacancy rate in project area.
5. Other recent or current housing improvement activities in the project area.
6. Ongoing comprehensive community development efforts in the project area.
7. New businesses or industries in the past five years in the city of the project location.
8. Local support documentation.
9. Financial contribution to the project from other sources (with underwriting criteria).
10. Property values compared to 1990 in project location (percent change).
11. Number of households compared to 1990 in project location (percent change).
12. Population compared to 1990 in project location (percent change).
13. Overall vacancy rate of owner-occupied units in the community (percent change).

c. Administrative criteria.

1. Plan for project administration.
2. Previous project management experience.
3. Budget for administration.
4. List of prior CDBG and HOME funding.
5. If application is for a continuation of a prior project, list of performance targets completed.

25.7(3) As applicable, the review criteria for rental housing assistance applications shall include the following:

a. General criteria.

1. Project objectives.
2. Total number of units and number of assisted units.
3. Project activities and cost estimates.
4. Eligibility criteria for renters of assisted units (income, age, disability, other).
5. Rationale for project location.
6. Availability and condition of infrastructure; availability of utilities.
7. Zoning compliance.
8. Environmental issues.
9. Potential tenant displacement including estimated Uniform Relocation Act (URA) costs.
10. Accessibility.
11. Rehabilitation standards or construction codes to be used.
12. Project time line.

b. Need, impact and feasibility criteria.

1. Evidence of need for the project.
2. Percentage of need to be met through this project.
3. Number and percentage of low- and moderate-income persons in the community.
4. Housing costs, housing supply, condition of available housing, vacancy rate in project area.
5. If new construction, documentation of need for new construction.
6. Other recent or current housing improvement activities in the project area.
7. Ongoing comprehensive community development efforts in the project area.
8. New businesses or industries in the past five years in the city of the project location.
9. Local support.
10. Opposition to the project and plans to alleviate concerns.
11. Financial contribution to the project from other sources (including all underwriting criteria).
12. Reason for "gap" in the project financing; justification for housing fund request amount.
13. Property values compared to 1990 in project location (percent change).
14. Number of households compared to 1990 in project location (percent change).
15. Population compared to 1990 in project location (percent change).
16. Overall vacancy rate of owner-occupied units in the community (percent change).

c. Administrative criteria.

1. Plan for project administration.
2. Previous administrative experience.
3. Plan to ensure long-term affordability.

4. Plan for annual certification of tenant eligibility and compliance with Section 8 Housing Quality Standards.
5. Previous CDBG- and HOME-funded housing projects and current status.
6. Applicant's other rental housing projects and addresses.

25.7(4) As applicable, the review criteria for tenant-based rental assistance applications shall include the following:

a. General criteria.

1. Project objectives.
2. Rationale for amount of assistance per recipient.
3. Selection criteria for participants.
4. Form of assistance (grants, loans).
5. Use of assistance (rental and security deposits, rent assistance).
6. Length of time of assistance.
7. Portability of rental assistance.
8. Rent calculation.

b. Need, impact and feasibility criteria.

1. Number and percentage of low- and moderate-income persons in the applicant community.
2. Percentage of income potential recipients are currently paying for rent.
3. Area housing costs.
4. Availability of affordable housing.
5. Public housing authority waiting list.
6. Documentation of other indicators of need for Tenant-based Rental Assistance (TBRA).
7. Percentage of need to be met through this project.
8. Alternatives to the proposed project that were considered.
9. Coordination of this project with other housing assistance.
10. Other providers of TBRA in the community.
11. Description of efforts to obtain additional funding from other sources for TBRA.
12. Evidence of community support.
13. Opposition to project and method to address it.
14. Economic indicators in community (unemployment rate, increase/decrease opportunity).
15. Project time line.
16. Property values compared to 1990 in project location (percent change).
17. Number of households compared to 1990 in project location (percent change).
18. Population compared to 1990 in project location (percent change).
19. Overall vacancy rate of rental units in the community (percent change).

c. Administrative criteria.

1. Plans for administering the project.
2. Description of previous administrative experience.
3. Budget for administration.
4. Plan for annual certification of tenant eligibility and compliance with Section 8 HQS.
5. Prior CDBG and HOME housing grants.
6. Prior projects funded with performance targets completed.

25.7(5) IDED staff may conduct site evaluations of proposed activities.

261—25.8(15) Allocation of funds.

25.8(1) IDED may retain a portion of the amount provided for at rule 261—23.4(15) of the state's annual CDBG allocation from HUD and up to 10 percent of the state's annual HOME allocation from HUD for administrative costs associated with program implementation and operation.

25.8(2) Not less than 15 percent of the state's annual HOME allocation shall be reserved for eligible housing activities proposed by CHDOs.

25.8(3) Reserved.

25.8(4) IDED reserves the right to allocate up to 5 percent of CDBG funds allocated to the housing fund for the emergency repair of homeless shelters. Recipients funded for this purpose shall not be required to follow the application procedure set forth in rule 261—25.5(15).

25.8(5) IDED reserves the right to allocate up to 5 percent of the HOME funds allocated to the housing fund for a contingency fund dedicated to addressing threats to public health and safety and exceptional opportunities that would otherwise be foregone without immediate assistance.

25.8(6) IDED will determine the appropriate source of funding, either CDBG or HOME, for each housing fund award based on the availability of funds, the nature of the housing activity and the recipient type.

25.8(7) IDED reserves the right to limit the amount of funds that shall be awarded for any single activity type.

25.8(8) Awards shall be limited to no more than $700,000.

25.8(9) The maximum per unit housing fund subsidy for all project types is $24,999.

25.8(10) Recipients shall justify administrative costs in the housing fund application. IDED reserves the right to negotiate the amount of funds provided for administration, but in no case shall the amount exceed 15 percent of a total housing fund award.

25.8(11) IDED reserves the right to negotiate the amount and terms of a housing fund award.

25.8(12) IDED reserves the right to make award decisions such that the state maintains the required level of local match to HOME funds.

25.8(13) IDED reserves the right to allocate a portion of funds to comprehensive areawide housing programs. Potential recipients shall be identified through a request for qualifications of entities interested in and capable of operating an areawide program. Areawide program proposals shall be evaluated on and awards negotiated on the targeted number of beneficiaries to be assisted across income levels, household types and unmet housing needs, rather than on specific activities.

25.8(14) A preaudit survey will be required of all for-profit and nonprofit direct recipients.

261—25.9(15) Administration of awards. Applications selected to receive housing fund awards shall be notified by letter from the IDED director.

25.9(1) Source of funds. If the source of funding for a housing fund award is HOME, the recipient shall administer the activity and manage funds in compliance with the regulations set forth in the HOME final rule, 24 CFR Part 92 (April 1, 1997). If the source of funding for a housing fund award is CDBG, the recipient shall administer the activity and manage funds in compliance with federal regulations set forth in 24 CFR Part 570 (April 1, 1997).

25.9(2) A contract shall be executed between the recipient and IDED. These rules, the housing fund application, the housing management guide and all applicable federal and state laws and regulations shall be part of the contract.

a. The recipient shall 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.

b. 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.

c. Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. Awards shall be conditioned upon IDED receipt and approval of an administrative plan for the funded activity.

25.9(3) 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 whole dollar amounts equal to or greater than $500 per request, except for the final draw of funds.

25.9(4) Record keeping and retention. The recipient shall retain all financial records, supporting documents and all other records pertinent to the housing fund activity for five years after contract expiration. Representatives of IDED, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a housing fund award.

25.9(5) 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 reviews or field inspections necessary to ensure recipient performance.

25.9(6) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall 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.

25.9(7) Contract closeout. Upon the contract expiration date or work completion date, as applicable, IDED shall initiate contract closeout procedures. Recipients shall comply with applicable audit requirements described in the housing fund application and management guide.

25.9(8) Compliance with federal, 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 federal, state and local regulations.

25.9(9) Remedies for noncompliance. At any time, 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 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 activities in a timely manner.

25.9(10) Appeals process for findings of noncompliance. Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

261—25.10(15) Requirements for the contingency fund. The contingency fund is reserved for (1) communities experiencing a threat to public health, safety, or welfare that necessitates immediate corrective action sooner than could be accomplished though normal housing fund procedures; or (2) communities and other entities responding to an immediate development opportunity that necessitates action sooner than can be accomplished through normal housing fund procedures. Up to 5 percent of the HOME funds may be used for this purpose.

25.10(1) Application procedure. Those applying for contingency funds shall submit a written request to IDED, Division of Community and Rural Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the situation, the project budget including the amount requested from IDED, projected use of funds and an explanation of the reasons that the situation cannot be remedied though normal housing fund procedures. If the project meets threshold criteria, a full application may be requested by the department.

25.10(2) Application review. Upon receipt of a request for contingency funding, IDED shall make a determination of whether the project is eligible for funding and notify the applicant of its determination. A project shall be considered eligible if it meets the following criteria:

a. Projects to address a threat to health and safety.

(1) An immediate threat to health, safety or community welfare that requires immediate action must exist.

(2) The threat must be the result of unforeseeable and unavoidable circumstances or events.

(3) No known alternative project or action would be more feasible than the proposed project.

(4) Sufficient other local, state or federal funds either are not available or cannot be obtained in the time frame required.

b. Projects to address an exceptional opportunity.

(1) A significant opportunity exists for the state that otherwise would be forgone if not addressed immediately.

(2) The opportunity is such that it is not possible to apply to the housing fund in a normal application time frame.

(3) The project would have merit, with respect to review criteria, comparable to funded projects in the most recent competition.

25.10(3) IDED reserves the right to request additional information on forms prescribed by IDED prior to making a final funding decision. IDED reserves the right to negotiate final project award and design components.

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

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CHAPTER 39
IOWA MAIN STREET PROGRAM
[Prior to 1/14/87, Iowa Development Commission[520] Ch 9]

261—39.1(75GA,ch1201) Purpose. The purpose of the Iowa main street program is to stimulate downtown economic development within the context of historic preservation and to establish a strong public/private partnership to revitalize downtowns and their communities. The main street program emphasizes community self-reliance and downtown's traditional assets of personal service, local ownership and unique architecture. The main street program is based on four strategies which, when applied together, create a positive image and an improved economy in downtown. The strategies are organization, promotion, design and economic restructuring.

Communities selected for participation in this demonstration program will receive technical assistance from the department's main street staff, professional staff of the National Main Street Center, and other professional consultants and may have professional services of other state agencies to draw upon in order to facilitate their local main street program. Participants will receive a grant to aid them in the implementation of their local main street program.

261—39.2(75GA,ch1201) Definitions. The following definitions will apply to the Iowa main street program unless the context otherwise requires:

"Department" means the Iowa department of economic development.

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

"Eligible activity" includes organization promotion, design and economic restructuring activities to create a positive image and an improved economy in a city's downtown.

"Eligible applicant" means a city with a population of less than 50,000 based upon the most recent census report or population study completed since the last census, filing a joint application with a local nonprofit organization established by the community to govern the local main street program.

"Grant" means funds received through the Iowa main street program as evidenced by an agreement with the Iowa department of economic development.

"Grantee" means any eligible applicant receiving funds under this program.

"National Main Street Center" refers to an entity within the National Trust for Historic Preservation, a nonprofit national organization chartered by Congress.

261—39.3(75GA,ch1201) Program administration.

39.3(1) *Administering agency.* The Iowa main street program will be administered by the Iowa department of economic development.

39.3(2) *Subcontracting.* The department may contract with the National Main Street Center of the National Trust for Historic Preservation for technical and professional services as well as other appropriate consultants and organizations.

39.3(3) *Request for proposals (RFP).* The department, upon availability of funds, will distribute a request for proposal which describes the Iowa main street program, outlines eligibility requirements, includes an application and a description of the application procedures. Grants will be awarded on a competitive basis.

39.3(4) *Applications.* Applications may be obtained by contacting the Iowa Main Street Program Coordinator, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4733.

39.3(5) *Deadline.* A completed application shall be returned to the department, postmarked no later than the date specified by the department in the RFP and contain the information requested in the application.

39.3(6) *Advisory council.* The director may appoint a state main street advisory council composed of individuals knowledgeable in downtown revitalization to advise the director on the various elements of the program.

261—39.4(75GA,ch1201) Eligible applicants. All cities with a population under 50,000 are eligible to file a joint application along with their local community nonprofit organization established to govern the local main street program for selection as a main street demonstration community.

261—39.5(75GA,ch1201) Funding.

39.5(1) *Timing of grants.* The funding of eligible projects under the Iowa main street program is contingent upon the availability of funds allocated to the department. Grants will be announced annually. When funds are available, the department reserves the right to withhold grant funds if an insufficient number of acceptable applications are submitted to adequately achieve the purposes of the Iowa main street program.

39.5(2) *Grant period.* A selected community may receive a grant each year of the five-year program start-up period.

39.5(3) *Compliance and termination.* Continued funding during the start-up period is contingent upon acceptable audit and monitoring reports received by the department and the grantee's compliance with the terms and conditions of the grant agreement. The department may terminate or suspend funding, in whole or in part, if there is a substantial violation of a specific provision of the agreement or these rules and corrective action has not been taken by the grantee.

39.5(4) *Allowable cost.* Funds granted by this program to a community shall be applied toward the operation of the local main street program.

39.5(5) *Match required.* Funds and in-kind services from local public and private sources shall be used to supplement the state grant awarded by this program. For cities under 5,000 in population, the minimum match requirement shall be 2.5 times the state grant in year one, 3 times the state grant in year two, 4 times the state grant in year three, 5.5 times the state grant in year four, and 8 times the state grant in year five. For cities between 5,000 and 50,000 in population, the minimum match requirement shall be 3 times the state grant in year one, 4 times the state grant in year two, 5.5 times the state grant in year three, 8 times the state grant in year four, and 14 times the state grant in year five.

261—39.6(75GA,ch1201) Selection.

39.6(1) The director will determine, contingent upon the availability of state funding, the number of cities to be selected for inclusion in the main street program.

39.6(2) Cities will be selected for participation in the program on a competitive basis as described in these rules.

39.6(3) Upon selection of the demonstration projects, the department shall prepare a grant agreement which will include the terms and conditions of the grant.

261—39.7(75GA,ch1201) Selection criteria. The following factors shall be considered in the selection of a city for participation in the main street program (the highest point total possible is 400 points):

39.7(1) *Support/funding. (100 points maximum)*

a. Evidence of a strong commitment from city government and various local and private sector organizations to support a local main street program for at least three years. This evidence will include a resolution of support from the city government and other organizations in the community such as: merchants, associations, chambers of commerce or economic development corporations in addition to letters of support from other private sector entities.

b. Evidence of local public and private funds available to finance, in addition to the state main street grant, a local main street program for three years. This evidence will include a proposed local main street budget, sources of funding and financial commitment letters from the city government and other identified sources.

c. Evidence of a positive commitment to hire a local main street program manager for not less than a three-year period. This evidence shall include a written commitment to hire a program manager, signed jointly by the local nonprofit organization established to govern the local program and the city. For cities under 5,000 in population, the local main street program manager shall be hired for a minimum of 25 hours per week. For cities between 5,000 and 50,000 in population, the local main street program manager shall be hired full-time.

d. Evidence of the existence of, or a plan for, a nonprofit corporation organized under the laws of the state, such as a local main street organization, merchants association, chamber of commerce or economic development corporation that will be locally designated to serve as the governing body and policy board for the local main street program and program manager. This evidence will include a copy of the proposed or filed articles of incorporation and the bylaws of such organization.

39.7(2) *Historic building fabric. (60 points maximum)*

a. Evidence of the existence of architecturally and historically significant buildings in the downtown area currently listed on the national register or national register eligible and designated historic preservation districts. This evidence shall include identification of such buildings or districts.

b. Evidence of a local historic preservation organization and any evidence that indicates the organization's involvement working on historic projects located in the downtown central business district. This evidence shall include the identification of such organizations and activities over the past three years.

c. Evidence of any current historic preservation activities.

d. Evidence of the concentration of historic buildings located within the identifiable main street area.

e. Evidence of a locally designated historic district.

39.7(3) *Potential. (100 points maximum)*

a. Consideration of the possible demonstrable change in the downtown as a result of being a main street city. This includes the identified goals of the applicant, the potential for the realization of these goals and identification of the long-term impact the main street program will have on the city.

b. Potential for successfully completing the five-year program start-up period. This shall include the proposed structure of the organization, the responsibilities of the board members, the program manager and the chain of command for the organization.

c. Demonstration of the need for economic revitalization and development downtown. This includes a summary of the current economic trends in the area, their impact on the downtown and a summary identifying reasons for needing the main street program.

d. Identification of the size and location of the downtown as related to the whole community. This shall include justification for the size of the project area.

39.7(4) *Current community demographics. (40 points maximum)*

a. Description of the housing characteristics of the city, including the average vacancy rate and the condition of housing stock.

b. Description of the cultural, tourism and recreational aspects of the community. The importance the community places on these quality of life issues provides a barometer for future community growth.

c. Description of the downtown mix of retail, professional services, government offices and other commercial uses.

d. Description of building ownership within the main street area, such as the current use, percentage of owner-occupied buildings, average rent rates and the vacancy rate.

39.7(5) *Previous history. (60 points maximum)*

a. Identification of previous downtown revitalization efforts, including identifying prior programs and their outcome.

b. Evidence of past public/private partnerships. This shall include a summary of significant civic improvements completed by the community within the past three years.

c. Evidence of good private investment record in the downtown main street area. This shall include descriptions of commercial building rehabilitations and new construction within the past three years.

d. Evidence of downtown plans, studies or surveys done within the past three years. This shall include copies of such plans, studies or surveys and their outcome.

e. Evidence of participation in the Iowa community betterment program, the Iowa community economic preparedness program (commercial) or related programs within the last three years.

f. Designation as a certified local government from the state historical society of Iowa.

39.7(6) *Readiness. (40 points maximum)*

a. Identification of the community's familiarity with the main street program and principles as evidenced by prior exposure to main street conferences, slide shows and contact with the main street Iowa program.

b. Demonstration of support shown for the main street program by the local financial community, the chamber of commerce, the local economic development organization, the local elected officials and the professional staff of city government.

c. Demonstration of the ability to implement the main street program and hire a program manager upon selection. This shall include a work plan with established timetables to hire a manager and organize a board of directors, if needed.

261—39.8(75GA,ch1201) Financial management.

39.8(1) All grants under the main street program are subject to audit. Grantees shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor. Grantees which determine that they are not required to comply with the Single Audit Act of 1984 shall then have audits prepared in accordance with state laws and regulations. Representatives of the department and the state auditor's office shall have access to all books, accounts, documents and records belonging to, or in use by, grantees pertaining to the receipt of a grant under these rules.

39.8(2) All records shall be retained for three years beyond the grant period or longer if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the record. In these instances, the records will be retained until the litigation, audit or claim has been resolved.

261—39.9(75GA,ch1201) Performance reviews. Grantees shall submit performance reports to the department as required. The reports shall assess the use of funds in accordance with program objectives and progress of the program activities.

261—39.10(75GA,ch1201) Noncompliance. If the department finds that a grantee is not in compliance with the requirements under this program, the grantee will be required to refund to the state all disallowed costs. Reasons for a finding of noncompliance include, but are not limited to, a finding that the grantee is using program funds for unauthorized activities, has failed to complete approved activities in a timely manner, has failed to comply with applicable laws and regulations or the grant agreement, or the grantee lacks the capacity to carry out the purposes of the program.

261—39.11(75GA,ch1201) Forms. The following forms will be used by the administering agency for the main street program.

1. Application form for the Iowa main street program (Form 1).
2. Performance reports for monitoring the performance of each grantee (Form 2).

This chapter is intended to implement 1994 Iowa Acts, chapter 1201.

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CHAPTER 40
REGIONAL ECONOMIC DEVELOPMENT COORDINATION PLANS
Rescinded IAB 7/19/95, effective 8/23/95

*History transferred from 261—Chapter 42 IAC 1/4/95.

CHAPTER 41
RURAL/COMMUNITY PLANNING AND DEVELOPMENT FUND

261—41.1(78GA,HF745) Purpose. The purpose of this program is to assist communities in addressing community and economic development challenges and opportunities. Technical and financial assistance will be provided to communities to access planning, training, education, consultation and technical assistance to further local initiatives or to select and prioritize strategies for the improvement of operations and structures to meet business and residential demands.

261—41.2(78GA,HF745) Program eligibility.

41.2(1) Eligible applicants include cities, counties, and councils of government on behalf of economic development groups; individual city and county projects; multicommunity or county projects; or coalitions of public/private entities including but not limited to local governments, fire/EMS departments, educational institutions, not-for-profit corporations, hospitals, state agencies, or development organizations. Applicants must be able to demonstrate a minimum match which equals at least 25 percent of the grant amount requested in the form of cash, and an additional in-kind services match of 25 percent.

41.2(2) Eligible projects. Examples of eligible projects include but are not limited to the following:

a. To hire staff or consultants to implement or expand community development opportunities;

b. To hire staff or consultants to design, develop or implement new systems of delivery of governmental services;

c. For the direct purchase of consultative or technical services to conduct feasibility studies, economic impact studies, examination of commercial, tourism, industrial, small business, or recreational development activities;

d. To conduct targeted marketing studies for specific strategies or emerging opportunities, or other marketing planning or technical assistance services;

e. To purchase educational/training materials to support leadership or professional development for economic/community development initiative;

f. To support a pilot study for a new or innovative approach to support community/economic development or to improve access to government services;

g. To conduct assessments of governmental or other services, issues and needs that, if modified, would improve climate for local economic development;

h. To conduct assessments of organizations or to engage in strategic planning;

i. Other targeted assistance necessary to enhance the economic vitality of the proposed area.

261—41.3(78GA,HF745) General policies for applications.

41.3(1) The maximum award for a single project is $50,000 over a period not to exceed three years. Awards may be in the form of either cash or technical assistance. Cash or technical assistance awards will vary depending upon the complexity of the issue, geographic area of service, level of population in the service area, number of issues involved, and diversity of the consortium.

41.3(2) If a consortium of entities applies, applications shall include letters of support from each entity indicating roles, responsibilities, and support in the form of either cash or in-kind services.

41.3(3) If a consortium of entities applies, one community, county, or council of governments shall be designated as the recipient of funds. An official of that legal entity shall sign the application accepting responsibility for the funds.

41.3(4) Program implementation timetables shall not exceed 36 months, unless prior written approval is given by the department.

41.3(5) The department will disseminate a request for proposals to appropriate entities.

261—41.4(78GA,HF745) Application procedures. Preapplications shall be submitted to the Community Development Project Manager, Community Planning and Development Fund, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Preapplications will be reviewed by the community development program manager, and written comments will be returned to applicant with appropriate application forms and instructions available at this address.

261—41.5(78GA,HF745) Application contents. Required contents of the application include:

1. A summary sheet including title and project overview; name, address, and telephone number of one person who will serve as the contact for the application; the geographic area to be served; and total program budget including applicant match.
2. A description of needs or problems, objectives, activities, project timetable, and a description of the final product/manual/outcome.
3. A budget for the project including cash and in-kind match.

261—41.6(78GA,HF745) Review process. Each eligible application will be reviewed by a committee within the department. Applications that score fewer than 400 points under subrule 41.6(2) will not be recommended for funding. Applicants may be interviewed further to explore the potential for providing technical assistance, gain additional information concerning the proposal, and negotiate the project's work plan and budget.

41.6(1) *Ranking.* The committee will rank the applications based on the following criteria:

a. Economic or community enhancement impact to the area. (How the project will improve the development potential of the project area, improve access to services, or create an environment for community improvement.)

b. Capacity of the applicant to sustain, implement, or reach stated objectives once grant period is concluded. (Ability of the applicant to sustain a new position, if requested, to build or implement a new system, building.)

c. Demonstrated networking, cooperation and partnerships with other entities, organizations, and local governments necessary to meet stated goals and objectives. (Past successful cooperative efforts that have been sustained over time. Multicommunity groups are strongly encouraged; some of the areas involved must also directly serve or impact a rural area.)

d. Local financial and volunteer contribution to the project. (Cash, office materials, supplies, volunteer support, office space, equipment, administrative assistance.)

e. Creativity and innovation of the proposed project to address issues presented. (Project demonstrates a new and creative approach to address a common issue/concern.)

f. Evidence of participation in local planning that supports the request for funds. (Community builder plan, housing needs assessment, comprehensive land use planning, or a similar planning activity that has led the applicant to the proposed activity which the application addresses.)

41.6(2) *Scoring.* The scoring system has a maximum of 700 points.

a. Economic or community enhancement impact to the area. 150 points possible.

b. Capacity of the applicant to sustain, implement or reach stated objectives. 150 points possible.

c. Demonstrated networking, cooperation and partnerships with other entities, organizations, and local governments. 150 points possible.

d. Local effort. 100 points possible.

e. Creativity and innovation of the proposed project. 75 points possible.

f. Evidence of local planning. 75 points possible.

261—41.7(78GA,HF745) Award process. Recommendations by the committee for funding will be forwarded to the director of the department for final decisions. Applicants will be notified in writing after the final decisions on grants are made.

41.7(1) Expenses eligible for reimbursement may include but are not limited to the following:

a. Coordinating staff for the governmental units or community groups participating in the project.

b. Feasibility studies or implementation of a locally developed study or plan.

c. Educational/training materials, supplies, postage necessary to the outcome of the project.

d. Travel expenses of the local coordinator, if hired through a participating governmental unit.

e. Direct purchase of consultative or technical assistance services.

f. In-state conference, workshop or seminar fees necessary to the outcome of the project for staff or volunteers directly involved in the project.

g. Travel expenses to visit other sites or locations in state necessary to the outcome of the project for staff or volunteers directly involved in the project.

41.7(2) Expenses ineligible for reimbursement may include but are not limited to the following:

a. Purchase of land, buildings or improvements thereon.

b. Expenses for development of sites and facilities.

c. Expenses for equipment, materials, supplies, telephones, and faxes related to the project.

d. Expenses for studies or plans that are routinely developed as a part of city or county function or operation, such as development of comprehensive planning documents, community builder plans, master plans or engineering studies of water, sewer, streets/roads, parks, unless a new or innovative approach is used such as a city/county joint planning process for land use, service provision or other collaborative actions.

261—41.8(78GA,HF745) Program management.

41.8(1) Record keeping. Financial records, supporting documents, statistical records and all other records pertinent to the project shall be retained by the recipient of funds for a period of three years after the contract expiration date.

41.8(2) A contract will be negotiated with the successful applicant which includes, but is not limited to, the terms for disbursement of funds and responsibilities.

41.8(3) Representatives of the department and state auditors shall have access to all books, accounts and documents belonging to or in use by the grantee pertaining to the receipt of assistance under this program.

41.8(4) All contracts under this program are subject to audit.

261—41.9(15) Performance reviews.

41.9(1) Applicants will be required to submit performance reports to the department. The report will assess progress on the goals and project activities. Some projects may require the completion of a final product (such as a manual), study or report to be submitted to the department before final payment is made. Performance reports may be quarterly or semiannual and, for some projects, may be required for a period of time after contract period expires.

41.9(2) The department may perform field visits as deemed necessary.

These rules are intended to implement 1999 Iowa Acts, House File 745, section 1(3)*"c."*

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CHAPTER 42
GOVERNMENTAL ENTERPRISE FUND
Rescinded IAB 10/6/99, effective 11/10/99

CHAPTER 46
RURAL ENTERPRISE FUND
[Prior to 7/19/95, see 261—Ch 67]
Rescinded IAB 10/6/99, effective 11/10/99

CHAPTER 47
RURAL LEADERSHIP DEVELOPMENT PROGRAM
[Prior to 7/19/95, see 261—Ch 68]
Rescinded IAB 10/6/99, effective 11/10/99

CHAPTER 48
RURAL ACTION DEVELOPMENT PROGRAM
[Prior to 7/19/95, see 261—Ch 69]
Rescinded IAB 10/6/99, effective 11/10/99

CHAPTER 49
RURAL INNOVATION GRANTS
Rescinded IAB 10/6/99, effective 11/10/99

PART IV
DIVISION OF BUSINESS DEVELOPMENT

CHAPTER 50
DIVISION RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 15
REQUIREMENTS FOR SPECIAL EDUCATION ENDORSEMENTS

CHAPTER 16
OCCUPATIONAL AND POSTSECONDARY ENDORSEMENTS AND LICENSES

CHAPTER 17
RENEWAL OF LICENSES

CHAPTER 18
CONVERSION INFORMATION

CHAPTER 19
COACHING AUTHORIZATION

CHAPTER 20
EVALUATOR LICENSE

CHAPTER 21
BEHIND-THE-WHEEL DRIVING INSTRUCTOR AUTHORIZATION

CHAPTER 21
BEHIND-THE-WHEEL DRIVING INSTRUCTOR AUTHORIZATION

282—21.1(78GA,SF203) Requirements. Applicants for the behind-the-wheel driving instructor authorization shall meet the following requirements:

21.1(1) Hold a current Iowa teacher or administrator license which authorizes service at the elementary or secondary level.

21.1(2) Successfully complete a behind-the-wheel driving instructor course approved by the department of transportation. At a minimum, classroom instruction shall include at least 12 clock hours of observed behind-the-wheel instruction and 24 clock hours of classroom instruction to include psychology of the young driver, behind-the-wheel teaching techniques, ethical teaching practices, and route selection.

282—21.2(78GA,SF203) Validity. The behind-the-wheel driving instructor authorization shall be valid for one calendar year, and it shall expire one year after issue date. The fee for the issuance of the behind-the-wheel driving instructor authorization shall be $10.

282—21.3(78GA,SF203) Approval of courses. Each institution of higher education, private college or university, community college or area education agency wishing to offer the behind-the-wheel driving instructor authorization must submit course descriptions to the department of transportation for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the department of transportation and the board of educational examiners.

282—21.4(78GA,SF203) Application process. Any person interested in the behind-the-wheel driving instructor authorization shall submit records of completion of a department of transportation-approved program to the board of educational examiners for an evaluation of completion of coursework, validity of teacher or administrator license, and all other requirements.

Application materials are available from the board of educational examiners, the department of transportation or from institutions or agencies offering department of transportation-approved courses.

282—21.5(78GA,SF203) Renewal. The behind-the-wheel driving instructor authorization may be renewed upon application, $10 renewal fee and verification of successful completion of:

21.5(1) Providing behind-the-wheel instruction for a minimum of 12 clock hours during the previous school year; and

21.5(2) Successful participation in at least one department of transportation-sponsored or department of transportation-approved behind-the-wheel instructor refresher course.

282—21.6(78GA,SF203) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the behind-the-wheel driving instructor authorization.

These rules are intended to implement Iowa Code chapter 272 and Iowa Code section 321.178 as amended by 1999 Iowa Acts, Senate File 203, section 11.

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DIVISION III
NURSING FACILITIES FOR PERSONS WITH MENTAL ILLNESS

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

CHAPTER 87
MEDICAID PROVIDER AUDITS

CHAPTER 88
MANAGED HEALTH CARE PROVIDERS

DIVISION I
HEALTH MAINTENANCE ORGANIZATION

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

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

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

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

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

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

(1) At least 18 years of age.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Review of a provider may occur at any time.

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

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

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

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

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

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

(1) At least 18 years of age.

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

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

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

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

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

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

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

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

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

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

77.41(3) *Home and vehicle modification providers.* A home and vehicle modification provider shall be either:

a. An approved HCBS brain injury or mental retardation supported community living service provider that meets all the following standards:

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

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

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

b. A community business that performs the work and meets all the following standards:

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

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

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

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

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

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

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

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

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

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

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

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

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

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c. Be ineligible for the HCBS MR waiver.

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

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

f. Be aged 18 years to 64 years.

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

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

h. Be in need of skilled nursing or intermediate care facility level of care. Initial decisions on level of care shall be made for the department by the Iowa Foundation for Medical Care (IFMC) within two working days of receipt of medical information. After notice of an adverse decision by IFMC, the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by IFMC pursuant to subrule 83.109(2). On initial and reconsideration decisions, IFMC determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2). Adverse decisions by IFMC on reconsiderations may be appealed to the department pursuant to 441—Chapter 7 and rule 441—83.109(249A).

i. Choose HCBS.

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

83.102(2) *Need for services.*

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

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

b. The total monthly cost of physical disability waiver services shall not exceed $621 per month.

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

83.102(4) *County payment slots for persons requiring the ICF/MR level of care.* Rescinded IAB 10/6/99, effective 10/1/99.

83.102(5) *Securing a slot.*

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

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

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

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

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

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

83.102(6) *Securing a county payment slot.* Rescinded IAB 10/6/99, effective 10/1/99.

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

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

441—83.103(249A) Application.

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

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

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

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

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

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

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

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

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

83.103(3) *Effective date of eligibility.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. All service funding sources.

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

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

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

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

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

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

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

e. The service plan.

f. Rescinded IAB 10/6/99, effective 10/1/99.

441—83.108(249A) Adverse service actions.

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

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

b. Service needs exceed the reimbursement maximums.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. The consumer receives services from other Medicaid providers.

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

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

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

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

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

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

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

(1) The basis for the reconsidered determination.

(2) A detailed rationale for the reconsidered determination.

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

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

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

441—83.110(249A) County reimbursement. Rescinded IAB 10/6/99, effective 10/1/99.

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

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

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TITLE X
SUPPORT RECOVERY

CHAPTER 95
COLLECTIONS

[Prior to 7/1/83, Social Services[770] Ch 95]
[Prior to 2/11/87, Human Services[498]]

441—95.1(252B) Definitions.

"Bureau chief" shall mean the chief of the bureau of collections of the department of human services or the bureau chief's designee.

"Caretaker" shall mean a custodial parent, relative or guardian whose needs are included in an assistance grant paid according to Iowa Code chapter 239B, or who is receiving this assistance on behalf of a dependent child, or who is a recipient of nonassistance child support services.

"Child support recovery unit" shall mean any person, unit, or other agency which is charged with the responsibility for providing or assisting in the provision of child support enforcement services pursuant to Title IV-D of the Social Security Act.

"Consumer reporting agency" shall mean any person or organization which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"Current support" shall mean those payments received in the amount, manner and frequency as specified by an order for support and which are paid to the clerk of the district court, the public agency designated as the distributor of support payments as in interstate cases, or another designated agency. Payments to persons other than the clerk of the district court or other designated agency do not satisfy the definition of support pursuant to Iowa Code section 598.22. In addition, current support shall include assessments received as specified pursuant to rule 441—156.1(234).

"Date of collection" shall mean the date that a support payment is received by the unit.

"Delinquent support" shall mean a payment, or portion of a payment, including interest, not received by the clerk of the district court or other designated agency at the time it was due. In addition, delinquent support shall also include assessments not received as specified pursuant to rule 441—156.1(234).

"Department" shall mean the department of human services.

"Dependent child" shall mean a person who meets the eligibility criteria established in Iowa Code chapter 234 or 239B, and whose support is required by Iowa Code chapter 234, 239B, 252A, 252C, 252F, 252H, 252K, 598 or 600B, and any other comparable chapter.

"Federal nontax payment" shall mean an amount payable by the federal government which is subject to administrative offset for support under the federal Debt Collection Improvement Act, Public Law 104-134.

"Obligee" shall mean any person or entity entitled to child support or medical support for a child.

"Obligor" shall mean a parent, relative or guardian, or any other designated person who is legally liable for the support of a child or a child's caretaker.

"Payor of income" shall have the same meaning provided this term in Iowa Code section 252D.16.

"Prepayment" shall mean payment toward an ongoing support obligation when the payment exceeds the current support obligation and amounts due for past months are fully paid.

*Effective date (10/1/99) delayed 70 days by the Administrative Rules Review Committee at its meeting held September 15, 1999.

"Public assistance" shall mean assistance provided according to Iowa Code chapter 239B or 249A, the cost of foster care provided by the department according to chapter 234, or assistance provided under comparable laws of other states.

"Responsible person" shall mean a parent, relative or guardian, or any other designated person who is or may be declared to be legally liable for the support of a child or a child's caretaker. For the purposes of calculating a support obligation pursuant to the mandatory child support guidelines prescribed by the Iowa Supreme Court in accordance with Iowa Code section 598.21, subsection 4, this shall mean the person from whom support is sought.

"Support" shall mean child support or medical support or both for purposes of establishing, modifying or enforcing orders, and spousal support for purposes of enforcing an order.

This rule is intended to implement Iowa Code chapters 252B, 252C and 252D.

441—95.2(252B) Child support recovery eligibility and services.

95.2(1) *Public assistance cases.* The child support recovery unit shall provide paternity establishment and support establishment, modification and enforcement services, as appropriate, under federal and state laws and rules for children and families referred to the unit who have applied for or are receiving public assistance. Referrals under this subrule may be made by the family investment program, the Medicaid program, the foster care program or agencies of other states providing child support services under Title IV-D of the Social Security Act for recipients of public assistance.

95.2(2) *Nonpublic assistance cases.* The same services provided by the child support recovery unit for public assistance cases shall also be made available to any person not otherwise eligible for public assistance. The services shall be made available to persons upon the completion and filing of an application with the child support recovery unit except that an application shall not be required to provide services to the following persons:

a. Persons not receiving public assistance for whom an agency of another state providing Title IV-D child support recovery services has requested services.

b. Persons for whom a foreign reciprocating country or a foreign country with which this state has an arrangement as provided in 42 U.S.C. §659 has requested services.

c. Persons who are eligible for continued services upon termination of assistance under the family investment program or Medicaid.

95.2(3) *Services available.* Except as provided by separate rule, the child support recovery unit shall provide the same services as the unit provides for public assistance recipients to persons not otherwise eligible for services as public assistance recipients. The child support recovery unit shall determine the appropriate enforcement procedure to be used. The services are limited to the establishment of paternity, the establishment and enforcement of child support obligations and medical support obligations, and the enforcement of spousal support orders if the spouse is the custodial parent of a child for whom the department is enforcing a child support or medical support order.

95.2(4) *Application for services.*

a. A person who is not on public assistance requesting services under this chapter, except for those persons eligible to receive support services under paragraphs 95.2(2)*"a," "b,"* and *"c,"* shall complete and return Form 470-0188, Application for Nonassistance Support Services, to the child support recovery unit serving the county where the person resides. If the person does not live in the state, the application form shall be returned to the county in which the support order is entered or in which the other parent or putative father resides.

b. An individual who is required to complete Form 470-0188, Application for Nonassistance Support Services, shall be charged an application fee in the amount set by statute. The fee shall be charged at the time of initial application and any subsequent application for services. The application fee shall be paid to the local child support recovery unit by the individual prior to services being provided.

This rule is intended to implement Iowa Code sections 252B.3 and 252B.4.

***441—95.3(252B) Crediting of current and delinquent support.** The amounts received as support from the obligor or payor of income shall be credited as the required support obligation for the month in which the collection services center receives the payment. Any excess shall be credited as delinquent payments and shall be applied to the immediately preceding month, and then to the next immediately preceding month until all excess has been applied. Funds received as a result of federal tax offsets are credited according to subrule 95.7(9).

95.3(1) *Treatment of vacation or severance pay.* When CSC is notified or otherwise becomes aware that a payment received from an income provider pursuant to 441—Chapter 98, Division II, includes payment amounts such as vacation pay or severance pay, these amounts are considered to be received in the months documented by the income provider.

95.3(2) *Payment received at the end of the month.* An additional payment in the month which is received from the obligor or payor of income within five calendar days prior to the end of the month shall be considered collected in the next month if:

a. The collection services center is notified by the obligor or payor of income that the payment is for the next month, and

b. Support for the current month is fully paid.

This rule is intended to implement Iowa Code sections 252B.3, 252B.4, and 252B.11.

441—95.4(252B) Prepayment of support. Prepayment which is due to the child support obligee shall be sent to the obligee upon receipt by the department, and shall be credited as payment of future months' support. Prepayment which is due the state shall be distributed as if it were received in the month when due. Support is prepaid when amounts have been collected which fully satisfy the ongoing support obligation for the current month and all past months.

441—95.5(252B) Lump sum settlement.

95.5(1) Any lump sum settlement of child support involving an assignment of child support payments shall be negotiated in conjunction with the child support recovery unit. The child support recovery unit shall be responsible for the determination of the amount due the department, including any accrued interest on the support debt computed in accordance with Iowa Code section 535.3 for court judgments. This determination of the amount due shall be made in accordance with Section 302.51, Code of Federal Regulations, Title 45 as amended to August 4, 1989. The bureau chief may waive collection of the accrued interest when negotiating a lump sum settlement of a support debt, if the waiver will facilitate the collection of the support debt.

95.5(2) The child support recovery unit shall be responsible for the determination of the department's entitlement to all or any of the lump sum payment in a paternity action.

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

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441—95.6(252B) Setoff against state income tax refund or rebate. A claim against a responsible person's state income tax refund or rebate will be made by the department when a support payment is delinquent as set forth in Iowa Code section 421.17(21). A claim against a responsible person's state income tax refund or rebate shall apply to support which the department is attempting to collect.

95.6(1) The department shall submit to the department of revenue and finance by the first day of each month, a list of responsible persons who are delinquent at least $50 in support payments.

95.6(2) The department shall mail a pre-setoff notice, to a responsible person when:

a. The department is notified by the department of revenue and finance that the responsible person is entitled to a state income tax refund or rebate; and

b. The department makes claim to the responsible person's state income tax refund or rebate. The presetoff notice will inform the responsible person of the amount the department intends to claim and apply to support.

95.6(3) When the responsible person wishes to contest a claim, a written request shall be submitted to the department within 15 days after the pre-setoff notice is mailed. When the request is received within the 15-day limit, a hearing shall be granted pursuant to rules in 441—Chapter 7.

95.6(4) The spouse's proportionate share of a joint return filed with a responsible person, as determined by the department of revenue and finance, shall be released by the department of revenue and finance unless other claims are made on that portion of the joint income tax refund. The request for release of a spouse's proportionate share shall be in writing and received by the department within 15 days after the mailing date of the pre-setoff notice.

95.6(5) Support recovery will make claim to a responsible person's state income tax refund or rebate when all current support payments or regular payments on the delinquent support were not paid for 12 months preceding the month in which the pre-setoff notice was mailed. A regular payment toward delinquent support is defined as making a monthly payment. The state income tax refund of a responsible person may be claimed by the office of the department of inspections and appeals or the college aid program even if no claim for payment of delinquent support has been made by support recovery.

95.6(6) The department shall notify a responsible person of the final decision regarding the claim against the tax refund or rebate by mailing a final disposition of support recovery claim notice to the responsible person.

95.6(7) Application of setoff. Setoffs shall be applied as provided in rule 441—95.3(252B).

This rule is intended to implement Iowa Code sections 252B.3 and 252B.4.

441—95.7(252B) Offset against federal income tax refund and federal nontax payment. A claim against a responsible person's federal income tax refund or federal nontax payment will be made by the department when delinquent support is owed.

95.7(1) Amount of assigned support. If the delinquent support is assigned to the department, the amount of delinquent support shall be at least $150 and the support shall have been delinquent for three months.

95.7(2) Amount of nonassigned support. If delinquent support is not assigned to the department, the claim shall be made if the amount of delinquent support is at least $500.

a. The amount distributed to an obligee shall be the amount remaining following payment of a support delinquency assigned to the department. Prior to receipt of the amount to be distributed, the obligee shall sign Form 470-2084, Repayment Agreement for Federal Tax Refund Offset, agreeing to repay any amount of the offset the Department of the Treasury later requires the department to return. The department shall distribute to an obligee the amount collected from an offset according to subrule 95.7(9) within the following time frames:

(1) Within six months from the date the department applies an offset amount from a joint income tax refund to the child support account of the responsible person, or within 15 days of the date of resolution of an appeal under subrule 95.7(8), whichever is later, or

441—95.21(252B) Cooperation in establishing and obtaining support in nonpublic assistance cases.

95.21(1) *Requirements.* The individual receiving nonpublic assistance support services shall cooperate with the child support recovery unit by meeting all the requirements of rule 441—95.19(252B), except that the individual may not claim good cause or other exception for not cooperating.

95.21(2) *Failure to cooperate.* The child support recovery unit shall make the determination of whether or not the nonpublic assistance applicant or recipient of services has cooperated. Noncooperation shall result in termination of support services. An applicant or recipient may also request termination of services under subrule 95.14(3).

This rule is intended to implement Iowa Code section 252B.4.

441—95.22(252B) Charging pass-through fees. Pass-through fees are fees or costs incurred by the department for service of process, genetic testing and court costs if the entity providing the service charges a fee for the services. The child support recovery unit may charge pass-through fees to persons who receive continued services according to rule 441—95.18(252B) and to other persons receiving nonassistance services, except no fees may be charged an obligee residing in a foreign country or the foreign country if the unit is providing services under paragraph 95.2(2)*"b."*

This rule is intended to implement Iowa Code section 252B.4.

441—95.23(252B) Reimbursing assistance with collections of assigned support. For an obligee and child who currently receive assistance under the family investment program, the full amount of any assigned support collection that the department receives shall be distributed according to rule 441—95.3(252B) and retained by the department to reimburse the family investment program assistance.

This rule is intended to implement Iowa Code section 252B.15.

441—95.24(252B) Child support account. The child support recovery unit shall maintain a child support account for each client. The account, representing money due the department, shall cover all periods of time public assistance has been paid, commencing with the date of the assignment. The child support recovery unit will not maintain an interest-bearing account.

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

441—95.25(252B) Emancipation verification. The child support recovery unit (CSRU) may verify whether a child will emancipate according to the provisions established in the court order prior to the child's eighteenth birthday.

95.25(1) *Verification process.* CSRU shall send Form 470-2562, Emancipation Verification, to the obligor and obligee on a case if CSRU has an address.

95.25(2) *Return information.* The obligor and obligee shall be asked to complete and return the form to the unit. CSRU shall use the information provided by the obligor or obligee to determine if the status of the child indicates that any previously ordered adjustments related to the obligation and a child's emancipation are necessary on the case.

95.25(3) *Failure to return information.* If the obligor and obligee fail to return the questionnaire, CSRU shall apply the earliest emancipation date established in the support order to the case and implement changes in support amounts required in the support order.

95.25(4) *Conflicting information returned.* If conflicting information is returned or made known to CSRU, CSRU shall have the right to verify the child's status through sources other than the obligor and obligee.

This rule is intended to implement Iowa Code sections 252B.3 and 252B.4.

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TITLE XIV
GRANT/CONTRACT/PAYMENT ADMINISTRATION

CHAPTER 150
PURCHASE OF SERVICE

[Prior to 7/1/83, Social Services[770] Ch 145]
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[Prior to 2/11/87, Human Services[498]]

DIVISION I
CATEGORIES OF CONTRACTS, TERMS AND CONDITIONS FOR IOWA PURCHASE OF SOCIAL SERVICES AGENCY AND INDIVIDUAL CONTRACTS, IOWA PURCHASE OF ADMINISTRATIVE SUPPORT, AND IOWA DONATIONS OF FUNDS CONTRACT AND PROVISIONS FOR PROVIDER ADVISORY COMMITTEE AND PUBLIC ACCESS TO CONTRACTS

441—150.1(234) Definitions.

"Accounting year" means a 12 consecutive month period for which accounting records are maintained. It can be either a calendar year or another designated fiscal year.

"Accrual basis accounting" means the accounting basis which shows all expenses incurred and income earned for a given time even though the expenses may not have been paid or income received in cash during the period.

"Administrative support" means technical assistance, studies, surveys, or securing volunteers to assist the department in fulfilling its administrative responsibilities.

"Agency" means an organization or organizational unit that provides social services.

1. Public agency means a general or special-purpose unit of government and organizations administered by that unit to deliver social services, for example, county boards of supervisors, community colleges, and state agencies.

2. Private nonprofit agency means a voluntary agency operated under the authority of a board of directors for purposes other than generating profit and incorporated under Iowa Code chapter 504A. An out-of-state agency must meet requirements of similar laws governing nonprofit organizations in its state.

3. Private proprietary agency means a for-profit agency operated by an owner or board for the operator's financial benefit.

"Bureau of purchased services" means a bureau of the division of fiscal management, which is responsible for administering the purchase of service system.

"Cash basis accounting" means the accounting basis which records expenses when bills are paid and income when money is received.

"Ceiling" means the maximum limit for payment for a service which has been established by an administrative rule or by the Iowa Code specifically for that service.

"Client" means an individual or family group who has applied for and been found to be eligible for social services from the Iowa department of human services.

"Common ownership" means that relationship existing when an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.

"Components of service" means the elements or activities that make up a specific service.

"Contract" means formal written agreement between the Iowa department of human services and another legal entity, except for those government agencies whose services are covered under provision of Iowa Code chapter 28E.

"Contractor" means an institution, organization, facility or individual who is a legal entity and has entered into a contract with the department of human services.

"Control" means that relationship existing where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

"Department" means the Iowa department of human services.

"Direct cost" means those expenses which can be identified specifically and solely to a particular program.

"Donor" means a local source of funding (public or private) that enters into an Iowa donation of funds contract.

"Effective date."

1. Contract effective date for agency contracts means the first day of a month on which the contract shall become in force.

2. Effective date of rate means the date specified in a purchase of service contract on which the specified rate of payment for service provided begins.

"Field staff" means department employees outside of central office reporting to the deputy director of field operations.

"Grant" means an award of funds to develop specific programs or achieve specific outcomes.

"Indirect cost" means those expenses which cannot be related directly to a specific program and are, therefore, allocated to more than one program.

"Project manager" means a department employee who is assigned to assist in developing, monitoring and evaluating a contract and to provide related technical assistance.

"Provider" means an institution, organization, facility, or individual who is a legal entity and has entered into a contract with the department to provide social services to clients of the department.

"Purchase of service system" means the system within the department for contracting and payment for services, including contracts for funding and contracts for technical assistance.

"Related to provider" means that the provider to a significant extent is associated or affiliated with or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies.

"Relatives" include the following persons: husband and wife, natural parent and child, sibling, adopted child and adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent and grandchild.

"Social services" means a set of actions purposefully directed toward human needs which are socially identified as requiring assistance from others for their resolution.

"Unit of service" means a specified quantity of service or a specific outcome as a result of the service provided.

441—150.2(234) Categories of contracts.

150.2(1) *Iowa purchase of social services contract.* An Iowa purchase of social services contract is a legal contract between the department and a provider for a specified service or services to clients referred by the department. This contract establishes the components of service to be provided, the rate per unit of service, a maximum number of units to be available, and other negotiated conditions. The department has three types of contracts for purchasing social services.

a. An agency contract is a contract written with an agency. Iowa Purchase of Social Services Agency Contract, Form 470-0628, shall be completed prior to services being purchased from the agency.

b. A child care certificate is an agreement written with a licensed child care center, a family day care home, a group day care home, an in-home care provider, or a relative care provider. Policies governing child care certificates may be found in 441—Chapter 170.

c. An individual in-home health-related provider agreement is an agreement written with an individual provider of in-home health services. Policies governing individual in-home health-related provider agreements may be found in 441—Chapter 177.

150.2(2) *Iowa purchase of administrative support contract.* An Iowa purchase of administrative support contract is between the department and a contractor for the provision of administrative support. This contract establishes the support services to be provided, the rate and the method of payment, and other negotiated conditions. A contractor or the division of a contractor who is a multiservice organization holding an administrative support contract may not provide direct client services during the period of the contract.

a. A volunteer contract is the administrative support contract between an individual or agency and the department to secure volunteers to assist the department in service delivery.

b. A general use administrative support contract is between the department and a contractor for the provision of administrative support.

150.2(3) *County board of supervisors' participation contract.* Rescinded IAB 7/8/92, effective 7/1/92.

150.2(4) *Iowa donation of funds contract.* The Iowa donation of funds contract establishes the conditions under which a donor makes funds available to the department. This is generally for the purpose of matching state or federal funds for services or administrative support. The contract shall contain specifications concerning amendment, termination, transmittal of funds, accounting, and reversion of unspent funds. The donor may specify the geographic area to be served and the specific service to be provided. The Iowa Donation of Funds Contract, Form 470-0629, shall be completed prior to the department's acceptance of the funds.

441—150.3(234) Iowa purchase of social services agency contract.

150.3(1) *Initiation of contract proposal.*

a. Right to request a contract. All potential provider agencies have a right to request a contract.

b. Initial contact. The initial contact should be between the potential provider and the regional administrator for the region in which the provider's headquarters is located. In the case of out-of-state providers this contact can be with the regional administrator for either the closest region or the region initiating the contact. The Purchase of Service Provider Handbook shall be given to the provider at the beginning of the process of developing a contract.

c. Contract proposal development. When the regional administrator determines that a contract is to be developed, a project manager will be assigned who will assist in contract development and processing. The project manager will assist the contractor in completing the contract proposal and fiscal information appropriate to the contract. This information shall include documentation that the conditions of participation are met. Form 470-0663, Iowa Purchase of Social Services Agency Contract Face Sheet, shall be completed at the same time as Form 470-0628, Iowa Purchase of Social Services Agency Contract, or Form 470-0630, Amendment or Renewal of the Iowa Purchase of Social Services Agency Contract, is prepared.

d. Contract proposal approval or rejection. Before a contract can be effective, it shall be signed by the following persons within the time frames provided:

(1) Authorized representative of the provider agency.

(2) Human services area administrator, within one week from receipt.

(3) Regional administrator, within one week from receipt.

(4) Chief of the bureau of purchased services, within 30 days from receipt.

The provider shall be given a notice and explanation in writing of delays in the process or of rejection of the proposal. Payment cannot be made until the contract is signed by the provider's authorized representative and the chief of the bureau of purchased services.

e. Criteria for rejection. The following criteria may cause a proposed contract to be rejected:

(1) The service is not needed by department clients.

(2) The service is not in the social services block grant plan for the regions or counties to be served by the program.

(3) No funds are available for the service being proposed.

(4) The proposed contract does not meet applicable rules, regulations, or guidelines, including service definition.

f. Contract effective date. When the agreed-upon contract conditions have been met, the effective date of the contract is the first day of an agreed-upon month following signature by the chief of the bureau of purchased services.

150.3(2) *Contract administration.*

a. Contract management. During the contract period the assigned project manager shall be the contract liaison between the department and the provider. The project manager shall be contacted on all interpretations and problems relating to the contract and shall follow the issues through to their resolution. The project manager shall also monitor performance under the contract and shall provide or arrange for technical assistance to improve the provider's performance, if needed. Report of On-Site Visit, Form 470-0670, may be used to monitor performance under the contract.

b. Contract amendment. The contract shall be amended only upon agreement of both parties. Amendments which affect the cost of services shall include reestablishment of applicable rates. Amendment or Renewal of Iowa Purchase of Social Services Agency Contract, Form 470-0630, shall be used to amend or renew the contract.

c. Contract renewal. A joint decision to pursue renewal of the contract must be made at least 60 days prior to the expiration date. Each contract shall be evaluated. The results of the evaluation shall be taken into consideration in the decision on renewal prior to renewal. This evaluation may involve use of the Monitoring and Evaluation Review Guide, Form 470-2571, or other evaluation tools specified in the contract. Desk Audit for Title VI and Section 504 Compliance, Form 470-2215, shall be completed by the provider.

d. Contract termination. Causes for termination during the period of the contract are:

(1) Mutual agreement of the parties involved.

(2) Demonstration that sufficient funds are unavailable to continue the services involved.

(3) Failure to make required reporting.

(4) Failure to make financial and statistical records available for review.

(5) Failure to abide by the provisions of the contract.

150.3(3) *Conditions of participation.* The provider shall meet the following standards:

a. Licensure, approval, or accreditation. The provider shall have any license, approval, and accreditation required by law, regulation or administrative rules, or standards of operation required by the state or the federal government before the contract can be effective. Out-of-state providers shall meet Iowa licensing standards related to treatment, professional staff to client ratio, and staff qualifications.

b. Signed contract. A contract can be effective only when signed by all parties required in 150.3(1)*"d."*

c. Civil rights laws. The providers shall be in compliance with all federal, state and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

d. Title VI compliance. The provider shall be in compliance with Title VI of the 1964 Civil Rights Act and all other federal, state, and local laws and regulations regarding the provision of services, or have a written plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

e. Section 504 compliance. The provider shall be in compliance with Section 504 of the Rehabilitation Act of 1973 and with all federal, state, and local Section 504 laws and regulations, or have a written work plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, Plan Review Accessibility Checklist, Form 470-0149, and Section 504 Transition Plan: Structural Accessibility, Form 470-0150, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

f. Affirmative action. The provider shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

g. Abuse reporting. The provider shall have a written policy and procedure approved by the regional administrator or designee for reporting abuse or denial of critical care of children or dependent adults.

h. Confidentiality. The provider shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 441—Chapter 9. The provider shall have a written policy and procedure approved by the regional administrator or designee for maintaining individual client confidentiality including client record destruction.

i. Client appeals and grievances. Clients receiving service through a purchase of service contract have the right to appeal adverse decisions made by the department or the provider. The provider shall have a written policy and procedure approved by the regional administrator or designee for handling client appeals and grievances and shall provide information to clients about their rights to appeal.

j. Client reports. The provider shall maintain the following client records:

(1) Provider service plan or individual program plan. Providers shall develop a written service plan or individual program plan for each client within 30 days of service initiation. The plan shall include a concise description of the situation or area which will be the focus of the service; statement of the goals to be achieved through the delivery of services; time limited and measurable objectives which will lead to the attainment of the goal to be achieved; specific service components, frequency, and the assignment of responsibility for the provision of the components; and the month and year when it is estimated the client will be able to achieve the current goals and objectives. The provider service plan shall be updated upon receipt of a new departmental case plan, but at least once every six months.

(2) Quarterly progress reports. Quarterly progress reports shall be sent to the department service worker responsible for the client. The first report shall be submitted to the department three months after service is initiated. Reports shall be submitted quarterly thereafter, unless provided for otherwise in rules for a specific service.

The progress report shall include a description of the specific service components provided, their frequency, and who provided them; the client's progress with respect to the goals and service objectives; and any recommended changes in the service plan or individual program plan. For all placement cases the report shall include interpretation of the client's reaction to placement, a summary of medical or dental services that were provided, a summary of educational or vocational progress and participation, and a summary of the involvement of the family with the client and the services.

Reports for the adult support program, family-centered services, purchased foster family home services, and independent living service shall also include supporting documentation for service provision. The documentation shall list dates of client and collateral contacts, type of contact, persons contacted, and a brief explanation of the focus of each contact. Each unit of service for which payment is sought should be the subject of a written progress note.

(3) Termination of service summary. A termination of service summary shall be sent to the department service worker responsible for the client within two weeks of service termination. The summary shall include the rationale for service termination and the impact of the service components on the client in relationship to the established goals and objectives.

k. Financial and statistical records. Each provider of service must maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department.

(1) The records shall be available for review at any time during normal business hours by department personnel, the purchase of service fiscal consultant, and state or federal audit personnel.

(2) These records shall be retained for a period of five years after final payment.

l. Reports on financial and statistical records. Reports on financial and statistical records shall be submitted as required. Failure to do so within the required time limits is grounds for termination of the contract.

m. Maintenance of client records. Records for clients served through a purchase of service contract must be retained by the provider for a period of three years after service to the client terminates.

n. Provider charges. A provider shall not charge department clients more than it receives for the same services provided to nondepartmental clients.

o. Special-purpose organizations. A provider may establish a separate, special-purpose organization to conduct certain of the provider's client-related or nonclient-related activities. For example, a development foundation assumes the provider's fund-raising activity. Often, the provider does not own the special-purpose organization (e.g., a nonprofit, nonstock-issuing corporation), and has no common governing body membership. However, a special-purpose organization is considered to be related to a provider if:

(1) The provider controls the organization through contracts or other legal documents that give the provider the authority to direct the organization's activities, management, and policies; or

(2) The provider is, for all practical purposes, the primary beneficiary of the organization's activities. The provider should be considered the special-purpose organization's primary beneficiary if one or more of the following circumstances exist:

The organization has solicited funds on the provider's behalf with provider approval, and substantially all funds so solicited were contributed with intent of benefiting the provider.

The provider has transferred some of its resources to the organization, substantially all of whose resources are held for the benefit of the provider; or

The provider has assigned certain of its functions to a special-purpose organization that is operating primarily for the benefit of the provider.

p. Certification by department of transportation. Each service provider of public transit services shall submit Form 020107, Certification Application for Coordination of Public Transit Services, and a copy of "Certificate of Insurance" (an ACORD form or similar or self-insurance documentation) to the applicable project manager annually showing information regarding compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules 761—Chapter 910.

Failure to provide the required documentation for compliance or exemption is grounds for denial or termination of the contract.

q. Services provided. Services provided, as described in Form 470-0663, Iowa Purchase of Social Services Agency Contract Face Sheet, and attachments, shall at a minimum meet the rules found in the Iowa Administrative Code for a particular service or the contract may be terminated.

r. Bonding, indemnity and insurance clauses.

(1) Rescinded IAB 2/3/93, effective 4/1/93.

(2) Indemnity. The provider agrees that it will at all times during the existence of this contract indemnify and hold harmless the department and county against any and all liability, loss, damages, costs or expenses which the provider may hereafter sustain, incur or be required to pay:

1. By reason of any client's suffering personal injury, death or property loss or damages either while participating in or receiving from the provider the care and services to be furnished by the provider under this contract, or while on premises owned, leased, or operated by the provider, or while being transported in any vehicle owned, operated, leased, chartered, or otherwise contracted for by the provider or any officer, agency, or employee thereof.

2. By reason of any client's causing injury to or damage to another person or property during any time when the provider or any officer, agency or employee thereof has undertaken or is furnishing the care and service called for under this contract.

(3) Insurance. The provider agrees that in order to protect itself as well as the department and county under the indemnity agreement above, it will at all times during the term of the contract have and keep in force a liability insurance policy, verification of which shall accompany Form 470-0663, Iowa Purchase of Social Services Agency Contract Face Sheet. The provider agrees that all employees, volunteers, or any other person, other than employees of the department acting within the scope of their employment in the department, authorized to transport clients in privately owned vehicles, have liability insurance in force.

s. Renegotiation clause. In the event there is a revision of federal or state laws or regulations and this contract no longer conforms to those laws or regulations, both parties will review the contract and renegotiate those items necessary to conform with the new federal or state laws or regulations.

150.3(4) *Establishment of rates.* The Financial and Statistical Report for Purchase of Service Contracts, Form 470-0664, is the basis for establishing the rates to be paid to all providers under an Iowa Purchase of Social Services Agency Contract, Form 470-0628.

a. Injectable contraceptive unit. The rate for the injectable contraceptive unit for family planning services shall be a statewide flat rate per year of family planning service. The rate will reflect the average actual yearly cost of the injectable contraceptive to the providers plus additional office visits, minus the average cost of contraceptive supplies included in the initial or annual family planning unit.

The department of health and the Family Planning Council of Iowa shall survey delegate agencies and together determine the flat rate. The survey shall identify for each delegate agency:

(1) The yearly cost of contraceptive supplies in the Financial and Statistical Report, Form 470-0664, upon which the facility's payment is based.

(2) The number of initial and annual yearly units of service provided by Title XX.

The survey shall then, based upon the above, compute a weighted average noninjectable method cost per year.

The survey shall also determine a weighted average injectable method cost per year by polling all delegate agencies as to the additional cost for delivery of the injectable method which includes the cost of giving the shot and the actual cost of the method.

The payment rate for injectable methods shall be the yearly weighted average injectable method cost minus the yearly weighted average noninjectable method cost for all Title XX delegate agencies.

Future surveys shall be done on an as-needed basis.

b. Out-of-state providers.

(1) Rescinded IAB 9/1/93, effective 11/1/93.

(2) Out-of-state providers of other services shall have rates established using the applicable portions of the Financial and Statistical Report for Purchase of Service Contracts, Form 470-0664.

c. Rescinded IAB 8/9/89, effective 10/1/89.

150.3(5) *Financial and statistical report.* The Financial and Statistical Report for Purchase of Service Contracts, Form 470-0664, shall be completed by those providers as required in 150.3(4). The reports shall be based on the following rules.

a. Accounting procedures. Financial information shall be based on the agency's financial records. When the records are not kept on an accrual basis of accounting, the provider shall make the adjustments necessary to convert the information to an accrual basis for reporting. Providers who are multiple program agencies shall submit a cost allocation schedule prepared in accordance with recognized methods and procedures.

(1) Direct program expense shall include all direct client contact personnel involved in a program including the time of a supervisor of a program, or the apportioned share of the supervisor's time when the supervisor supervises more than one program.

(2) Expenses other than salary and fringe benefits shall be charged as direct program expenses when the expenses are identifiable to a program. They may also be charged as direct program expenses when a method of distribution acceptable to the department is maintained on a consistent basis.

(3) Occupancy expenses shall be allocated to programs on a space utilization formula. The space utilization formula may be used for salaries and fringes of building maintenance and janitorial type personnel.

(4) All expenses which relate jointly to two or more programs shall be allocated to program service costs by utilizing a cost allocation method which fairly distributes costs to the related programs. Any expenses which relate directly to a particular program shall be reflected as such. All maintenance costs shall be charged directly or allocated proportionately to the related programs affected.

(5) Indirect program service costs shall be distributed over all applicable services.

(6) Expenses such as supplies, conferences, and similar expenses that cannot be directly related to a program shall be charged to indirect program service costs.

(7) A multiservice agency shall establish a method acceptable to the department of distributing indirect program service costs.

(8) Income received from fund-raising efforts or donations shall be reported as revenue on the financial and statistical report and used to offset fund-raising costs. Fund-raising costs remaining after the offset shall be an unallowable cost.

All contributions shall be accompanied by a schedule showing the contribution and anticipated designation by the agency. No private moneys contributed to the agency shall be included by the department in its reimbursement rate determination unless these moneys are contributed for services provided to specific individuals for whom the reimbursement rate is established by the department.

If a shelter care provider's actual and allowable costs for a child's shelter care placement exceed the amount the department is authorized to pay and the provider is reimbursed by the child's county of legal settlement for the difference between actual and allowable costs and the amount reimbursed by the department, the amount paid by the county shall not be included by the department in its reimbursement rate determination, as long as the amount paid is not greater than the provider's actual and allowable costs, or the statewide average of actual and allowable costs in May of the preceding year for juvenile shelter care homes, whichever is less.

(9) When an agency has a certified public accounting firm perform an audit of its financial statements, the resulting audit report shall follow one of the uniform audit report formats recommended by the American Institute of Certified Public Accountants. These formats are specified in the industry audit guide series, "Audits of Voluntary Health and Welfare Organizations," prepared by the Committee on Voluntary Health and Welfare Organizations, American Institute of Certified Public Accountants, New York, 1974. A copy of the certified audit report shall be submitted to the department within 60 days of receipt.

(10) All expenses reported on Form 470-0664 shall be supported by an agency's general ledger and documentation on file in the agency's office.

b. Failure to maintain records. Failure to maintain records adequate to support the Financial and Statistical Report for Purchase of Service Contracts, Form 470-0664, may result in termination of the contract. These records include, but are not limited to:

(1) Reviewable, legible census reports.
(2) Payroll information.
(3) Capital asset schedules.
(4) All canceled checks, deposit slips, invoices (paid and unpaid).
(5) Audit reports (if any).
(6) Board of directors' minutes.

c. Submission of reports. The financial and statistical report shall be submitted to the department no later than three months after the close of the provider's established fiscal year. At least one week must be allowed prior to this deadline for the project manager to review the report and transmit it to the purchase of service section in central office. Failure to submit the report in time without written approval from the manager of the purchase of service section may reduce payment to 75 percent of the current rate. Failure to submit the report within six months of the end of the fiscal year shall be cause for terminating the contract.

d. Rate modification. Modification of rates shall be made when required by changes in licensing requirements, changes in the law, or amendments to the contract. Requests for modification of a rate may be made when changes are because of program expansion or modification and have the approval of the district where services are provided. Even if there is a modification of the rate, the modified rate is still subject to any maximum established in any law or rule.

e. Payment of new rate. New rates shall be effective for services provided beginning the first day of the second calendar month after receipt by the purchase of service section of a report sufficient to establish rates or, by mutual agreement, new rates shall be effective the first day of the month following completion of the fiscal review. Failure to submit a report sufficient to establish a rate will result in the effective date being delayed. At least one week must be allowed prior to the deadline in paragraph *"c"* above for the project manager to review the report and transmit it to central office.

f. Exceptions to costs. Exceptions to costs identified by the purchase of service section or its fiscal consultant will be communicated to the provider in writing.

g. Accrual basis. Providers not using the accrual basis of accounting shall adjust amounts to the accrual basis when the financial and statistical report is completed. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expenses.

h. Census data. Documentation of units of service provided which identifies the individual client shall be available on a daily basis and summarized on a monthly report. The documentation and reports shall be retained by the provider for review at the time the expenditure report is prepared and reviewed by the department's fiscal consultant.

i. Opinion of accountant. The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate noncompliance with reporting instructions.

j. Revenues. When the Financial and Statistical Report is completed, revenues shall be reported as recorded in the general books and records adjusted for accruals. Expense recoveries shall be reflected as revenues.

2. If a social service provider loses a source of income used to determine the reimbursement rate for the provider, the provider's reimbursement rate may be adjusted to reflect the loss of income, provided that the lost income was used to support actual and allowable costs of a service purchased under a purchase of service contract.

3. For the fiscal year beginning July 1, 1999, the combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. The maximum reimbursement rate shall be $79.70 per day. If the department reimburses the provider at less than the maximum rate, but the provider's cost report justifies a rate of at least $79.70, the department shall readjust the provider's reimbursement rate to the actual and allowable cost plus the inflation factor or $79.70, whichever is less.

4. Rescinded IAB 6/30/99, effective 7/1/99.

5. For the fiscal year beginning July 1, 1999, the purchase of service reimbursement rate for adoption and independent living services shall be increased by 2 percent of the rates in effect on June 30, 1999.

q. Related party costs. Direct and indirect costs applicable to services, facilities, equipment, and supplies furnished to the provider by organizations related to the provider are includable in the allowable cost of the provider at the cost to the related organization. All costs allowable at the provider level are also allowable at the related organization level, unless these related organization costs are duplicative of provider costs already subject to reimbursement.

(1) Allowable costs shall be all actual direct and indirect costs applying to any service or item interchanged between related parties, such as capital use allowance (depreciation), interest on borrowed money, insurance, taxes, and maintenance costs.

(2) When the related party's costs are used as the basis for allowable rental or supply costs, the related party shall supply documentation of these costs to the provider. The provider shall complete a schedule displaying amount paid to related parties, related party cost, and total amount allowable. The resulting costs shall be allocated according to policies in 150.3(5)*"a"*(3) to (7).

Financial and statistical records shall be maintained by the related party under the provisions in 150.3(3)*"k."*

(3) Tests for relatedness shall be those specified in rule 441—150.1(234) and 150.3(3)*"o."* The department or the purchase of service fiscal consultant shall have access to the records of the provider and landlord or supplier to determine if relatedness exists. Applicable records may include financial and accounting records, board minutes, articles of incorporation, and list of board members.

r. Day care increase. Rescinded IAB 7/7/93, effective 7/1/93.

s. Interest on unpaid invoices. Any invoice that remains unpaid after 60 days following the receipt of a valid claim is subject to the payment of interest. The rate of interest is 1 percent per month beyond the 60-day period, on a simple interest basis. A separate claim for the interest is to be generated by the agency. If the original claim was paid with both federal and state funds, only that portion of the original claim paid with state funds will be subject to interest charges.

t. Interest as an allowable cost. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) "Interest" is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) "Necessary" requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably required to operate a program, and be reduced by investment income except where the income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds.

(3) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

u. Rate formula. Paragraph 150.3(5)*"p"* notwithstanding, when rates are determined based on cost of providing the service involved, they will be calculated according to the following mathematical formula:

$$\frac{\text{Net allowable expenditures}}{\text{Effective utilization level}} \quad \text{Reimbursement factor} = \text{Base Rate}$$

(1) Net allowable expenditures are those expenditures attributable to service to clients which are allowable as set forth in subrule 150.3(5), paragraphs *"a"* to *"t."*

(2) Effective utilization level shall be 80 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program.

(3) Inflation factor is the percentage which will be applied to develop payment rates consistent with current policy and funding of the department. The inflation factor is intended to overcome the time lag between the time period for which costs were reported and the time period during which the rates will be in effect. The inflation factor shall be the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.

(4) Base rate is the rate which is developed independent of any limits which are in effect. Actual rates paid are subject to applicable limits or maximums.

v. Rescinded IAB 5/13/92, effective 4/16/92.

150.3(6) *Client eligibility and referral.*

a. Program eligibility. To receive services through the purchase of service system, clients shall be determined eligible and be formally referred by the department. The department shall not make payment for services provided prior to the client's application, eligibility determination, and referral. See *"b"* below for an exception to this rule.

The following forms shall be used by the department to authorize services:

Form 470-0622, Referral of Client for Purchase of Social Services.

Form 470-0719, Placement Agreement: Child Placing or Child Caring Agency (Provider).

b. When a court orders foster care and the department has no responsibility for supervision or placement of the client, the department will pay the rate established by these rules for maintenance and service provided by the facility.

150.3(7) *Client fees.* The provider shall agree not to require any fee for service from departmental clients unless a fee is required by the department and is consistent with federal regulation and state policy. Rules governing client fees are found in 441—130.4(234).

The provider shall collect fees due from clients. The provider shall maintain records of fees collected, and these records shall be available for audit by the department or its representative. When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. Reasonable effort to collect means an original billing and two follow-up notices of nonpayment. When the second notice of nonpayment is sent, the provider shall send a copy of the notice to the department worker.

150.3(8) *Billing procedures.* At the end of each month the provider agency shall prepare Form 470-0020, Purchase of Service Provider Invoice, for contractual services provided by the agency during the month.

Separate invoices shall be prepared for each county from which clients were referred, each service, and each funding source involved in payment. Complete invoices shall be sent to the departmental county office responsible for the client for approval and forwarding for payment.

More frequent billings may be permitted on an exception basis with the written approval of the region and the chief of the bureau of purchased services.

a. Time limit for submitting vouchers, invoices, or claims. The time limit for submission of original vouchers, invoices, or claims shall be three months from the date of service.

b. Resubmittals of rejected claims. Valid claims which were originally submitted within the time limit specified in paragraph *"a"* but were rejected because of an error shall be resubmitted without regard to time frames.

150.3(9) *Reviews of departmental actions.* A provider who is adversely affected by a departmental decision may request a review. A review request may cause the action to be stopped pending the outcome of the review, except in cases where it can be documented that to do so would be detrimental to the health and welfare of clients. The procedure for review is:

a. The provider shall send a written request for review to the project manager responsible for the contract within ten days of receipt of the decision in question. This request shall document the specific area in question and the remedy desired. The project manager shall provide a written response within ten days.

b. When dissatisfied with the response, the provider shall submit to the regional administrator within ten days the original request, the response received, and any additional information desired. The regional administrator shall study the concerns and the action taken, and render a decision in writing within 14 days. A meeting with the provider may be held to clarify the situation.

c. If still dissatisfied, the provider may within ten days request a review by the chief of the bureau of purchased services. The request for review should include copies of material from paragraphs *"a"* and *"b"* above. The bureau chief shall review the issues and positions of the parties involved and provide a written decision within 14 days. A meeting may be held with the provider, project manager, and regional administrator or designee.

d. The provider may appeal this decision within ten days to the director of the department, who will issue the final department decision within 14 days.

150.3(10) *Review of financial and statistical reports.* Authorized representatives of the department or state or federal audit personnel shall have the right to review the general financial records of a provider. The purpose of the review is to determine if expenses reported to the department have been handled as required under 150.3(5). Representatives shall provide proper identification and shall use generally accepted auditing principles. The reviews may include an on-site visit to the provider, the provider's central accounting office, the offices of the provider's agents, a combination of these, or, by mutual decision, to other locations.

150.3(11) Rescinded, effective 3/1/87.

This rule is intended to implement Iowa Code section 234.6.

441—150.4(234) Iowa purchase of social services contract—individual providers.

150.4(1) *Individual child day care provider agreement.* Rules governing individual child day care provider agreements may be found in 441—Chapter 170.

150.4(2) *Individual in-home health-related provider agreement.* Rules governing individual in-home health-related provider agreements may be found in 441—Chapter 177.

441—150.5(234) Iowa purchase of administrative support.

150.5(1) *Initiation of contract proposal.*

a. Right to request a contract. All potential contractors have a right to request a contract.

b. Initial contact.

(1) Volunteer contract. The initial contact for a volunteer contract may be between the potential contractor and the regional administrator of the region in which the individual or the contractor agency's headquarters is located or the contract may be between the potential contractor and the director of the state volunteer program in the central office of the department. If so, the director will communicate with the region.

(2) General use administrative support contract. The initial contact for a general use administrative support contract may be between the potential contractor and the regional administrator of the region in which the individual or contractor organization's headquarters is located or the contract may be between the potential contractor and the chief of the bureau of purchased services, who will communicate with the region.

c. Contract proposal development. When the regional administrator determines that a contract is to be developed, a project manager will be assigned who will assist in contract development and processing. The project manager will assist the contractor in completing the contract proposal and fiscal information appropriate to the contract. This includes documentation that the conditions of participation required below are met.

d. Contract proposal approval or rejection. Before a contract can be effective it shall be signed by the following persons within the time frames provided:

(1) Volunteer contract.

Individual contractor or authorized representative of the contractor agency.

Regional administrator within one week from receipt.

Director of the state volunteer program within 30 days from receipt.

(2) General use administrative support contract.

Individual contractor or authorized representative of the contractor agency.

Regional administrator within one week from receipt.

Chief of the bureau of purchased services within two weeks from receipt.

Director of the division of management and budget within two weeks from receipt.

The contractor shall be notified of delays in the process or of rejection of the proposal. This notification along with an explanation shall be in writing. The applicant has a right to have the decision reviewed by the director of the state volunteer program, or chief of the bureau of purchased services.

e. Criteria for rejection. The following criteria may cause a proposed contract to be rejected.

(1) The proposed activity is not needed by the department.

(2) No funds are available for the activity being proposed.

(3) The proposed contract does not meet applicable rules, regulations, or guidelines.

f. Contract effective date. If the agreed-upon contract conditions have been met, the effective date of the contract is the first day of an agreed-upon month following signature by the director of the state volunteer program, or the chief of the bureau of purchased services.

150.5(2) *Contract administration.*

a. Contract management. During the contract period, the assigned project manager shall be the liaison between the department and the contractor. The project manager shall be contacted on all interpretations and problems related to the contract and shall follow issues through to their resolution. The project manager shall also monitor performance under the contract and will provide or arrange for technical assistance to improve the contractor's performance, if needed.

b. Contract amendments. The contract shall be amended only upon agreement of both parties. Amendments which affect the cost of providing the volunteer services must include reestablishment of amounts to be paid.

c. Contract renewal. A joint decision to pursue renewal of the contract must be made at least 60 days prior to the expiration date. Each contract shall be evaluated. The results of the evaluation shall be taken into consideration in the decision on renewal. This evaluation may involve use of evaluation tools specified in the contract.

d. Contract termination. Causes for termination during the period of the contract are:

(1) Mutual agreement of the parties involved.

(2) Demonstration that sufficient funds are unavailable to continue the service(s) involved.

(3) Failure to make reports required by the contract.

(4) Failure to make financial, statistical, and program records available.

(5) Failure to abide by the provisions of the contract.

150.5(3) *Conditions of participation.* The contractor shall meet the following standards:

a. Licensure, approval, or accreditation. The contractor shall have any license, approval, and third-party accreditation required by law, regulation, or administrative rules, or shall meet standards of operation required by state or federal regulation. This requirement must be met before the contract can be effective.

b. Signed contract. A contract can be effective only when signed by all parties required in 150.5(1)*"d."*

c. Civil rights laws. The contractors shall be in compliance with all federal, state, and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the diversity programs unit to come into compliance.

d. Title VI compliance. The contractors shall be in compliance with Title VI of the 1964 Civil Rights Act and all other federal, state, and local laws and regulations regarding the provision of services, or have a written plan approved by the diversity programs unit to come into compliance.

e. Section 504 compliance. The contractors shall be in compliance with Section 504 of the Rehabilitation Act of 1973 and with all federal, state, and local Section 504 laws and regulations, or have a written work plan approved by the diversity programs unit to come into compliance.

f. Affirmative action. The contractors shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the diversity programs unit to come into compliance.

g. Abuse reporting. The contractor shall have an approved policy and procedure for reporting abuse or denial of critical care of children or dependent adults.

h. Confidentiality. The contractor shall comply with all applicable federal and state laws and regulations on confidentiality.

i. Financial and statistical records. Each contractor of service shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department.

(1) The records shall be available for review at any time during normal business hours by department personnel, the purchase of service fiscal consultant, or state or federal audit personnel.

(2) These records shall be retained for a period of five years after final payment.

j. Certification by department of transportation. Each contractor who supplies transportation services shall submit Form 020107, Certification Application for Coordination of Public Transit Services, and a copy of "Certificate of Insurance" (an ACORD form or similar or self-insurance documentation) to the applicable project manager annually showing information regarding compliance with, or exemption from, public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules 761—Chapter 910.

Failure to provide the required documentation for compliance or exemption is grounds for denial or termination of the contract.

150.5(4) *Establishing amounts to be paid.* The amounts to be paid under purchase of administrative support contracts are actual approved expenses as negotiated in the contract. Approved items of cost are based on submission of a proposed budget listing those items necessary for provision of the volunteer coordination or technical assistance to be delivered. At the termination of the contract a statement of actual expenses incurred shall be submitted by the contractor.

150.5(5) *Billing procedures.* At the end of each month, or as otherwise provided in the contract, the contractor shall prepare a claim on Form 07-350, Purchase Order/Payment Voucher, for expenses for which reimbursement is permitted in the contract. The claim is to be sent to the regional office of the department that administers the contract for approval and forwarding for payment.

a. Time limit for submitting claims. The time limit for submission of original claims shall be within 90 days of the provision of service.

b. Resubmittals of rejected claims. Valid claims which were originally submitted within this time limit but were rejected because of an error must be resubmitted, but without regard to time frames.

150.5(6) *Reviews of department actions.* A contractor who is adversely affected by a department decision may request a review. A review request may cause the action to be stopped pending the outcome of the review process, except in cases where it can be documented that to do so would be detrimental to the health and welfare of clients. The procedure for review is:

a. Within ten days of receipt of the decision in question the contractor shall send a written request for review to the project manager responsible for the contract. This request shall document the specific area in question and the remedy desired. A written response from the project manager shall be provided within ten days.

b. When dissatisfied with the response, the contractor shall submit the original request, the response received, and any additional information desired to the regional administrator within ten days. The regional administrator shall study the concerns, the action taken and render a decision in writing within 14 days. A meeting with the contractor may be held to clarify the situation.

c. If still dissatisfied, the contractor may within ten days request a review by the chief of the bureau of purchased services. The request for review should include copies of material from paragraphs *"a"* and *"b"* above. The bureau chief shall review the issues and positions of the parties involved and provide a written decision within 14 days. A meeting with the contractor, project manager, and regional administrator or designee may be held.

d. The contractor may appeal this decision within ten days to the director of the department, who will issue the final department decision within 14 days.

150.5(7) *Reviews.* Authorized representatives of the department or state or federal audit personnel have the right to review the general financial records of a contractor. The purpose of the review is to determine if expenses reported to the department have been handled as required under 150.5(4). Representatives shall provide proper identification and shall use generally accepted auditing principles. The reviews may be on the basis of an on-site visit to the contractor, the contractor's central accounting office, the offices of the contractor's agents, a combination of these, or, by mutual decision, to other locations.

This rule is intended to implement Iowa Code sections 234.6 and 601J.5, subsection 3, paragraph *"c."*

441—150.6(234) County board of supervisors participation contract. Rescinded IAB 7/8/92, effective 7/1/92.

441—150.7(234) Iowa donation of funds contract.

150.7(1) *Contract development.* The regional administrator or designee shall assist the donor in completion of the contract document.

a. Contract approval or rejection. Before a contract can be effective it shall be signed by the following persons within the time frames provided:

(1) Donor or the donor's authorized representative.

(2) Human services area administrator, within one week from receipt.

(3) Regional administrator, within one week from receipt.

(4) Chief of the bureau of purchased services, within two weeks from receipt.

b. Contract effective date. The contract is effective upon signature of the chief of the bureau of purchased services.

c. Contract ending date. The contract ending date shall be specified in the contract, but shall not be later than June 30 following the effective date of the contract.

150.7(2) *Contract administration.*

a. Contract management. During the contract period the regional administrator or designee shall be the liaison between the department and the donor. The liaison shall be contacted on all interpretations and problems relating to the contract. When a problem involves a particular service or administrative support contract, the project manager for that contract shall be notified by the liaison for the donor, if the project manager is not also the liaison.

b. Contract amendment. The contract shall be amended if:

(1) The donor or department is unable to comply with the existing terms of the contract and contract termination is not being sought.

(2) The donor decides to provide additional funds and the department agrees to accept them.

c. Contract termination. The contract may be terminated early if any of the following conditions exist:

(1) The donor and the department agree to terminate the contract early.

(2) The donor or the department fails to comply with contract terms.

d. Contract renewal. A donation of funds contract cannot be renewed. A new contract shall be negotiated when the donor wishes to provide funds in subsequent periods.

150.7(3) *Conditions of participation.*

a. Signed contract. A contract shall be effective only when signed by all parties required in 150.7(1)*"a."*

b. Civil rights laws. The donors shall be in compliance with all federal, state, and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the diversity programs unit to come into compliance.

c. Title VI compliance. The donors shall be in compliance with Title VI of the 1964 Civil Rights Act and all other federal, state, and local laws and regulations regarding the provision of services, or have a written plan approved by the diversity programs unit to come into compliance.

d. Section 504 compliance. The donors shall be in compliance with Section 504 of the Rehabilitation Act of 1973 and with all federal, state, and local Section 504 laws and regulations, or have a written work plan approved by the diversity programs unit to come into compliance.

e. Affirmative action. The donors shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the diversity programs unit to come into compliance.

f. Confidentiality. The donor shall comply with all applicable federal and state laws and regulations on confidentiality.

g. Eligibility of clients for programs. Clients for whom services are purchased using funds donated through this contract must be determined eligible by the department using 441—Chapters 130 and 153.

h. Purchase of service system. The donor shall follow the policies of the purchase of service system established by the department.

i. Restrictions on donated funds. The donor may specify the geographical area to be served and the service to be provided.

j. Transmittal of funds. Any funds available under this contract shall be transmitted to the department at least quarterly. When funds are for match purposes, they shall be transmitted in amounts sufficient to cover the anticipated quarterly expenditures.

k. Accounting. The department shall supply a monthly report which provides an accounting of the use of the funds to the donor.

150.7(4) *Administrative control of funds.* Except for restrictions permitted by subrule 150.7(3)*"i,"* all donated funds shall be donated on an unrestricted basis for use as if they were appropriated funds and shall be under the administrative control of the department.

150.7(5) *Reversion of unspent funds.* No funds donated and transmitted to the department will be returned to the donor unless the donor is a public agency. Unspent funds will be returned to the public agency donor after the contract period upon submittal of a written request to the manager of the purchase of service section.

441—150.8(234) Provider advisory committee. The provider advisory committee serves in an advisory capacity to the department, specifically to the bureau of purchased services. The provider advisory committee is composed of representatives from member provider associations as appointed by the respective associations. Individual representatives from provider agencies having a purchase of service contract but not belonging to an association may become members of the provider advisory committee upon simple majority vote of the committee members at a meeting. A representative of the purchase of service fiscal consultant is a nonvoting member. Departmental representatives from the bureau of purchased services, the office of the deputy director of field operations, the division of adult, children and families services, and the division of mental health and developmental disabilities are also nonvoting members.

441—150.9(234) Public access to contracts. Subject to applicable federal and state laws and regulations on confidentiality including 441—Chapter 9, all material submitted to the department of human services pursuant to this chapter shall be considered public information.

These rules are intended to implement Iowa Code section 234.6 and 1999 Iowa Acts, House File 760, section 33, subsections 6, 8, and 9.

441—150.10 to **441—150.20** Reserved.

DIVISION II
PURCHASE OF SOCIAL SERVICES CONTRACTING ON BEHALF OF COUNTIES FOR LOCAL PURCHASE SERVICES FOR ADULTS WITH MENTAL ILLNESS, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES

PREAMBLE

In order for the counties to fulfill their duties pursuant to the approved county management plans, counties must have service agreements with providers of mental health, mental retardation and developmental disabilities services. The Iowa State Association of Counties has requested the assistance of the department in negotiating contracts on behalf of the counties. The following rules set forth the terms and conditions for contracting that will be used by the department when contracting on behalf of counties with providers of local purchase services for adults with mental illness, mental retardation and developmental disabilities.

The department, within the limits of current resources, will negotiate contracts on behalf of counties beginning July 1, 1997. The initial contracts will be negotiated by amending the existing purchase of social service agency contract, using Form 470-0630, Amendment or Renewal of Iowa Purchase of Services Agency Contract, to reflect the contractual relationship between the provider and the counties. The amendment will be effective for the time period ending June 30, 1998.

441—150.21(234) Definitions.

"Accounting year" means a 12-consecutive-month period for which accounting records are maintained. It can be either a calendar year or another designated fiscal year.

"Accrual basis accounting" means the accounting basis which shows all expenses incurred and income earned for a given time even though the expenses may not have been paid or income received in cash during the period.

"Agency" means an organization or organizational unit that provides social services.

1. Public agency means a general or special-purpose unit of government and organizations administered by that unit to deliver social services, for example, county boards of supervisors, community colleges, and state agencies.

2. Private nonprofit agency means a voluntary agency operated under the authority of a board of directors for purposes other than generating profit and incorporated under Iowa Code chapter 504A. An out-of-state agency must meet requirements of similar laws governing nonprofit organizations in its state.

3. Private proprietary agency means a for-profit agency operated by an owner or board for the operator's financial benefit.

"Bureau of purchased services" means a bureau within the division of fiscal management, which is responsible for administering the purchase of service system.

"Cash basis accounting" means the accounting basis which records expenses when bills are paid and income when money is received.

"Ceiling" means the maximum limit for payment for a service which has been established by an administrative rule or by the Iowa Code specifically for that service.

"Client" means an individual or family group who has applied for and been found to be eligible for social services from the Iowa department of human services.

"Common ownership" means that relationship existing when an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.

"Components of service" means the elements or activities that make up a specific service.

"Contract" means formal written agreement between the Iowa department of human services and another legal entity, except for those government agencies whose services are covered under provision of Iowa Code chapter 28E.

"Contractor" means an institution, organization, facility or individual who is a legal entity and has entered into a contract with the department of human services.

"Control" means that relationship existing where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

"Department" means the Iowa department of human services.

"Direct cost" means those expenses which can be identified specifically and solely to a particular program.

"Effective date."

1. Contract effective date for agency contracts means the first day of a month on which the contract shall become in force.

2. Effective date of rate means the date specified in a purchase of service contract on which the specified rate of payment for service provided begins.

"Grant" means an award of funds to develop specific programs or achieve specific outcomes.

"Indirect cost" means those expenses which cannot be related directly to a specific program and are, therefore, allocated to more than one program.

"Project manager" means a department employee who is assigned to assist in developing, monitoring and evaluating a contract and to provide related technical assistance.

"Provider" means an institution, organization, facility, or individual who is a legal entity and has entered into a contract with the department to provide social services to clients of the department.

"Purchase of service system" means the system within the department for contracting and payment for services.

"Related to provider" means that the provider to a significant extent is associated or affiliated with or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies.

"Social services" means a set of actions purposefully directed toward human needs which are socially identified as requiring assistance from others for their resolution.

"Unit of service" means a specified quantity of service or a specific outcome as a result of the service provided.

441—150.22(234) Department contracts on behalf of counties.

150.22(1) *28E Agreement.* The department may enter into a purchase of social services agency contract on behalf of a county when the department and the county have entered into an agreement pursuant to Iowa Code chapter 28E. The 28E Agreement shall authorize the department to enter into a contract on behalf of the county for the purchase of local purchase services as identified in rule 441—153.35(225C). The services shall be directed toward persons with mental illness, mental retardation, or a developmental disability who are eligible for services pursuant to the approved county management plan developed in accordance with 441—Chapter 25, Division II.

150.22(2) *Contract terms and conditions.* When the department is contracting on behalf of a county, the terms and conditions of the purchase of social services agency contract shall apply unless modified by the provisions below. Form 470-0663, Iowa Purchase of Social Services Agency Contract Face Sheet, and Form 470-0628, Iowa Purchase of Social Services Agency Contract, shall be used. Form 470-3642, Local Purchase Addendum to the Iowa Purchase of Social Services Agency Contract, shall be used to set forth the changes to the contract pursuant to the provisions below.

150.22(3) *Initiation of a proposal for a new contract or contract amendment.*

a. Right to request a contract. All potential provider agencies have a right to request a contract.

b. Initial contact. For new contracts, the initial contact should be between the potential provider and the regional administrator for the region in which the provider's headquarters is located. In the case of out-of-state providers, this contact shall be with the regional administrator for the region where the county is located on whose behalf the contract is being negotiated. The Purchase of Service Provider Handbook shall be given to the provider at the beginning of the process of developing a contract.

c. Contract proposal development. When the regional administrator determines that a contract is to be developed, a project manager shall be assigned who shall assist in contract development and processing. The project manager shall assist the contractor in completing the contract proposal and fiscal information appropriate to the contract or contract amendment. This information shall include documentation that the conditions of participation are met. Form 470-0663, Iowa Purchase of Social Services Agency Contract Face Sheet, shall be completed at the same time as Form 470-0628, Iowa Purchase of Social Services Agency Contract, or Form 470-0630, Amendment or Renewal of the Iowa Purchase of Social Services Agency Contract, is prepared.

d. Contract proposal approval or rejection. Before a contract or contract amendment can be effective, it shall be signed by the following persons within the time frames provided:

(1) Authorized representative of the provider agency.

(2) Human service area administrator of the county in which the provider is located, within one week from receipt.

(3) Regional administrator of the region in which the provider is located, within one week from receipt.

(4) Chief, bureau of purchased services, within 30 days from receipt.

If the provider is located out of state, the contract or contract amendment shall be signed by the human service area administrator and regional administrator in the region where the county is located on whose behalf the contract is being negotiated.

The provider shall be given a notice and explanation in writing of delays in the process or of rejection of the proposal. Payment cannot be made until the contract is signed by the provider's authorized representative and the chief of the bureau of purchased services.

e. Criteria for rejection. The proposed contract or contract amendment may be rejected if one or more of the following criteria are present:

(1) The service is not needed by department clients.

(2) The service is not in the social services block grant plan for the regions or counties to be served by the program.

(3) Funds are not available for the service being proposed.

(4) The proposed contract does not meet applicable rules, regulations, or guidelines, including service definition.

(5) A county has requested that the department contract with the provider on its behalf, and the department in its sole discretion does not have sufficient resources to negotiate and process the contract or contract amendment.

(6) No county has requested that the department contract with the provider on its behalf or has requested the amendment.

f. Contract effective date. When the agreed-upon contract conditions have been met, the contract or contract amendment shall become effective the first of the month in which it is signed by the chief of the bureau of purchased services as long as all terms and conditions of the contract were met on the first of the month.

150.22(4) *Contract administration.*

a. Contract management. During the contract period the assigned project manager shall be the contract liaison between the department and the provider. The project manager shall be contacted on all interpretations and problems relating to the contract and shall follow the issues through to their resolution. The project manager shall also monitor performance under the contract, as provided for in the 28E agreement, and shall provide or arrange for technical assistance to improve the provider's performance, if needed. Report of On-Site Visit, Form 470-0670, may be used to monitor performance under the contract.

b. Contract amendment. The contract shall be amended only upon agreement of both parties. Amendment or Renewal of Iowa Purchase of Social Services Agency Contract, Form 470-0630, shall be used to amend the contract.

c. Contract renewal. A joint decision to pursue renewal of the contract must be made at least 60 days prior to the expiration date. Each contract shall be evaluated. The results of the evaluation shall be taken into consideration in the decision on renewal prior to renewal. This evaluation may involve use of the Monitoring and Evaluation Review Guide, Form 470-2571, or other evaluation tools specified in the contract. Desk Audit for Title VI and Section 504 Compliance, Form 470-2215, shall be completed by the provider.

d. Contract termination.

(1) Causes for termination during the period of the contract are:

1. Mutual agreement of the parties involved.
2. Demonstration that sufficient funds are unavailable to continue the services involved.
3. Failure to make required reporting.
4. Failure to make financial and statistical records available for review.
5. Failure to abide by the provisions of the contract.

(2) The provider or the department may terminate this contract without cause upon 30 days' notice. The department may terminate the contract upon 10 days' notice for cause except in the event of loss of licensure or imminent danger to clients. In the event of loss of license, the contract shall be terminated on the date the license is terminated or relinquished, without the need for notice. In the event of imminent danger to clients, the contract shall be terminated immediately upon notice.

(3) When notice of termination is required herein, it shall be provided by certified mail and is effective upon receipt as evidenced by the U.S. Postal Service return receipt card.

150.22(5) *Conditions of participation.* The provider shall meet the following standards:

a. Licensure, approval, or accreditation. The provider shall have any license, approval, and accreditation required by law, regulation or administrative rules, or standards of operation required by the state or the federal government before the contract can be effective. Out-of-state providers shall meet Iowa licensing standards related to treatment, professional staff-to-client ratio, and staff qualifications.

b. Signed contract. A contract can be effective only when signed by all parties required in 441—paragraph 150.22(3)*"d."*

c. Civil rights laws. The providers shall be in compliance with all federal, state and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

d. Title VI compliance. The provider shall be in compliance with Title VI of the 1964 Civil Rights Act and all other federal, state, and local laws and regulations regarding the provision of services, or have a written plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

e. Section 504 compliance. The provider shall be in compliance with Section 504 of the Rehabilitation Act of 1973 and with all federal, state, and local Section 504 laws and regulations, or have a written work plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, Plan Review Accessibility Checklist, Form 470-0149, and Section 504 Transition Plan: Structural Accessibility, Form 470-0150, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

f. Affirmative action. The provider shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

g. Abuse reporting. The provider shall have a written policy and procedure approved by the regional administrator or designee for reporting abuse or denial of critical care of dependent adults.

h. Confidentiality. The provider shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 441—Chapter 9. The provider shall have a written policy and procedure approved by the regional administrator or designee for maintaining individual client confidentiality including client record destruction.

i. Client appeals and grievances. Clients receiving service through a purchase of service contract have the right to appeal adverse decisions made by the county or the provider. The provider shall have a written policy and procedure approved by the regional administrator or designee for handling client appeals and grievances and shall provide information to clients about their rights to appeal. Client appeals of adverse decisions made by the county shall be made in accordance with the provisions of the county management plan developed pursuant to rule 441—25.21(225C).

j. Client reports. The provider shall maintain client records as specified below. The records shall be available for review during normal business hours by any of the following: authorized department or county personnel, the purchase of service fiscal consultant, and state, county or federal audit personnel.

(1) Provider service plan or individual program plan. Providers shall develop a written service plan or individual program plan for each client within 30 days of service initiation. The plan shall include a concise description of the situation or area which will be the focus of the service; statement of the goals to be achieved through the delivery of services; time-limited and measurable objectives which will lead to the attainment of the goal to be achieved; specific service components, frequency, and the assignment of responsibility for the provision of the components; and the month and year when it is estimated the client will be able to achieve the current goals and objectives. The provider service plan shall be updated in coordination with the central point of coordination or designee.

(2) Quarterly progress reports. Quarterly progress reports shall be sent to the central point of coordination or designee responsible for the client, unless waived by the county. The first report shall be submitted three months after service is initiated. Reports shall be submitted quarterly thereafter, unless provided for otherwise in rules for a specific service.

The progress report shall include a description of the specific service components provided, their frequency, and who provided them; the client's progress with respect to the goals and service objectives; and any recommended changes in the service plan or individual program plan. For all placement cases the report shall include interpretation of the client's reaction to placement, a summary of medical or dental services that were provided, a summary of educational or vocational progress and participation, and a summary of the involvement of the family with the client and the services.

Each unit of service for which payment is sought should be the subject of a written progress note.

(3) Termination of service summary. A termination of service summary shall be sent to the central point of coordination or designee responsible for the client within two weeks of service termination. The summary shall include the rationale for service termination and the impact of the service components on the client in relationship to the established goals and objectives.

k. Financial and statistical records. Each provider of service must maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department or the county.

(1) The records shall be available for review at any time during normal business hours by any of the following: authorized department or county personnel, the purchase of service fiscal consultant, and state, county or federal audit personnel.

(2) These records shall be retained for a period of five years after final payment.

l. Reports on financial and statistical records. Reports on financial and statistical records shall be submitted as required. Failure to do so within the required time limits is grounds for termination of the contract.

m. Maintenance of client records. Records for clients served through a purchase of service contract must be retained by the provider for a period of three years after service to the client terminates.

n. Provider charges. This contract may be negotiated on behalf of multiple counties. Each county may establish its own rate pursuant to this contract.

o. Special-purpose organizations. A provider may establish a separate, special-purpose organization to conduct certain of the provider's client-related or non-client-related activities. For example, a development foundation assumes the provider's fund-raising activity. Often, the provider does not own the special-purpose organization (e.g., a nonprofit, non-stock-issuing corporation), and has no common governing body membership. However, a special-purpose organization is considered to be related to a provider if:

(1) The provider controls the organization through contracts or other legal documents that give the provider the authority to direct the organization's activities, management, and policies; or

(2) The provider is, for all practical purposes, the primary beneficiary of the organization's activities. The provider should be considered the special-purpose organization's primary beneficiary if one or more of the following circumstances exist:

The organization has solicited funds on the provider's behalf with provider approval, and substantially all funds so solicited were contributed with intent of benefiting the provider.

The provider has transferred some of its resources to the organization, substantially all of whose resources are held for the benefit of the provider; or

The provider has assigned certain of its functions to a special-purpose organization that is operating primarily for the benefit of the provider.

p. Certification by department of transportation. Each service provider of public transit services shall submit Form 020107, Certification Application for Coordination of Public Transit Services, and a copy of "Certificate of Insurance" (an ACORD form or similar or self-insurance documentation) to the applicable project manager annually showing information regarding compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules 761—Chapter 910.

Failure to provide the required documentation for compliance or exemption is grounds for denial or termination of the contract.

q. Services provided. Services provided, as described in Form 470-0663, Iowa Purchase of Social Services Agency Contract Face Sheet, and attachments, shall at a minimum meet the rules found in the Iowa Administrative Code for a particular service or the contract may be terminated.

r. Bonding, indemnity and insurance clauses.

(1) Indemnity. The provider agrees that it will at all times during the existence of this contract indemnify and hold harmless the department and county against any and all liability, loss, damages, costs or expenses which the provider may hereafter sustain, incur or be required to pay:

1. By reason of any client's suffering personal injury, death or property loss or damages either while participating in or receiving from the provider the care and services to be furnished by the provider under this contract, or while on premises owned, leased, or operated by the provider, or while being transported in any vehicle owned, operated, leased, chartered, or otherwise contracted for by the provider or any officer, agency, or employee thereof.

2. By reason of any client's causing injury to or damage to another person or property during any time when the provider or any officer, agency or employee thereof has undertaken or is furnishing the care and service called for under this contract.

(2) Insurance. The provider agrees that in order to protect itself as well as the department and county under the indemnity agreement above, it will at all times during the term of the contract have and keep in force a liability insurance policy, verification of which shall accompany Form 470-0663, Iowa Purchase of Social Services Agency Contract Face Sheet. The provider agrees that all employees, volunteers, or any other person, other than employees of the department or the county acting within the scope of their employment in the department or the county, authorized to transport clients in privately owned vehicles, have liability insurance in force.

s. Renegotiation clause. In the event there is a revision of federal or state laws or regulations, or a change in the county management plan and the contract no longer conforms to those laws or regulations or the county plan, both parties shall review the contract and renegotiate those items necessary to conform with the new federal or state laws or regulations or changes to the county management plan.

150.22(6) *Establishment of rates.* The Financial and Statistical Report for Purchase of Service Contracts, Form 470-0664, is the basis for establishing the rates to be paid to all providers, including out-of-state providers, under an Iowa Purchase of Social Services Agency Contract, Form 470-0628. If, however, pursuant to the 28E agreement between the county and the department, the county has elected to use an alternative method of establishing rates for a provider, the county rate-setting methodology shall apply for rates for services provided by that provider to clients referred from that county.

State payment program rates for persons enrolled in the state payment program shall be established pursuant to 441—subrule 153.57(3).

150.22(7) *Financial and statistical report.* The Financial and Statistical Report for Purchase of Service Contracts, Form 470-0664, shall be completed by those providers as required in subrule 150.22(6). The reports shall be based on the following rules.

a. Accounting procedures. Financial information shall be based on the agency's financial records. When the records are not kept on an accrual basis of accounting, the provider shall make the adjustments necessary to convert the information to an accrual basis for reporting. Providers who are multiple program agencies shall submit a cost allocation schedule prepared in accordance with recognized methods and procedures.

(1) Direct program expense shall include all direct client contact personnel involved in a program including the time of a supervisor of a program, or the apportioned share of the supervisor's time when the supervisor supervises more than one program.

(2) Expenses other than salary and fringe benefits shall be charged as direct program expenses when the expenses are identifiable to a program. They may also be charged as direct program expenses when a method of distribution acceptable to the department is maintained on a consistent basis.

(3) Occupancy expenses shall be allocated to programs on a space utilization formula. The space utilization formula may be used for salaries and fringes of building maintenance and janitorial-type personnel.

(4) All expenses which relate jointly to two or more programs shall be allocated to program service costs by utilizing a cost allocation method which fairly distributes costs to the related programs. Any expenses which relate directly to a particular program shall be reflected as such. All maintenance costs shall be charged directly or allocated proportionately to the related programs affected.

(5) Indirect program service costs shall be distributed over all applicable services.

(6) Expenses such as supplies, conferences, and similar expenses that cannot be directly related to a program shall be charged to indirect program service costs.

(7) A multiservice agency shall establish a method acceptable to the department of distributing indirect program service costs.

(8) Income received from fund-raising efforts or donations shall be reported as revenue on the financial and statistical report and used to offset fund-raising costs. Fund-raising costs remaining after the offset shall be an unallowable cost.

All contributions shall be accompanied by a schedule showing the contribution and anticipated designation by the agency. No private moneys contributed to the agency shall be included by the department in its reimbursement rate determination unless these moneys are contributed for services provided to specific individuals for whom the reimbursement rate is established by the department.

(9) When an agency has a certified public accounting firm perform an audit of its financial statements, the resulting audit report shall follow one of the uniform audit report formats recommended by the American Institute of Certified Public Accountants. These formats are specified in the industry audit guide series, "Audits of Voluntary Health and Welfare Organizations," prepared by the Committee on Voluntary Health and Welfare Organizations, American Institute of Certified Public Accountants, New York, 1974. A copy of the certified audit report shall be submitted to the department within 60 days of receipt.

(10) All expenses reported on Form 470-0664 shall be supported by an agency's general ledger and documentation on file in the agency's office.

b. Failure to maintain records. Failure to maintain records adequate to support the Financial and Statistical Report for Purchase of Service Contracts, Form 470-0664, may result in termination of the contract. These records include, but are not limited to:

(1) Reviewable, legible census reports.
(2) Payroll information.
(3) Capital asset schedules.
(4) All canceled checks, deposit slips, invoices (paid and unpaid).
(5) Audit reports (if any).
(6) Board of directors' minutes.

c. Submission of reports. The financial and statistical report shall be submitted to the department no later than three months after the close of the provider's established fiscal year. At least one week must be allowed prior to this deadline for the project manager to review the report and transmit it to the department's bureau of purchased services. Failure to submit the report in time without written approval from the chief of the bureau of purchased services may reduce payment to 75 percent of the current rate. Failure to submit the report within six months of the end of the fiscal year shall be cause for terminating the contract.

d. Rate modification. Modification of rates shall be made when required by changes in licensing requirements, changes in the law, or amendments to the contract. Requests for modification of a rate may be made when changes are because of program expansion or modification and have the approval of the region where services are provided. Even if there is a modification of the rate, the modified rate is still subject to any maximum established in any law or rule.

e. Payment of new rate. When rates are established by the department, new rates shall be effective for services provided beginning the first day of the second calendar month after receipt by the purchase of service section of a report sufficient to establish rates or, by mutual agreement, new rates shall be effective the first day of the month following completion of the fiscal review. Failure to submit a report sufficient to establish a rate will result in the effective date being delayed. At least one week shall be allowed prior to the deadline in paragraph 150.22(7)*"c"* above for the project manager to review the report and transmit it to central office of the department. If the county has elected to use an alternative method of establishing rates, the effective date of any new rates shall be determined by the county.

f. Exceptions to costs. Exceptions to costs identified by the bureau of purchased services or its fiscal consultant shall be communicated to the provider in writing.

g. Accrual basis. Providers not using the accrual basis of accounting shall adjust amounts to the accrual basis when the financial and statistical report is completed. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expenses.

h. Census data. Documentation of units of service provided which identifies the individual client shall be available on a daily basis and summarized on a monthly report. The documentation and reports shall be retained by the provider for review at the time the expenditure report is prepared and reviewed by the department's fiscal consultant.

i. Opinion of accountant. The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate noncompliance with reporting instructions.

j. Revenues. When the Financial and Statistical Report is completed, revenues shall be reported as recorded in the general books and records adjusted for accruals. Expense recoveries shall be reflected as revenues.

k. Capital asset use allowance (depreciation) schedule. The Capital Asset Use Allowance Schedule shall be prepared using the guidelines for provider reimbursement in the Medicare and Medicaid Guide, December 1981.

l. The following expenses shall not be allowed:

(1) Fees paid directors and nonworking officers' salaries.

(2) Bad debts.

(3) Entertainment expenses.

(4) Memberships in recreational clubs, paid for by an agency (country clubs, dinner clubs, health clubs, or similar places) which are primarily for the benefit of the employees of the agency.

(5) Legal assistance on behalf of clients.

(6) Costs eligible for reimbursement through the medical assistance program.

(7) Food and lodging expenses for personnel incurred in the city or immediate area surrounding the personnel's residence or office of employment, except when the specific expense is required by the agency and documentation is maintained for audit purposes. Food and lodging expenses incurred as part of programmed activities on behalf of clients, their parents, guardians, or consultants are allowable expenses when documentation is available for audit purposes.

(8) Business conferences and conventions. Meeting costs of an agency which are not required in licensure.

(2) "Necessary" requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably required to operate a program, and be reduced by investment income except where the income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds.

(3) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

s. Rate formula. Paragraph 150.22(7)*"p"* notwithstanding, when rates are determined based on cost of providing the service involved, they will be calculated according to the following mathematical formula:

$$\frac{\text{Net allowable expenditures}}{\text{Effective utilization level}} \quad \text{Reimbursement factor} = \text{Base Rate}$$

(1) Net allowable expenditures are those expenditures attributable to service to clients which are allowable as set forth in subrule 150.22(7), paragraphs *"a"* to *"r."*

(2) Effective utilization level shall be 80 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program.

(3) Inflation factor is the percentage which will be applied to develop payment rates consistent with current policy and funding of the department. The inflation factor is intended to overcome the time lag between the time period for which costs were reported and the time period during which the rates will be in effect. The inflation factor shall be the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.

(4) Base rate is the rate which is developed independent of any limits which are in effect. Actual rates paid are subject to applicable limits or maximums.

150.22(8) *Client eligibility and referral.* To receive services through the purchase of service system, clients shall be determined eligible and be formally referred by the county. The county is not obligated to make payment for services provided prior to the client's application, eligibility determination, and referral.

The following forms shall be used by the county to authorize services:

Form 470-0622, Referral of Client for Purchase of Social Services, or the process authorized by the referring county.

150.22(9) *Client fees.* The provider shall agree not to require any fee for service from clients referred pursuant to the contract unless a fee is required by the referring county and is consistent with federal and state regulation.

The provider shall collect fees due from clients, if requested by the referring county. The provider shall maintain records of fees collected, and these records shall be available for audit by the referring county or its representative. When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. Reasonable effort to collect means an original billing and two follow-up notices of nonpayment. When the second notice of nonpayment is sent, the provider shall send a copy of the notice to the central point of coordination or designee.

150.22(10) *Billing procedures.* At the end of each month the provider agency shall prepare Form 470-0020, Purchase of Service Provider Invoice, or the form agreed upon between the provider and the referring county, for contractual services provided by the agency during the month.

Separate invoices shall be prepared for each county from which clients were referred. Complete invoices shall be sent to the county responsible for the client for approval and forwarding for payment. More frequent billings may be permitted on an exception basis by the referring county.

a. Time limit for submitting vouchers, invoices, or claims. The time limit for submission of original vouchers, invoices, or claims shall be three months from the date of service.

b. Resubmittals of rejected claims. Valid claims which were originally submitted within the time limit specified in paragraph *"a"* but were rejected because of an error shall be resubmitted without regard to time frames.

150.22(11) *Review of actions.* A provider who is adversely affected by a departmental decision may request a review by the department. A review request may cause the action to be stopped pending the outcome of the review, except in cases where it can be documented that to do so would be detrimental to the health and welfare of clients. The procedure for review is:

a. The provider shall send a written request for review to the project manager responsible for the contract within 10 days of receipt of the decision in question. This request shall document the specific area in question and the remedy desired. The project manager shall provide a written response within 10 days.

b. When dissatisfied with the response, the provider shall submit to the regional administrator within 10 days the original request, the response received, and any additional information desired. The regional administrator shall study the concerns and the action taken, and render a decision in writing within 14 days. A meeting with the provider may be held to clarify the situation.

c. If still dissatisfied, the provider may within 10 days request a review by the chief of the bureau of purchased services. The request for review should include copies of material from paragraphs *"a"* and *"b"* above. The bureau chief shall review the issues and positions of the parties involved and provide a written decision within 14 days. A meeting may be held with the provider, project manager, and regional administrator or designee.

d. The provider may appeal this decision within 10 days to the director of the department, who shall issue the final department decision within 14 days.

The department shall notify the applicable counties of any request for review and the decision reached in response to the request.

A provider who is adversely affected by a county decision may request a review in accordance with procedures established by the county pursuant to the approved county management plan.

150.22(12) *Review of financial and statistical reports.* The provider's general financial records shall be available for review by authorized department and county personnel, the purchase of service fiscal consultant, and state, county, and federal audit personnel. The purpose of the review is to determine if expenses reported for the purpose of establishing the rate have been handled as required under subrule 150.22(7). Representatives shall provide proper identification and shall use generally accepted auditing principles. The reviews may include an on-site visit to the provider, the provider's central accounting office, the offices of the provider's agents, a combination of these, or, by mutual decision, to other locations.

150.22(13) *Notification of changes.* The provider shall, prior to implementation whenever possible, notify the assigned project manager of any changes in the provider's organization or delivery of service which may affect compliance with any terms and conditions of the contract. If prior notice is not possible, the provider shall notify the project manager within one working day of the change.

These rules are intended to implement Iowa Code section 234.6 and 1999 Iowa Acts, House File 760, section 33, subsection 6.

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106.11(2) *Eligibility.* Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nurseries, and commercial nut growers) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding $1,000 in a single growing season, or the likelihood that damage will exceed $1,000 if preventive action is not taken, or a documented history of at least $1,000 damage annually in previous years.

106.11(3) *Depredation management plans.* Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by the field employee in consultation with the producer.

a. The goal of the management plan will be to reduce damage below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, temporary fencing, allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of these measures, plus permanent fencing where necessary. Fencing will not be required if the cost of a fence exceeds $1,000.

(3) Depredation permits to shoot deer may be issued to temporarily reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the field employee of the wildlife bureau and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

106.11(4) *Depredation permits.* Three types of permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to hunters for the regular deer license fee to be used during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued in blocks of five licenses up to the number specified in the management plan.

(2) Depredation licenses may be sold to individuals designated by the producer as having permission to hunt. No individual may obtain more than two depredation licenses. Licenses will be sold by designated department field employees.

(3) Depredation licenses issued to the producer or producer's family member may be the one free license for which the producer family is eligible annually.

(4) Depredation licenses will be valid only for antlerless deer, unless otherwise specified in the management plan, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(5) Hunters may keep any deer legally tagged with a depredation license.

(6) All other regulations for the hunting season specified on the license will apply.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation), and to other agricultural producers.

(1) Deer shooting permits will be issued at no cost to the producer.

(2) The producer or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops will allow taking deer from August 1 through March 31. Permits issued for August 1 through August 31 shall be valid only for taking antlered deer. Permits issued for September 1 through March 31 may be valid for taking antlered deer, antlerless deer or any deer, depending on the nature of the damage. Permits available to other agricultural producers will allow taking deer from September 1 through October 31.

(4) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(5) Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.

(6) Shooters must wear blaze orange and comply with all other applicable laws and regulations pertaining to shooting and hunting.

c. Agricultural depredation permits. Agricultural depredation permits will be issued to a resident landowner or designated tenant who has sustained at least $1,000 of damage to agricultural crops if they are cooperating with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to reduce crop damage by deer or have an approved DNR deer depredation plan.

(1) Agricultural depredation permits will be issued to the resident landowner or designated tenant at no cost and shall be valid only on the farm unit where the damage is occurring.

(2) Permits issued to the resident landowner or designated tenant shall allow the taking of antlerless deer from September 1 through November 30. The number of permits issued to individual landowners or tenants will be determined by a department depredation biologist and will be part of the deer depredation management plan.

(3) Deer taken on these permits must be taken by the resident landowner or the designated tenant only.

(4) Times, places, and other restrictions will be specified on the permit.

(5) Shooters must wear blaze orange and comply with all other applicable laws and regulations.

d. Deer depredation licenses and shooting permits will be valid only on the land where damage is occurring or the immediately adjacent property. Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

e. Depredation licenses, agricultural depredation permits and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

f. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd.

106.11(5) *Disposal.* It shall be the producer's responsibility to see that all deer are field dressed, tagged with a DNR salvage tag, and removed immediately from the field. Dead deer must be handled for consumption, and the producer must coordinate disposal of deer offered to the public through the local conservation officer. Charitable organizations will have the first opportunity to take deer offered to the public. No producer can keep more than two deer taken under special depredation permits. By express permission from a DNR enforcement officer, the landowner may dispose of deer carcasses through a livestock sanitation facility.

571—106.12(481A) Eligibility for free landowner/tenant deer licenses.

106.12(1) *Who qualifies for free deer hunting license.* Owners or tenants of a farm unit, or a member of an owner's or tenant's family that resides with the owner or tenant, are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

106.12(2) *Who qualifies as a tenant.* A "tenant" is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner's family, including the landowner's spouse or child in some circumstances, or a third party not a family member. The tenant does not have to reside on the farm unit.

106.12(3) *What "actively engaged in farming" means.* Landowners and tenants are "actively engaged in farming" if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or kind. A farm manager or other third party that operates a farm for a fee or a laborer that works on the farm for a wage and is not a family member does not qualify as a tenant.

106.12(4) *Landowners who qualify as active farmers.* These landowners:

a. Are the sole operator of a farm unit (along with immediate family members), or

b. Make all farm operations decisions, but contract for custom farming or hire labor to do some or all of the work, or

c. Participate annually in farm operations decisions such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or

d. Raise specialty crops such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or

e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

106.12(5) *Landowners who do not qualify.* These landowners:

a. Use a farm manager or other third party to operate the farm, or

b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

106.12(6) *Where free licenses are valid.* Free licenses are valid only on that portion of the farm unit that is in a zone open to deer hunting. A "farm unit" is all parcels of land that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. "Agricultural purposes" includes but is not limited to field crops, livestock, horticultural crops (e.g., nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

106.12(7) *How many free licenses may be obtained.* The maximum number of free licenses per farm unit is two, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner's family may obtain only one license. A tenant or the tenant's family is entitled to only one free license even if the tenant farms land for more than one landowner.

571—106.13(481A) Special late season deer hunt. Rescinded IAB 6/17/98, effective 7/22/98.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.24.

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21.3(3) *Termination.* Any employing unit which terminates for any reason shall provide IPERS with the following:

a. Complete name and address of the dissolved entity;

b. Assigned IPERS account number;

c. Last date on which wages were paid;

d. Date on which the entity dissolved;

e. Reason for the dissolution;

f. Whether or not the entity expects to pay wages in the future; and

g. Name and address of absorbed employing unit if applicable.

21.3(4) *Reports of dissolved or absorbed employers.* An employing unit that has been dissolved or entirely absorbed by another employing unit is required to file a quarterly or monthly report with IPERS through the last date on which it legally existed. Any wages paid after the legal date of dissolution are reported under the account number assigned to the new or successor employing unit, if any.

21.3(5) *IPERS account number.* Each reporting unit is assigned an IPERS account number. This number should be used on all correspondence and reporting forms directed to IPERS.

This rule is intended to implement Iowa Code sections 97B.5, 97B.9 to 97B.12, 97B.15 and 97B.41(8)*"a."*

581—21.4(97B) Definition of wages for employment during the calendar quarter—other definitions. Unless the context otherwise requires, terms used in these rules, regulations, interpretations, forms and other official pronouncements issued by IPERS shall have the following meaning:

21.4(1) *"Wages"* means all compensation earned by employees, including vacation pay; sick pay; bonus payments; back pay; dismissal pay; amounts deducted from employee's pay at the employee's discretion for tax-sheltered annuities, dependent care and cafeteria plans; and the cash value of wage equivalents.

a. Vacation pay. The amount paid an employee during a period of vacation.

b. Sick pay. Payments made for sick leave which are a continuation of salary payments.

c. Workers' compensation, unemployment, short-term and long-term disability payments. Wages do not include workers' compensation payments, unemployment payments, or short-term and long-term disability payments made by an insurance company or third-party payer, such as a trust. Wages include payments for sick leave which are a continuation of salary payments if paid from the employer's general assets, regardless of whether the employer labels the payments as sick leave, short-term disability, or long-term disability.

d. Compensatory time. Wages include amounts paid for compensatory time taken in lieu of regular work hours and when paid as a lump sum. However, compensatory time paid in a lump sum shall not exceed 240 hours per employee per year or any lesser number of hours set by the employer. Each employer shall determine whether to use the calendar year or a fiscal year other than the calendar year when setting its compensatory time policy.

e. Banked holiday pay. If an employer codes banked holiday time as holiday or vacation pay, the banked holiday pay will be treated as vacation pay when calculating covered wages. If an employer codes banked holiday pay as compensatory time, it will be combined with other compensatory time and subject to the time limits set forth in paragraph *"d"* above.

f. Special lump sum payments. Wages do not include special lump sum payments made during or at the end of service as a payoff of unused accrued sick leave or of unused accrued vacation. Wages do not include special lump sum payments made during or at the end of service as an incentive to retire early or as payments made upon dismissal, severance, or a special bonus payment intended as an early retirement incentive. The foregoing items are excluded whether paid in a lump sum or in a series of installment payments. Wages do not include catastrophic leave paid in a lump sum.

g. Other special payment arrangements. Wages do not include amounts paid pursuant to special arrangements between an employer and employee whereby the employer pays increased wages and the employee reimburses the employer or a third-party obligor for all or part of the wage increase. This includes, but is not limited to, the practice of increasing an employee's wages by the employer's share of health care costs and having the employee reimburse the employer or a third-party provider for such health care costs. Wages do not include amounts paid pursuant to a special arrangement between an employer and employee whereby wages in excess of the covered wage ceiling for a particular year are deferred to one or more subsequent years. Wages do not include employer contributions (excluding employee contributions) to a plan, program, or arrangement whereby the amounts contributed are not included in the member's federal taxable income.

Employers and employees that knowingly and willfully enter into the types of arrangements described in this subrule without making the appropriate wage adjustments, thereby causing an impermissible increase in the payments authorized under Iowa Code chapter 97B, may be prosecuted under Iowa Code section 97B.40 for engaging in a fraudulent practice. If IPERS determines that its calculation of a member's monthly benefit includes amounts paid under an arrangement described in this subrule, IPERS shall recalculate the member's monthly benefit, after making the appropriate wage adjustments. IPERS may recover the amount of overpayments caused by the inclusion of the payments described in this subrule from the monthly amounts payable to the member or amounts payable to the member's successor(s) in interest, regardless of whether or not IPERS chooses to prosecute the employers and employees under Iowa Code section 97B.40.

h. Wage equivalents. Items such as food, lodging and travel pay which are includable as employee income, if they are paid as compensation for employment. The basic test is whether or not such wage equivalent was given for the convenience of the employee or employing unit. Wage equivalents are not reportable under IPERS if given for the convenience of the employing unit or are not reasonably quantifiable. Wage equivalents that are not included in the member's federal taxable income shall be deemed to be for the convenience of the employer. A wage equivalent is not reportable if the employer certifies that there was a substantial business reason for providing the wage equivalent, even if the wage equivalent is included in the employee's federal taxable income. Wages paid in any other form than money are measured by the fair market value of the meals, lodging, travel or other wage equivalents.

i. Members of the general assembly. Wages for a member of the general assembly means the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary. Wages include per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages do not include expense payments except that, effective July 1, 1990, wages include daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly. Such nontravel expenses of office during a session of the general assembly shall not exceed the maximum established by law for members from Polk County. A member of the general assembly who has elected to participate in IPERS shall receive four quarters of service credit for each calendar year during the member's term of office, even if no wages are reported in one or more quarters during a calendar year.

j. Wages for certain testing purposes. Wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include a member's gross wages, excluding nontaxable fringe benefits and all amounts placed in tax-deferred vehicles including, but not limited to, plans established pursuant to Internal Revenue Code Sections 125, 401(k), 403, and 457, and excluding IPERS contributions paid after December 31, 1994, by employers on behalf of employees. Effective January 1, 1996, the annual wages of a member taken into account for testing purposes under any of the applicable sections of Internal Revenue Code shall not exceed the applicable amount set forth in Internal Revenue Code Section 401(a)(17), and any regulations promulgated pursuant to that section. The foregoing sentence shall not be deemed to permit the maximum amount of wages of a member taken into account for any other purpose under Iowa Code chapter 97B to exceed the maximum covered wage ceiling under Iowa Code section 97B.1A(25). Effective January 1, 1998, wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include elective deferrals placed in tax-deferred plans established pursuant to Internal Revenue Code Sections 125, 401(k), 403, and 457 by employers on behalf of employees.

21.4(2) Wages are reportable in the quarter in which they are actually paid to the employee, except in cases where employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, in which case the employer shall file wage adjustment reporting forms with IPERS allocating said wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

Wages received by employees who have the right to accelerate or defer the receipt of wages (e.g., by shifting from a 12-month to a 10-month wage payment schedule, or vice versa) must be reported in the quarter the wages otherwise would normally have been received, if such rights are offered primarily for purposes of increasing a member's three-year average covered wage (e.g., by offering the right to shift from a 12-month to a 10-month wage payment schedule only to employees who are retiring or terminating employment).

An employer cannot report wages as having been paid to employees as of a quarterly reporting date if the employee has not actually or constructively received the payments in question. For example, wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on June 30 would be reported as second quarter wages, but wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on July 3 would be reported as third quarter wages.

IPERS contributions must be calculated on the gross amount of a back pay settlement before the settlement is reduced for taxes, interim wages, unemployment compensation, and similar mitigation of damages adjustments. IPERS contributions must be calculated by reducing the gross amount of a back pay settlement by any amounts not considered covered wages such as, but not limited to, lump sum payments for medical expenses.

Notwithstanding the foregoing, a back pay settlement that does not require the reinstatement of a terminated employee and payment of the amount of wages that would have been paid during the period of severance (before adjustments) shall be treated by IPERS as a "special lump sum payment" under subrule 21.4(1) above and shall not be covered.

21.4(3) One quarter of service will be credited for each quarter in which a member is paid covered wages.

a. "Covered wages" means wages of a member during periods of service that do not exceed the annual covered wage maximum. Effective January 1, 1997, and for each subsequent calendar year, covered wages shall not exceed $160,000 or the amount permitted for that year under Section 401(a)(17) of the Internal Revenue Code.

b. Effective January 1, 1988, covered wages shall include wages paid a member regardless of age. (From July 1, 1978, until January 1, 1988, covered wages did not include wages paid a member on or after the first day of the month in which the member reached the age of 70.)

c. If a member is employed by more than one employer during the calendar year, the total amount of wages paid shall be included in determining the annual covered wage maximum. If the amount of wages paid to a member by several employers during a calendar year exceeds the covered wage limit, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11. See subrule 21.8(1), paragraph *"h."*

This rule is intended to implement Iowa Code section 97B.1A(25).

581—21.5(97B) Identification of employees covered by the IPERS retirement law.

21.5(1) Definition of employee.

a. A person is in employment as defined by Iowa Code chapter 97B if the person and the covered employer enter into a relationship which both recognize to be that of employer/employee. A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration. An employee is an individual who is subject to control by the agency for whom the individual performs services for wages. The term control refers only to employment and includes control over the way the employee works, where the employee works and the hours the employee works. The control need not be actually exercised for an employer/employee relationship to exist; the right to exercise control is sufficient. A public official may be an "employee" as defined in the agreement between the state of Iowa and the Secretary of Health, Education and Welfare, without the element of direction and control.

Effective July 1, 1994, a person who is employed in a position which allows IPERS coverage to be elected as specified in Iowa Code section 97B.1A(8) must file a one-time election form with IPERS for coverage. If the person was employed before July 1, 1994, the election must be postmarked on or before July 1, 1995. If the person was employed on or after July 1, 1994, the election must be postmarked within 60 days from the date the person was employed. Coverage will be prospective from the date the election is approved by IPERS. The election, once filed, is irrevocable and membership continues until the member terminates covered employment. The election window does not allow members who had been in coverage to elect out.

Effective July 1, 1994, members employed before that date as a gaming enforcement officer, a fire prevention inspector peace officer, or an employee of the division of capitol police (except clerical workers), may elect coverage under Iowa Code chapter 97A in lieu of IPERS. The election must be directed to the board of trustees established in Iowa Code section 97A.5 and postmarked on or before July 1, 1995. Coverage under IPERS will terminate when the board of trustees approves the election. The election, once received by the board of trustees, is irrevocable. If no election is filed by that date, the member will remain covered by IPERS until termination of covered employment. The election window does not allow a member who previously elected out of IPERS to reverse the decision and become covered under IPERS.

Effective January 1, 1999, new hires who may elect out of IPERS coverage shall be covered on the date of hire and shall have 60 days to elect out of coverage in writing using IPERS' forms. Notwithstanding the foregoing, employees who had the right to elect IPERS coverage prior to January 1, 1999, but did not do so, shall be covered as of January 1, 1999, and shall have until December 31, 1999, to elect out of coverage.

Employment as defined in Iowa Code chapter 97B is not synonymous with IPERS membership. Some classes of employees are excluded under Iowa Code section 97B.1A(8)*"b"* from membership by their nature. The following subparagraphs are designed to clarify the status of certain employee positions.

(1) Effective January 1, 1999, elected officials in positions for which the compensation is on a fee basis, elected officials of school districts, elected officials of townships, and elected officials of other political subdivisions who are in part-time positions are covered by IPERS unless they elect out of coverage. An elected official who becomes covered under this chapter may later terminate membership by informing IPERS in writing of the expiration of the member's term of office, or if a member of the general assembly, of the intention to terminate coverage. An elected official does not terminate covered employment with the end of each term of office if the official has been reelected for the same position. If elected for another position, the official shall be covered unless the official elects out of coverage.

(28) Effective July 1, 1994, volunteer firefighters and special police officers are considered temporary employees and will be covered if they meet the requirements of 581 IAC 21.5(1)*"a"*(13).

(29) Residents or inmates of county homes are excluded.

(30) Members of the state transportation commission, the board of parole, and the state health facilities council are included unless they elect out of coverage.

(31) Employees of an interstate agency established under Iowa Code chapter 28E, and similar enabling legislation in an adjoining state if the city had made contributions to the system for employees performing functions which are transferred to the interstate agency shall be considered employees of the city for the sole purpose of membership in IPERS, although the employer contributions for those employees are made by the interstate agency.

(32) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in Iowa Code chapter 372 or 420 are included unless they elect out of coverage.

(33) Employees appointed by the state board of regents are covered unless, at the discretion of the state board of regents, they elect coverage in a retirement system qualified by the state board of regents.

(34) School employees who work in additional positions along with normal duties with the same employer will be considered employees until all of their compensated duties to their employer cease. (Examples include teacher/coach; teacher/summer driver's education instructor; and Phase I, II, and III employment.)

(35) "Adjunct instructors" employed by a community college or university are excluded from coverage. Adjunct instructors are persons employed by a community college or university without a continuing contract and whose teaching load does not exceed one-half time for two full semesters or three full quarters for the calendar year. The determination of whether a teaching load exceeds one-half time shall be based on the number of credit hours or noncredit contact hours that the community college or university considers to be a full-time teaching load for a regular full semester or quarter, as the case may be. In determining whether an adjunct instructor is a covered employee, no credit shall be granted for teaching periods of shorter duration than a regular semester or regular quarter (such as summer semesters), regardless of the number of credit or contact hours assigned to that period. If there is no formal severance, an adjunct instructor who becomes a covered employee will remain a covered employee until that person completes four consecutive calendar quarters in which no services are performed for that covered employer after the last covered calendar quarter. Notwithstanding the foregoing sentence, no service credit will be granted to any adjunct instructor who has become a covered employee under this rule for any calendar quarter in which no covered wages are reported unless the adjunct instructor is on an approved leave of absence.

(36) Effective July 1, 1992, enrollees of a senior community service employment program authorized by Title V of the Older Americans Act and funded by the United States Department of Labor are not covered unless: (a) both the enrollee and the covered employer elect coverage; or (b) the enrollee is currently contributing to IPERS. A covered employer is defined as the host agency where the enrollee is placed for training.

(37) Effective July 1, 1994, employees of area agencies on aging are excluded from coverage if the area agency has provided for participation by all of its eligible employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code. If an area agency on aging does not have or terminates participation in an alternative plan, coverage under IPERS shall begin immediately.

(38) Effective July 1, 1994, arson investigators are no longer covered under IPERS. They were transferred to public safety peace officers' retirement, accident and disability system.

(39) Persons who meet the requirements of independent contractor status as determined by IPERS using the criteria established by the federal Internal Revenue Service are not included.

(40) Effective July 1, 1994, a person employed on or after that date for certain public safety positions is excluded from IPERS coverage. These positions are gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities, fire prevention inspector peace officers, and employees of the division of capitol police (except clerical workers).

(41) Employees of area community colleges are included unless they elect coverage under an alternative system pursuant to a one-time irrevocable election.

(42) Volunteer emergency personnel, such as ambulance drivers, are considered temporary employees and will be covered if they meet the requirements of 581 IAC 21.5(1)*"a"*(13). Persons who meet such requirements will be covered under the protection occupation requirements of Iowa Code section 97B.49(16) if they are considered firefighters by their employers; otherwise they are covered under Iowa Code section 97B.11.

(43) Employees of the Iowa department of public safety hired pursuant to Iowa Code chapter 80 as peace officer candidates are excluded from coverage.

(44) Persons employed through any program described in Iowa Code section 15.225, subsection 1, and provided by the Iowa conservation corps shall not be covered.

(45) Appointed and full-time elective members of boards and commissions who receive a set salary shall be covered. Effective January 1, 1999, part-time elective members of boards and commissions not otherwise described in these rules who receive a set salary are included unless they elect out of coverage. Members of boards, other than county boards of supervisors, and commissions, including appointed and elective full-time and part-time members, who receive only per diem and expenses shall not be covered.

(46) Persons receiving rehabilitation services in a community rehabilitation program, rehabilitation center, sheltered workshop, and similar organizations whose primary purpose is to provide vocational rehabilitation services to target populations shall not be covered.

(47) Persons who are members of a community service program authorized under and funded by grants made pursuant to the federal National and Community Service Act of 1990 shall not be covered.

(48) Persons who are employed by professional employment organizations, temporary staffing agencies, and similar noncovered employers and are leased to covered employers shall be excluded. Notwithstanding the foregoing, persons who are employed by a covered employer and leased to a noncovered employer shall be covered.

(49) Effective July 1, 1999, persons performing referee services for varsity and junior varsity athletic events for which a license is needed from the Iowa high school athletic association shall be excluded from coverage.

b. Each employer shall ascertain the federal social security account number of each employee subject to IPERS.

c. Rescinded IAB 7/5/95, effective 8/9/95.

21.5(2) The employer shall report the employee's federal social security account number in making any report required by IPERS with respect to the employee.

21.5(3) to **21.5(6)** Rescinded IAB 7/22/92, effective 7/2/92.

21.5(7) Effective July 1, 1996, an employee may actively participate in IPERS and another retirement system supported by public funds if the person does not receive credit under both IPERS and such other retirement system for any position held.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.42, 97B.42A, 97B.42B, 97B.49C, and 97B.52A.

581—21.6(97B) Wage reporting and payment of contributions by employers.

21.6(1) Any public employing unit whose combined employer/employee IPERS contribution tax equals or exceeds $100 per month is required to pay the tax on a monthly basis. All other employing units are required to file wage reports and pay the contribution tax on a quarterly basis. When IPERS becomes aware of the correct payment and reporting status of an employing unit, IPERS will send to the reporting official a supply of the employer remittance advice forms.

21.6(2) Each periodic wage reporting form must include all employees who earned reportable wages or wage equivalents under IPERS. If an employee has no reportable wage in a quarter but is still employed by the employing unit, the employee should be listed with zero wages. If the total amount of employer and employee contributions is $1 or less, wages shall be reported as zero for that member in that quarter.

21.6(3) All checks in payment of the total contribution tax shall be made payable to the Iowa Public Employees' Retirement System and mailed with the employer remittance advice to IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117.

21.6(4) For employers filing quarterly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the calendar quarter in which the wages were paid.

For employers filing monthly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the month in which wages were paid.

Any employer filing monthly or quarterly employer remittance advice forms for two or more entities shall attach to each remittance form the checks covering the contributions due on that form. The combining of contributions due for payment from two or more entities into one check or multiple checks will not be accepted. Improperly paid contributions are considered as unpaid. Upon the request of the employer, IPERS may grant a waiver of the requirement which prohibits the combining of contributions. A single entity which has several accounts will be required to report all wages under one main account effective January 1, 1995.

21.6(5) A request for an extension of time to pay a contribution may be granted by IPERS for good cause if presented before the due date, but no extension shall exceed 30 days after the end of the calendar quarter. If an employer who has been granted an extension fails to pay the contribution on or before the end of the extension period, interest shall be charged and paid from the original due date as if no extension had been granted.

To establish good cause for an extension of time to pay, the employer must show that the failure to pay was not due to mere negligence, lack of ordinary care or attention, carelessness or inattention. The employer must affirmatively show that it did not pay timely because of some occurrence beyond the control of the employer.

21.6(6) When an employer has no reportable wages or no wages to report during the applicable reporting period, the periodic wage reporting document should be marked "no reportable wages" or "no wages" and returned to IPERS. When no employer's wage report is made, the employing unit's account is considered delinquent for the reporting period until the report is filed.

21.6(7) Substitute forms may be used if they meet all the IPERS reporting requirements and the employing unit receives advance approval from IPERS.

21.6(8) Magnetic tape reporting may be used by an employer after submitting a written request to IPERS. When the request is received, IPERS will send the employer a copy of the specifications for this type of reporting.

21.6(9) Contribution rates. The following contribution rate schedule, payable on the covered wage of the member, is determined by the position or classification and the occupation class code of the member.

a. All covered members, except those identified in 21.6(9)*"b"* and *"c."*

(1) Member's rate—3.7%.

(2) Employer's rate—5.75%.

b. Sheriffs, deputy sheriffs, and airport firefighters, effective July 1, 1999.

(1) Member's rate—5.69%.

(2) Employer's rate—8.54%.

c. Members employed in a protection occupation, effective July 1, 1999.

(1) Member's rate—5.58%.

(2) Employer's rate—8.38%.

d. Members employed in a "protection occupation" shall include:

(1) Conservation peace officers.

(2) Effective July 1, 1994, a marshal in a city not covered under Iowa Code chapter 400, or a firefighter or police officer of a city not participating under Iowa Code chapter 410 or 411. (See definitions of employee in subrule 21.5(1).)

Effective January 1, 1995, part-time police officers will be included.

(3) Correctional officers as provided for in Iowa Code section 97B.49B.

Employees who, prior to December 22, 1989, were in a "correctional officer" position but whose position is found to no longer meet this definition on or after that date, shall retain coverage, but only for as long as the employee is in that position or another "correctional officer" position that meets this definition. Movement to a position that does not meet this definition shall cancel "protection occupation" coverage.

(4) Airport firefighters employed by the military division of the department of public defense. Effective July 1, 1994, airport firefighters employed by the military division of the department of public defense shall pay the same contribution rate, and receive benefits under the same formula, as sheriffs and deputy sheriffs. Service under this subrule includes all membership service in IPERS as an airport firefighter.

(5) Airport safety officers employed under Iowa Code chapter 400 by an airport commission in a city of 100,000 population or more.

(6) Rescinded IAB 7/5/95, effective 8/9/95.

(7) Effective July 1, 1990, an employee of the state department of transportation who is designated as a "peace officer" by resolution under Iowa Code section 321.477.

(8) Effective July 1, 1992, a fire prevention inspector peace officer employed by the department of public safety. Effective July 1, 1994, a fire prevention inspector peace officer employed before that date who does not elect coverage under Iowa Code chapter 97A in lieu of IPERS.

(9) Effective July 1, 1994, through June 30, 1998, a parole officer III with a judicial district of the department of correctional services.

(10) Effective July 1, 1994, through June 30, 1998, a probation officer III with a judicial district of the department of correctional services.

e. Prior special rates are as follows:

Effective July 1, 1998, through June 30, 1999:

1. Sheriffs, deputy sheriffs, and airport firefighters—member's rate—6.34%; employer's rate—9.51%.

2. Protection occupation—member's rate—5.61%; employer's rate—8.41%.

f. Pretax.

(1) Effective January 1, 1995, employers must pay member contributions on a pretax basis for federal income tax purposes only. Such contributions are considered employer contributions for federal income tax purposes and employee contributions for all other purposes. Employers must reduce the member's salary reportable for federal income tax purposes by the amount of the member's contribution.

(2) Salaries reportable for purposes other than federal income tax will not be reduced, including IPERS, FICA, and, through December 31, 1998, state income tax purposes.

(3) Effective January 1, 1999, employers must pay member contributions on a pretax basis as provided in subparagraph (1) above for both federal and state income tax purposes.

21.6(10) Effective July 1, 1992, credit memos that have been issued due to an employer's overpayment are void one year after issuance.

This rule is intended to implement Iowa Code sections 97B.49A to 97B.49I.

581—21.7(97B) Accrual of interest. Interest as provided under Iowa Code section 97B.9 shall accrue on any contributions not received by IPERS by the due date, except that interest may be waived by IPERS upon request prior to the due date by the employing unit, if due to circumstances beyond the control of the employing unit.

This rule is intended to implement Iowa Code section 97B.9.

581—21.8(97B) Refunds and returns of erroneously paid contributions.

21.8(1) *Refund formula.* A member is eligible for a refund of the employee accumulated contributions 30 days after the member's last paycheck is issued from which IPERS contributions will be deducted. Effective July 1, 1999, a vested member's refund shall also include a portion of the employer accumulated contributions. Refund amounts are determined as follows:

a. Employee accumulated contributions. Upon receiving an eligible member's application for refund, IPERS shall pay to the terminated member the amount of the employee accumulated contributions currently reported to, and processed by, IPERS as of the date of the refund. Upon reconciliation of the final employee contributions for that member, a supplemental refund of the employee accumulated contributions will be paid.

b. Employer accumulated contributions. Effective July 1, 1999, IPERS shall also pay to vested members, in addition to the employee accumulated contributions, a refund of a portion of the employer accumulated contributions. The refundable portion shall be calculated by multiplying the employer accumulated contributions by the "service factor." The "service factor" is a fraction, the numerator of which is the member's quarters of service and the denominator of which is the "applicable quarters." The "applicable quarters" shall be 120 for regular members, 100 for protection occupation members, and 88 for sheriffs, deputy sheriffs and airport firefighters. All quarters of service credit shall be included in the numerator of the service factor. In no event will a member ever receive an amount in excess of 100 percent of the employer accumulated contributions for that member.

In addition to the foregoing provisions, IPERS shall calculate the refundable portion of the employer accumulated contributions as follows:

(1) Upon reconciliation of the final employer contributions for that member, the member's portion of the employer accumulated contributions will be recalculated. IPERS will add the additional quarter(s) of service to the numerator of the service factor. The adjusted service factor will be multiplied by the sum of the original employer accumulated contributions plus the supplemental employer accumulated contributions. The employer accumulated contributions included in the original refund will then be subtracted from that recalculated figure to determine the amount of employer accumulated contributions to be included in the supplemental refund.

(2) The member's portion of employer accumulated contributions shall be determined under subrule 21.8(2) below if the member had a combination of regular service and special service, or a combination of different types of special service.

(3) In making calculations under this subrule and subrule 21.8(2) below, IPERS shall round to not less than six decimal places to the right of the decimal point.

21.8(2) *Refunds for members eligible for a hybrid refund.* Effective July 1, 1999, the calculation of the member's portion of employer accumulated contributions for a "hybrid refund" shall be as follows:

a. A "hybrid refund" is a refund that is calculated for a member who has a combination of regular service and special service quarters, or a combination of different types of special service quarters.

b. If a member is eligible for a hybrid refund, the member's portion of employer accumulated contributions shall be calculated by multiplying the total employer accumulated contributions by: (1) the member's regular service factor, if any; and (2) the protection occupation service factor, if any; and (3) the sheriff/deputy sheriff/airport firefighter service factor, if any (except as otherwise provided in this subrule). The amounts obtained will be added together to determine the amount of the employer accumulated contributions payable. In no event will a member ever receive an amount in excess of 100 percent of the employer accumulated contributions for that member.

c. Upon reconciliation of the final contributions from a member's employer, the member's portion of the employer accumulated contributions under this subrule will be recalculated. IPERS will add the additional quarter(s) of service to the numerator of the applicable service factor. The adjusted service factor will be multiplied by the sum of the original employer accumulated contributions plus the supplemental employer accumulated contributions. The employer accumulated contributions included in the original refund will then be subtracted from that recalculated figure to determine the amount of the employer accumulated contributions to be included in the supplemental refund.

d. If wages reported for a quarter are a combination of regular and special service wages, or different types of special service wages, IPERS will classify the service credit for each quarter based on the largest dollar amount reported for that quarter. A member shall not receive more than one quarter of service credit for any calendar quarter, even though more than one type of service credit is recorded for that quarter.

e. If a member is last employed in a sheriff, deputy sheriff, or airport firefighter position, all quarters of "eligible service," as defined in Iowa Code section 97B.49C(1)*"d,"* shall be counted as quarters of sheriff/deputy sheriff/airport firefighter service credit.

f. A special limitation applies to hybrid refunds where the member and employer contributed at regular rates for quarters that are eligible for coverage under Iowa Code section 97B.49B or Iowa Code section 97B.49C. If a member has regular service credit and special service credit, and any part of the special service credit consists of quarters for which only regular contributions were made, such quarters will be counted as regular service quarters. However, the foregoing limitation will not apply if the member only has service credit eligible for coverage under Iowa Code section 97B.49B, or only has service credit eligible for coverage under Iowa Code section 97B.49C.

g. Except as described above, this subrule shall not be construed to require or permit service eligible for coverage under Iowa Code section 97B.49B to be treated as special service under Iowa Code section 97B.49C, or vice versa, when determining the percentage payable under this subrule.

21.8(3) *Refund of retired reemployed member's contributions.*

a. Less than six months. A retired member who returns to permanent covered employment, but who resigns within six months of the date the reemployment began, is eligible to have the member contributions for this period refunded. The contributions made by the employer will be refunded to the employer.

b. Six months or longer. A retired member who returns to permanent employment and subsequently terminates the member's employment may elect to receive an increased monthly allowance, or a refund of the member's accumulated contributions and, effective July 1, 1998, employer's accumulated contributions accrued during the period of reemployment. A reemployed member who elects a refund under this subrule in lieu of an increased monthly allowance shall forfeit all other rights to benefits under the system with respect to the period of reemployment. If IPERS determines that the reemployment will not increase the amount of a member's monthly benefit, a member shall only elect the refund.

21.8(4) *General administrative provisions.* In addition to the foregoing, IPERS shall administer a member's request for a refund as follows:

a. To obtain a refund, a member must file a refund application form, which is available from IPERS or the member's employer.

b. The last pay date must be certified by the employer on the refund application unless the member has not been paid covered wages for at least one year. The employee's "termination date" is the last date on which the employee was paid and certified by the employer on the IPERS refund application. The applicant's signature must be notarized. Terminated employees must keep IPERS advised in writing of any change in address so that refunds and tax documents may be delivered.

c. Unless otherwise specified by the member, the refund warrant will be mailed to the member at the address listed on the application for refund. If a member so desires, the warrant may be delivered to the member or the member's agent at IPERS' principal office. The member must show verification of identification by presenting a picture identification containing both name and social security number. If a member designates in writing an agent to pick up the refund warrant, the agent must present to IPERS both the written designation and the described picture identification.

d. No payment of any kind shall be made under this rule if the amount due is less than $1.

21.8(5) *Emergency refunds.*

a. IPERS may issue an emergency refund to a member who has terminated covered employment and meets the refund eligibility requirements of Iowa Code section 97B.53, if:

(1) The member files an application for refund on a form provided by IPERS;

(2) The member alleges in writing that the member is encountering a financial hardship or unforeseeable emergency; and

(3) The member provides IPERS with payment instructions either in person or in writing.

b. Financial hardship or unforeseeable emergency includes:

(1) Severe financial hardship to a member resulting from a sudden and unexpected illness or accident of the member or a member's dependent;

(2) Loss of a member's property due to casualty; or

(3) Other similar extraordinary and unforeseeable circumstances which arise as a result of events beyond a member's control.

21.8(6) *Erroneously reported wages for employees not covered under IPERS.* Employers who erroneously report wages for employees that are not covered under IPERS may secure a warrant or credit, as elected by the employer, for the employer's contributions by filing an IPERS periodic wage reporting adjustments form available from IPERS. An employer that files a periodic wage reporting adjustments form requesting a warrant or credit shall receive a warrant or credit for both the employer and employee contributions made in error. The employer is responsible for returning the employee's share and for filing corrected federal and state wage reporting forms. Warrants will not be issued by IPERS if the amount due is less than $1. In such cases, the credit will be transferred to the employer's credit memo. Under no circumstance shall the employer adjust these wages by underreporting wages on a future periodic wage reporting document. Wages shall never be reported as a negative amount. An employer that completes the employer portion of an employee's request for a refund on IPERS refund application form will not be permitted to file a periodic wage reporting adjustments form for that employee for the same period of time.

21.8(7) *Contributions paid on wages in excess of the annual covered wage maximum.* Effective for wages paid in calendar years beginning on or after January 1, 1995, IPERS shall automatically issue to each affected employer a warrant or credit, as elected by the employer, of both employer and employee contributions paid on wages in excess of the annual covered wage maximum for a calendar year. A report will be forwarded to each such employer detailing each employee for whom wages were reported in excess of the covered wage ceiling. Warrants or credits for the excess contributions made will be issued to the employers upon IPERS' receipt of certification from said employers that the overpayment report is accurate. Warrants will not be issued if the amount due is less than $1. In such cases, the credit will be transferred to the employer's credit memo. The employer is responsible for returning the employee's share of excess contributions. Where employees have simultaneous employment with two or more employers and as a result contributions are made on wages in excess of the annual covered wage maximum, warrants or credits for the excess employer and employee contributions shall be issued to each employer in proportion to the amount of contributions paid by the employer.

21.8(8) *Termination within less than six months of the date of employment.* If an employee hired for permanent employment resigns within six months of the date of employment, the employer may file IPERS' form for reporting adjustments to receive a warrant or the credit, as elected by the employer, for both the employer's and employee's portion of the contributions. It is the responsibility of the employer to return the employee's share. "Termination within less than six months of the date of employment" means employment is terminated prior to the day before the employee's six-month anniversary date. For example, an employee hired on February 10 whose last day is August 8 would be treated as having resigned within less than six months. An employee hired on February 10 whose last day is August 9 (the day before the six-month anniversary date, August 10) would be treated as having worked six months and would be eligible for a refund.

This rule is intended to implement Iowa Code sections 97B.10, 97B.46 and 97B.53.

21.10(6) Where multiple beneficiaries have been designated by the member, payment, including the payment of the remainder of a series of guaranteed annuity payments, shall be made in a lump sum only. The lump sum payment shall be paid to the multiple beneficiaries in equal shares unless a different proportion is stipulated.

21.10(7) Payment of the death benefit when no designation of beneficiary or an invalid designation of beneficiary is on file with IPERS shall be made in one of the following ways:

a. Where the estate is open, payment shall be made to the administrator or executor.

b. Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits, payment will be made to the surviving spouse. The following documents shall be presented as supporting evidence:

(1) Copy of the will, if any;

(2) Copy of any letters of appointment; and

(3) Copy of the court order closing the estate and discharging the executor or administrator.

c. Where no estate is probated or the estate is closed prior to filing with IPERS and there is no surviving spouse, payment will be made to the heirs-at-law as determined by the intestacy laws of the state of Iowa.

d. Where a trustee has been named as designated beneficiary and is not willing to accept the death benefit or otherwise serve as trustee, IPERS may, but is not required to, apply to the applicable district court for an order to distribute the funds to the clerk of court on behalf of the beneficiaries of the member's trust. Upon the issuance of an order and the giving of such notice as the court prescribes, IPERS may deposit the death benefit with the clerk of court for distribution. IPERS shall be discharged from all liability upon deposit with the clerk of court.

21.10(8) Where the member dies prior to the first month of entitlement, the death benefit shall include the accumulated contributions of the member plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the "applicable denominator," as provided in Iowa Code section 97B.52(1). The amount payable shall not be less than the amount that would have been payable on the death of the member on June 30, 1984. The calculation of the highest year of covered wages shall use the highest calendar year of covered wages reported to IPERS.

When a member who has filed an application for retirement benefits and has survived into the first month of entitlement dies prior to the issuance of the first benefit check, IPERS will pay the death benefit allowed under the retirement option elected pursuant to section 97B.48(1) or 97B.51.

21.10(9) Waiver of beneficiary rights. A named beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would have been entitled. The waiver of the rights shall occur prior to the receipt of a payment from IPERS to the beneficiary. The waiver of rights shall be binding and will be executed on a form provided by IPERS. The waiver of rights may be general, in which case payment shall be divided equally among all remaining designated beneficiaries, or to the member's estate if there are none. The waiver of rights may also expressly be made in favor of one or more of the member's designated beneficiaries or the member's estate. If the waiver of rights operates in favor of the member's estate and no estate is probated or claim made, or if the executor or administrator expressly waives payment to the estate, payment shall be paid to the member's surviving spouse unless there is no surviving spouse or the surviving spouse has waived the surviving spouse's rights. In that case, payment shall be made to the member's heirs excluding any person who waived the right to payment. Any waiver filed by an executor, administrator, or other fiduciary must be accompanied by a release acceptable to IPERS indemnifying IPERS from all liability to beneficiaries, heirs, or other claimants for any waiver executed by an executor, administrator, or other fiduciary.

21.10(10) Payment may be made to a conservator if the beneficiary is under the age of 18 and the total dollar amount to be paid by IPERS to a single beneficiary is $10,000 or more. Payment may be made to a custodian if the total dollar amount to be paid by IPERS to a single beneficiary is less than $10,000.

21.10(11) When a member on benefits returns to covered employment (or remains in covered employment if aged 70 or older), and dies before applying for a recomputation or recalculation of benefits, the death benefit formula will be applied to the wages and years of service reported after benefits begin.

21.10(12) Death benefits shall not exceed the maximum amount possible under the Internal Revenue Code.

21.10(13) IPERS will apply the provisions of the Uniform Simultaneous Death Act, Iowa Code sections 633.523 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

21.10(14) IPERS will apply the provisions of the Felonious Death Act, Iowa Code sections 633.535 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

21.10(15) A completed application must be filed with the department no later than five years after the date of the member's death or the total sum is forfeited. A beneficiary's right to receive a death benefit beyond the five-year limitation shall be extended to the extent permitted under Internal Revenue Code Section 401(a)(9) and the applicable treasury regulations. Notwithstanding the foregoing, the maximum claims period shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for death benefits payable under benefit options described in Iowa Code sections 97B.49A to 97B.49I and 97B.51(6) and for members who die after their required beginning date. The claims period for all cases in which the member's death occurs during the same calendar year in which a claim must be filed under this subrule shall end April 1 of the year following the year of the member's death.

21.10(16) Effective July 1, 1998, a member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. For claims filed prior to July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the third quarter of 1998. For claims filed on or after July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the quarter that the claim is received by IPERS. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

21.10(17) Interest is only accrued if the member dies before the member's retirement first month of entitlement (FME) or, for a retired reemployed member, before the member's reemployment FME, and is only accrued with respect to the retired or retired reemployed member's accumulated contributions account.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.1A(17), 97B.34, 97B.34A, 97B.44 and 97B.52.

581—21.11(97B) Application for benefits.

21.11(1) Form used. It is the responsibility of the member to notify IPERS of the intention to retire. This should be done 60 days before the expected retirement date. The application for monthly retirement benefits is obtainable from IPERS, 600 East Court Avenue, P.O. Box 9117, Des Moines, Iowa 50306-9117. The printed application form shall be completed by each member applying for benefits and shall be mailed or brought in person to IPERS. Option choice and date of retirement shall be clearly stated on the application form and all questions on the form shall be answered in full. If an optional allowance is chosen by the member in accordance with Iowa Code section 97B.48(1) or 97B.51, the election becomes binding when the first retirement allowance is paid. A retirement application is deemed to be valid and binding when the first payment is paid. Members may not cancel their applications, change their option choice, or change an Option 4 contingent annuitant after that date.

21.11(2) Proof required in connection with application. Proof of date of birth to be submitted with an application for benefits shall be in the form of a birth certificate or an infant baptismal certificate. If these records do not exist, the applicant shall submit two other documents or records ten or more years old, or certification from the custodians of these records, which will verify the day, month and year of birth. The following records or documents are among those deemed acceptable to IPERS as proof of date of birth:

a. United States census record;
b. Military record;
c. Naturalization record;
d. A marriage license showing age of applicant in years, months and days on date of issuance;
e. A life insurance policy;
f. Records in a school's administrative office;
g. An official form from the United States Immigration Service, such as the "green card," containing such information;
h. Valid Iowa driver's license; or
i. Adoption papers; or
j. A family Bible record. A photostatic copy will be accepted with certification by a notary that he record appears to be genuine.

Under subrule 21.11(6), IPERS is required to begin making payments to a member or beneficiary who has reached the required beginning date specified by Internal Revenue Code Section 401(a)(9). In order to begin making such payments and to protect IPERS' status as a plan qualified under Internal Revenue Code Section 401(a), IPERS may rely on its internal records with regard to date of birth, if the member or beneficiary is unable or unwilling to provide the proofs required by this subrule within 30 days after written notification of IPERS' intent to begin payments.

21.11(3) Retirement benefits and the age reduction factor.

a. A member shall be eligible for monthly retirement benefits with no age reduction effective with the first of the month in which the member becomes the age of 65, if otherwise eligible.

b. Effective July 1, 1998, a member shall be eligible for full monthly retirement benefits with no age reduction effective with the first of the month in which the member becomes the age of 62, if the nember has 20 full years of service and is otherwise eligible.

c. Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55.

These benefits are computed in accordance with Iowa Code sections 97B.49A to 97B.49I.

21.11(4) A member shall be eligible to receive monthly retirement benefits effective with the first day of the month in which the member becomes the age of 70, even though the member continues to be employed.

21.11(5) A member shall be eligible to receive benefits for early retirement effective with the first of the month in which the member attains the age of 55 or the first of any month after attaining the age of 55 before the member's normal retirement date, provided the date is after the last day of service.

21.11(6) A member retiring on or after the early retirement or normal retirement date shall submit a written notice to IPERS setting forth the retirement date, provided the date is after the member's last day of service. A member's first month of entitlement shall be no earlier than the first day of the first month after the member's last day of service or, if later, the month provided for under subrule 21.18(2). A member who does not begin benefits timely in the first month that begins after the member's last day of service may receive up to six months of retroactive payments. The period for which retroactive payments may be paid is measured from the month that a valid contact occurs. For purposes of this subrule, a "contact" means a telephone call, facsimile transmission, E-mail, visit to IPERS at its offices or offsite locations, or a letter or other writing requesting a benefits estimate or application to retire, whichever is received first. A contact is only valid if a completed application to retire is received within six months following the month that a benefits estimate or application to retire form is mailed to the member in response to the contact. If a completed application to retire form is received more than six months after such a benefits estimate or application to retire is mailed, retroactive payments may only be made for up to six months preceding the month that the completed application to retire is received.

Notwithstanding the foregoing, IPERS shall commence payment of a member's retirement benefit under Iowa Code sections 97B.49A to 97B.49I (under Option 2) no later than the "required beginning date" specified under Internal Revenue Code Section 401(a)(9), even if the member has not submitted the appropriate notice. If the lump sum actuarial equivalent could have been elected by the member, payments shall be made in a lump sum rather than as a monthly allowance. The "required beginning date" is defined as the later of: (1) April 1 of the year following the year that the member attains the age of 70½, or (2) April 1 of the year following the year that the member actually terminates all covered and noncovered employment with employers covered under Iowa Code chapter 97B.

If IPERS distributes a member's benefits without the member's consent in order to begin benefits on or before the required beginning date, the member may elect to receive benefits under an option other than the mandatory options described above if the member contacts IPERS in writing within 60 days of the first mandatory distribution. IPERS shall inform the member what adjustments or repayments are required in order to make the change.

If a member cannot be located so as to commence payment on or before the required beginning date described above, the member's benefit shall be forfeited. However, if a member later contacts IPERS, and wishes to file an application for retirement benefits, the member's benefits shall be reinstated. A member whose benefits are forfeited and then reinstated under this subrule shall only qualify for retroactive payments to the extent provided under Iowa Code section 97B.48(2).

21.11(7) Retirement benefits to a member shall terminate the day on which the member's death occurs. The benefits for the month of the member's death shall be prorated based on the number of days the member lived during that month. Notwithstanding the foregoing, for each death occurring on or after July 1, 1998, a member's retirement benefits shall terminate after payment is made to the member for the entire month during which the member's death occurs. For such deaths, death benefits shall begin with the month following the month in which the member's death occurs.

21.11(8) Upon the death of the retired member, IPERS will reconcile the decedent's account to determine if an overpayment was made to the retiree and if a further payment(s) is due to the retired member's named beneficiary, contingent annuitant, heirs-at-law or estate. If an overpayment has been made to the retired member, IPERS will determine if steps should be taken to seek collection of the overpayment from the named beneficiary, contingent annuitant, estate, heirs-at-law, or other interested parties.

The waiver of the necessary steps to effect collection may occur in cases where recovery of the moneys is not probable and where that action is not deemed prudent administration or cost-effective utilization of the funds of the system.

21.11(9) To receive retirement benefits, a member under the age of 70 must officially leave employment with an IPERS covered employer, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits.

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not constitute a bona fide retirement. A member also will not be considered to have a bona fide retirement if the member has, prior to the member's first month of entitlement, entered into contractual arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.

581—21.16(97B) Approved leave periods.

21.16(1) Effective July 1, 1998, a member's service is not deemed interrupted while a member is on a leave of absence that qualifies for protection under the Family and Medical Leave Act of 1993 (FMLA), or would qualify but for the fact that the type of employment precludes coverage under the FMLA, or during the time a member is engaged during military service for which the member is entitled to receive credit under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. Sections 4301 to 4333).

21.16(2) Reentry into public employment by an employee on military leave can be achieved if the individual accepts employment with a covered employer. Reemployment may begin anytime within 12 months of the individual's discharge from military service or, if longer, within the period provided under USERRA. Upon reemployment the member shall receive credit for all service to which the member is entitled pursuant to USERRA.

Notwithstanding any provision of Iowa Code chapter 97B or these rules to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

For reemployments initiated on or after December 12, 1994, a member shall be treated as receiving compensation for each month during the member's period of military service equal to the member's average monthly compensation during the 12-month period immediately preceding the period of military service or, if shorter, the member's average monthly compensation for the period immediately preceding the period of military service. The member's deemed compensation during the period of military service shall be taken into consideration in determining a member's make-up contributions, if any, and the member's high three-year average covered wage.

For reemployments initiated on or after December 12, 1994, make-up contributions shall be permitted with respect to employee contributions that would have been made during the period of military service if the member had actually been in covered employment during the period earning the deemed compensation provided for under this subrule. Make-up contributions shall be permitted during the five-year period that begins on the date of reemployment or, if less, a period equal to three times the period of military service.

The member shall request the foregoing make-up contributions (except contributions for periods prior to January 1, 1995, which shall be made as posttax contributions) on forms to be filed with the employer, which shall forward a copy to the system. Make-up contributions shall be made as pretax contributions under Internal Revenue Code Section 414(h)(2). Employers must comply with a member's request to begin make-up contributions during a period not exceeding that described in the preceding paragraph and shall forward said amounts to the system in the same manner as provided for pick-up contributions under Iowa Code section 97B.11A. An election to make up employee contributions under this rule shall be irrevocable.

21.16(3) Effective for leaves of absence beginning on or after July 1, 1998, an eligible member must make contributions to the system in order to receive service credit for the period of the leave (except for leaves under subrule 21.16(1) above). Contributions may be made in increments of one quarter or more.

21.16(4) Reentry into public employment by an employee on a leave of absence under subrule 21.16(1) can be achieved by the employee by accepting employment with any public employer, provided that any interruption between the end of the period of leave of absence and reentry into public employment meets the requirements of the FMLA, USERRA and this rule.

21.16(5) Credit for a leave of absence shall not be granted and cannot be purchased for any time period which begins after or extends beyond an employee's termination of employment as certified by the employer. This includes a certification of termination of employment made by an employer on a refund application. Employers shall be required to certify all leaves of absence for which credit is being requested using an affidavit furnished by IPERS and accompanied by a copy of the official record(s) which authorized the leave of absence. The provisions of this subrule denying credit for leaves of absence in certain situations shall apply to leaves of absence that begin on or after the effective date of this subrule, which shall be November 27, 1996. The provisions of the subrule requiring employers to certify all leaves of absence using an affidavit furnished by IPERS shall apply to all requests for leave of absence credit filed after November 27, 1996, regardless of when the leave of absence was granted.

21.16(6) For a leave of absence beginning on or after July 1, 1998, and purchased before July 1, 1999, the service purchase cost shall be equal to the employer and employee contributions and interest payable for the employee's most recent year of covered wages, adjusted by the inflation factor used in rule 21.24(97B). For a leave of absence beginning on or after July 1, 1998, and purchased on or after July 1, 1999, the service purchase cost shall be the actuarial cost, as certified by IPERS' actuary. In calculating the actuarial cost of a service purchase under this subrule, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.1A(8A), 97B.1A(19) and 97B.81.

581—21.17(97B) Membership status.

21.17(1) Effective July 1, 1990, a member achieves vested status when the member has served and made contributions in 16 or more quarters of IPERS-covered employment or attains the age of 55. The vested status of a member may also be determined when the member's contribution payments cease. At that time a comparison of the membership date and termination date will be made. If service sufficient to indicate vested status is present, after any periods of interruption in service have been taken into consideration, the member shall be considered a vested member. All vested members receive all the rights and benefits of a vested member in IPERS until or unless the member files for a refund of accumulated contributions.

21.17(2) For the purposes of this rule, four quarters of coverage shall constitute a year of membership service for a member employed on a fiscal- or calendar-year basis. A member working for a school district or other institution which operates on a nine-month basis shall be granted a year of membership service for each year in which the member has three or more quarters of coverage, if the employee remains in covered employment for the next operating year. An employee who terminates covered employment and has no wages paid in the third quarter shall not receive service credit for the third quarter. Only one year of membership service credit shall be granted for any 12-month period.

Effective July 1, 1998, a member who is reemployed in covered employment after retirement may, after again terminating employment, elect to receive a refund of the employee and employer contributions made during the period of reemployment in lieu of a second annuity. If a member requests a refund in lieu of a second annuity, the related service credit shall be forfeited.

21.19(4) In recomputing a retired member's monthly benefit, IPERS shall use the following assumptions.

a. The member cannot change option or beneficiary with respect to reemployment period.

b. If the reemployment period is less than four years, the money purchase formula shall be used to compute the benefit amount.

c. If the reemployment period is four or more years, the benefit formula in effect as of the first month of entitlement (FME) for the reemployment period shall be used. If the FME is July 1998 or later, and the member has more than 30 years of service, including both original and reemployment service, the percentage multiplier for the reemployment period only will be at the applicable percentage (up to 65 percent) for the total years of service.

d. If a period of reemployment would increase the monthly benefit a member is entitled to receive, the member may elect between the increase and a refund of the employee and employer contributions without regard to reemployment FME.

e. If a member previously elected IPERS Option 1, is eligible for an increase in the Option 1 monthly benefits, and elects to receive the increase in the member's monthly benefits, the member's Option 1 death benefit shall also be increased if the investment is at least $1,000. The amount of the increase shall be at least the same percentage of the maximum death benefit permitted with respect to the reemployment as the percentage of the maximum death benefit elected at the member's original retirement. In determining the increase in Option 1 death benefits, IPERS shall round up to the nearest $1,000. For example, if a member's investment for a period of reemployment is $1,900 and the member elected at the member's original retirement to receive 50 percent of the Option 1 maximum death benefit, the death benefit attributable to the reemployment shall be $1,000 (50 percent times $1,900, rounded up to the nearest $1,000). Notwithstanding the foregoing, if the member's investment for the period of reemployment is less than $1,000, the benefit formula for a member who originally elected new IPERS Option 1 shall be calculated under IPERS Option 3.

f. A retired reemployed member whose reemployment FME precedes July 1998 shall not be eligible to receive the employer contributions made available to retired reemployed members under Iowa Code section 97B.48A(4) effective July 1, 1998.

g. A retired reemployed member who requests a return of the employee and employer contributions made during a period of reemployment cannot repay the distribution and have the service credit for the period of reemployment restored.

This rule is intended to implement Iowa Code sections 97B.1A, 97B.45 and 97B.48A.

581—21.20(97B) Identification of agents.

21.20(1) Recognition of agents. When a claimant before IPERS desires to be represented by an agent in the presentation of a case, the claimant shall designate in writing the name of a representative and the nature of the business the representative is authorized to transact. Such designation on the part of the claimant shall constitute for IPERS sufficient proof of the acceptability of the individual to serve as the claimant's agent. An attorney in good standing may be so designated by the claimant.

21.20(2) Payment to incompetents. When it appears that the interest of a claimant or retiree would be served, IPERS may recognize an agent to represent the individual in the transaction of the affairs with IPERS. Recognition may be obtained through the filing with IPERS of a copy of the guardianship, trusteeship, power of attorney, conservatorship or Social Security representative payee documents by the individual so designated. Such persons have all the rights and obligations of the member. Notwithstanding the foregoing, none of the foregoing representatives shall have the right to name the representative as the member's beneficiary unless approved to do so by a court having jurisdiction of the matter, or unless expressly authorized to do so in a power of attorney executed by the member.

21.20(3) An individual serving in the capacity of an agent establishes an agreement with IPERS to transact all business with IPERS in such a manner that the interests of the retiree or claimant are best served. Payments made to the agent on behalf of the individual will be used for the direct benefit of the retiree or claimant. Failure to adhere to the agreement will cause discontinuance of the agency relationship and may serve as the basis for legal action by IPERS or the member.

This rule is intended to implement Iowa Code sections 97B.34 and 97B.37.

581—21.21(97B) Actuarial equivalent (AE) payments.

21.21(1) If a member aged 55 or older requests an estimate of benefits which results in any one of the options having a monthly benefit amount of less than $50, the member may elect, under Iowa Code section 97B.48(1), to receive a lump sum actuarial equivalent (AE) payment in lieu of a monthly benefit. Once the AE payment has been paid to the member, the member shall not be entitled to any further benefits based on the contributions included in the AE payment and the employment period represented thereby. Should the member later return to covered employment, any future benefits the member accrues will be based solely on the new employment period. If an estimate of benefits based on the new employment period again results in any one of the options having a monthly benefit amount of less than $50, the member may again elect to receive an AE payment.

21.21(2) If a member, upon attaining the age of 70 or later, requests a retirement allowance without terminating employment and any one of the options results in a monthly benefit amount of less than $50, the member may elect to receive an AE payment based on the member's employment up to, but not including, the quarter in which the application is filed. When the member subsequently terminates covered employment, any benefits due to the member will be based only on the period of employment not used in computing the AE paid when the member first applied for a retirement allowance. If an estimate of benefits based on the later period of employment again results in any of the options having a monthly benefit amount of less than $50, the member may again elect to receive another AE payment. A member who elects to receive an AE payment without terminating employment may not elect to receive additional AE payments unless the member terminates all covered employment and completes a bona fide retirement as provided in these rules.

21.21(3) An AE payment shall be equal to the sum of the member's and employer's accumulated contributions and the retirement dividends standing to the member's credit before December 31, 1966.

This rule is intended to implement Iowa Code sections 97B.4, 97B.15 and 97B.48(1).

581—21.22(97B) Disability.

21.22(1) The following standards apply to the establishment of a disability under the provisions of IPERS:

a. The member must inform IPERS at retirement that the retirement is due to an illness, injury or similar condition. The member must also initiate an application for federal Social Security disability benefits or federal Railroad Retirement Act disability benefits.

b. To qualify for the IPERS disability provision, the member must be awarded federal Social Security benefits due to the disability which existed at the time of retirement.

c. Effective July 1, 1990, the member may also qualify for the IPERS disability provision by being awarded, and commencing to receive, disability benefits through the federal Railroad Retirement Act, 45 U.S.C. Section 231 et seq., due to a disability which existed at the time of retirement.

21.22(2) If a member returns to covered employment after achieving a bona fide retirement, the benefits being provided to a member under Iowa Code section 97B.50(2)*"a"* or *"b"* shall be suspended or reduced as follows. If the member has not attained the age of 55 upon reemployment, benefit payments shall be suspended in their entirety until the member subsequently terminates employment, applies for, and is approved to receive benefits under the provisions of Iowa Code chapter 97B. If the member is aged 55 or older upon reemployment, the member shall continue to receive the monthly benefit payable to the member on the member's initial retirement date based on the member's age at the initial retirement date, years of membership service not to exceed 30, and benefit option, and subject to the applicable reductions for early retirement in place at the time of the initial retirement. The member's benefit shall also be subject to the applicable provisions of Iowa Code section 97B.48A pertaining to reemployed retirees.

21.22(3) Rescinded IAB 7/22/92, effective 7/2/92.

This rule is intended to implement Iowa Code section 97B.50.

581—21.23(97B) Confidentiality of records.

21.23(1) Records established and maintained by IPERS containing personal information are not public records under Iowa Code chapter 22. Records may be released to the member or the beneficiary (if the beneficiary is entitled to funds) or to a person designated by the member or beneficiary in writing. Records may also be released to an executor, administrator or attorney of record for an estate of a deceased member or beneficiary.

21.23(2) Summary information concerning the demographics of the IPERS membership and general statistical information concerning the system and its activities is made available in accordance with Iowa Code section 97B.17.

21.23(3) Notwithstanding any provisions of Iowa Code chapter 22 or 97B to the contrary, the department's records may be released to any political subdivision, instrumentality, or other agency of the state solely for use in a civil or criminal law enforcement activity pursuant to the requirements of this subrule. To obtain the records, the political subdivision, instrumentality, or agency shall, in writing, certify that the activity is authorized by law, provide a written description of the information desired, and describe the law enforcement activity for which the information is sought. The department shall not be civilly or criminally liable for the release or rerelease of records in accordance with this subrule.

This rule is intended to implement Iowa Code sections 97B.15 and 97B.17.

581—21.24(97B) Service buy-in/buy-back.

21.24(1) *Prior service buy-back.*

a. Effective July 1, 1990, a member who was active, vested or retired on or after July 1, 1978, and who made contributions to IOASI between January 1, 1946, and June 30, 1953, and took a refund of those contributions, may buy back the amount of that refund plus interest in order to establish quarters of service covered by the refund. Less than a full quarter of service will be considered equivalent to a full quarter of service. A teacher who has three quarters of service and a contract for the following year will be granted four quarters of service. IPERS may require the submission of a copy of the contract.

b. Prior to July 1, 1990, a member who was active, vested or retired as of July 1, 1978, and who made contributions to IOASI between January 1, 1946, and June 30, 1953, and who took a refund of those contributions, was able to buy back the amount of that refund and establish years of service covered by the refund.

c. A member cannot participate in the prior service buy-back if the member had taken an IPERS refund (contributions made after July 4, 1953) unless the member first participated in the IPERS buy-back in accordance with this rule.

If a member decides to buy back prior service credit, the member must repay the entire refunded amount plus the accumulated interest and interest dividends on that amount.

If a member participating in a prior service buy-back had years of public service within Iowa prior to January 1, 1946, those years of service will also be added to the member's account at no cost, subject to the member's providing verification of public service.

21.24(2) *Purchase IPERS credit for service in other public employment.*

a. Effective July 1, 1992, a vested or retired member may make application to IPERS for purchasing credit for service rendered to another public employer. In order to be eligible, a member must:

(1) Have been a public employee in a position comparable to an IPERS covered position at the time the application for buy-in is processed. Effective July 1, 1990, "public employee" includes members who had service as a public employee in another state, or for the federal government, or within other retirement systems established in the state of Iowa;

(2) Waive on a form provided by IPERS all rights to a retirement in another system for that period of employment sought to be purchased, if any; such a waiver must be accepted by the other retirement system before the member can proceed with a buy-in of that service time into IPERS; and

(3) Submit verification of service for that other public employer to IPERS.

A quarter of credit will be given for each quarter the employee was paid. If no pay dates are shown, credit will be given if the employee had service of at least 15 days in the quarter.

b. A qualifying member who decides to purchase IPERS credit must make employer and employee contributions to IPERS for each calendar quarter of service allowed in this buy-in. This contribution shall be determined using the member's covered IPERS wages for the most recent full calendar year of IPERS coverage, the applicable rates established in Iowa Code sections 97B.11, 97B.49B and 97B.49C, and multiplied by the number of quarters being purchased from other public employment. "Applicable rates" means the rates in effect at the time of purchase for the types of service being purchased. A member must have at least four quarters of reported wages in any calendar year before a buy-in cost may be calculated.

c. If a vested or retired member does not have wages in the most recent calendar year, the cost of the buy-in will be calculated using the member's last calendar year of reported wages, adjusted by an inflation factor based on the Consumer Price Index as published by the United States Department of Labor.

d. Members eligible to complete the buy-in may buy the entire period of service for a public employer or may buy credit in increments of one or more calendar quarters. The quarters need not be specifically identified to particular calendar quarters. A period of service is defined as follows: (1) if a member was continuously employed by an employer, the entire time is one period of employment, regardless of whether a portion or all of the service was covered by one or more retirement systems; and (2) if a member is continuously employed by multiple employers within a single retirement system, the entire service credited by the other retirement system is a period of employment. A member with service credit under another public employee retirement system who wishes to transfer only a portion of the service value of the member's public service in another public system to IPERS, must provide a waiver of that service time to IPERS together with proof that the other public system has accepted this waiver and allowed partial withdrawal of service credit. Members are allowed to purchase time credited by the other public employer as a leave of absence in the same manner as other service credit. Notwithstanding the foregoing, members wishing to receive free credit for military service performed while in the employ of a qualifying non-IPERS covered public employer must purchase the entire period of service encompassing the service time for that public employer or in the other retirement system, excluding the military time. Veterans' credit originally purchased in another retirement system may be purchased into IPERS in the same manner as other service credit.

e. The total amount paid will be added to the member's contributions and the years of service this amount represents will be added to the member's IPERS years of service. Effective January 1, 1993, the purchase will not affect the member's three-year average covered wage.

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-in, as certified by IPERS' actuary. In calculating the actuarial cost of a buy-in, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase.

21.24(3) *IPERS buy-back.* Effective July 1, 1996, only vested or retired members may buy back previously refunded IPERS credit. For the period beginning July 1, 1996, and ending June 30, 1999, an eligible member is required to make membership contributions equal to the accumulated contributions received by the member for the period of service being purchased plus accumulated interest and interest dividends. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-back, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase.

Effective July 1, 1996, buy-backs may be made in increments of one or more calendar quarters. Prior to July 1, 1996, the member was required to repurchase the entire period of service and repay the total amount received plus accumulated interest and interest dividends.

A member who is vested solely by having attained the age of 55 must have at least one calendar quarter of wages on file with IPERS before completing a buy-back.

IPERS shall restore the wage records of a member who makes a buy-back and utilize those records in subsequent benefit calculations for that member.

21.24(4) *Prior service credit prior to January 1946.* A member who had service before January of 1946 but no service between January 1, 1946, and June 30, 1953, is eligible to receive credit for that service at no cost, subject to the member's providing verification of that service. If the member was employed after July 4, 1953, and took a refund of contributions, that member must first participate in the membership service buy-back (see subrule 21.24(3)) before receiving credit for service prior to 1946.

A member must submit proof of service in order to qualify.

21.24(5) *Veterans' credit.*

a. Effective July 1, 1992, a vested or retired member, in order to receive service credit under the IPERS system, may elect to make employer and employee contributions to IPERS for a period of active duty service in the armed forces of the United States, in increments of one or more calendar quarters, provided that the member:

(1) Produces verification of active duty service in the armed forces of the United States; and

(2) Is not receiving, or is not eligible to receive, retirement pay from the United States government for active duty service in the armed forces including full retirement disability compensation for this period of service. Disability payments received by the member as compensation for disability incurred while in service of the armed forces, which are not in lieu of military retirement compensation, will not disqualify a member from participating in this program.

A quarter of credit will be given when the date indicated on the DD214 shows service of at least 15 days in the quarter.

b. Prior to July 1, 1990, a person had to be an active member of IPERS as of July 1, 1988, and had to have covered wages during the 1987 calendar year in order to be eligible to apply. Partial buy-ins of allowable service time were not permitted until July 1, 1990.

c. For purchases prior to July 1, 1999, the member must pay IPERS the combined employee and employer contribution amount determined using the member's covered wages for the most recent full calendar year at the applicable rates in effect for that year under Iowa Code sections 97B.11, 97B.49B and 97B.49C for each year of the member's active duty service. A member must have at least four quarters of reported wages in any calendar year before a buy-in cost may be calculated.

d. If a vested or retired member does not have wages in the most recent calendar year, the cost of the buy-in will be calculated using the member's last calendar year of reported wages, adjusted by an inflation factor based on the Consumer Price Index as published by the United States Department of Labor. Between July 1, 1990, and July 1, 1992, members who did not have reported wages in the most recent calendar year were not permitted to purchase their otherwise eligible service time. Effective January 1 , 1993, the purchase will not affect the member's high three-year average wage.

e. Members eligible to complete the veterans' buy-in may buy the entire period of service or may buy credit in increments of one or more calendar quarters. If the entire period is not purchased, IPERS will calculate the proportionate cost of this period of service in accordance with this subrule. Fractional years of active service shall qualify a member for the equivalent quarters of credited IPERS covered service.

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a military service purchase, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase.

21.24(6) *Legislative members.*

a. Active members. Persons who are members of the Seventy-first General Assembly or a succeeding general assembly during any period beginning July 4, 1953, may, upon proof of such membership in the general assembly, make contributions to the system for all or a portion of the period of such service in the general assembly. The contributions made by the member shall be determined in the same manner as provided in subrule 21.24(6)*"b."*

b. Vested or retired former members of the general assembly.

(1) A vested or retired member of the system who was a member of the general assembly prior to July 1, 1988, may make contributions to the system for all or a portion of the period of service in the general assembly.

(2) The contributions made by the member shall be equal to the accumulated contributions as defined in Iowa Code section 97B.41(2), which would have been made if the member of the general assembly had been a member of the system during the period of service in the general assembly being purchased.

(3) The member shall submit proof to IPERS of membership in the general assembly for the period claimed.

(4) Upon determining a member eligible and receiving the appropriate contributions from the member, IPERS shall credit the member with the period of membership service for which contributions are made.

c. Incremental purchases. Service purchased under this subrule must be purchased in increments of one or more calendar quarters.

d. Actuarial cost. Effective July 1, 1999, an eligible member must pay 40 percent and the Iowa legislature shall pay 60 percent of the actuarial cost of a legislative service purchase, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase.

21.24(7) *Vocational school (area college) employees may elect coverage under another retirement system.*

a. Effective July 1, 1990, a person newly entering employment with an area vocational school or area community college may choose to forego IPERS coverage and elect coverage under an alternative retirement benefits system, which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees. This option is available only to those newly hired persons who are already members of the alternative retirement system. Such an election by a newly employed person is irrevocable.

b. Effective July 1, 1994, and providing that the board of directors of the area vocational school or area community college have approved participation in an alternative retirement system pursuant to Iowa Code section 260C.23, a member employed by an area vocational school or an area community college may elect coverage under an alternative retirement benefits system, which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees, in lieu of continuing or commencing contributions to IPERS.

c. Rescinded IAB 7/22/92, effective 7/2/92.

d. Effective July 1, 1994, a person who is employed before that date with an area community college may file a one-time irrevocable election form with IPERS and the employer electing participation in an alternative plan. The election must be postmarked by December 31, 1995. If a person is employed July 1, 1994, or later, the person may file a one-time election with IPERS and the employer electing participation in the alternative plan. The election must be postmarked within 60 days from the date employed. The employee will be a member of IPERS unless an election is filed within the specified time frames. An employee vested with IPERS retains all of the rights of any vested member for as long as the contributions remain with the fund. Members who elect out of IPERS coverage but remain with the same employer are eligible to apply for and receive a refund of their contributions plus interest. Such members may not, however, apply for retirement benefits until attaining the age of 70, or until they terminate employment with all public employers.

21.24(8) *Refunds of service purchase amounts.* A member may request and receive a refund without interest of all or a portion of amounts paid to IPERS to buy back prior service credit or to purchase credit for other service pursuant to Iowa Code chapter 97B. Such refund requests must be made in writing within 60 days after the date of the receipt issued by IPERS to the member for such amounts. Such refunds shall be in increments representing one or more quarters. Notwithstanding the foregoing, no refund shall be made if a member has made a service purchase under this rule and one or more monthly retirement allowance payments have been made thereafter. Furthermore, this subrule shall not limit IPERS' ability to refund service purchase amounts when required in order to meet the provisions of the Internal Revenue Code that apply to IPERS. This subrule shall be effective for refund requests received by IPERS on or after May 3, 1996.

21.24(9) *Leaves of absence.* Service credit for leaves of absence that begin on or after July 1, 1998, may be purchased. The cost of such service purchases shall be calculated in the same manner as provided for buy-ins under subrule 21.24(2) above. In addition, a member must be vested or retired, and must have one calendar year of wages on file in order to make such a purchase.

21.24(10) *Service credit under Iowa Code section 97B.42A(4).* Service credit for periods of time prior to January 1, 1999, when the member was employed in a position for which coverage could have been elected, but was not, may be purchased. The cost of such service purchases shall be calculated in the same manner as provided for buy-ins under subrule 21.24(2) above. In addition, a member must be vested or retired, and must have one calendar year of wages on file in order to make such a purchase. A member shall not be able to purchase service under this rule that was not eligible for optional coverage at the time of the employment.

21.24(11) *IRC Section 415(n) compliance.* Effective for service purchases made on or after January 1, 1998, service purchases made under this rule and other posttax contributions shall not exceed $30,000 per calendar year. In addition, the amounts contributed for service purchases under this rule shall not exceed the amount required to purchase the service according to the current cost schedules. In implementing these and the other requirements of IRC Section 415(n), IPERS shall use the following procedures.

a. If the member's total benefit at retirement passes the fully reduced IRC Section 415(b) dollar limit test, IPERS shall pay the total benefit.

b. If the member's total benefit at retirement fails the fully reduced IRC Section 415(b) dollar limit test, and the member made one or more service purchases, IPERS shall perform the applicable IRC Section 415 tests, with adjustments for posttax service purchases and other posttax contributions, and pay excess amounts, if any, under a qualified benefits arrangement authorized under Iowa Code section 97B.49I.

c. IPERS shall not permit the purchase of nonqualified service, as defined under IRC Section 415(n), unless such service is specifically authorized by the Iowa legislature. If so authorized, a member must have five years of existing service to make such a purchase, and the quarters of service purchased cannot exceed 20.

d. The limitations of this rule shall not apply to buybacks of prior refunds. In addition, the $30,000 annual limit under this rule shall not apply to service purchases grandfathered under the provisions of the Iowa Code and Section 1526 of the Taxpayer Relief Act of 1997.

e. If IPERS adopts rules and procedures permitting service to be purchased on a pretax basis, the amounts contributed will not be combined with posttax service purchases and other posttax contributions in applying the foregoing procedures.

f. The provisions of this subrule shall apply to all vested members who have an account balance and retirees.

g. IPERS reserves the right to apply the limitations of IRC Section 415(n) on a case-by-case basis to ensure that such limits are not exceeded.

21.24(12) If a member is attempting to purchase service credit under this rule, and any particular subrule under this rule requires that the member must have four calendar quarters of wages on file as a precondition to making the purchase, and the member's regular job duties are performed in fewer than four calendar quarters each year, the four calendar quarter requirement shall be reduced to the number of calendar quarters regularly worked by the member.

This rule is intended to implement Iowa Code sections 97B.42, 97B.43, 97B.72A, 97B.73 to 97B.75, and 97B.80.

581—21.25(97B) South Africa restrictions. Rescinded IAB 7/5/95, effective 8/9/95.

581—21.26(97B) Garnishments and income withholding orders. For the limited purposes of this rule, the term "member" includes IPERS members, beneficiaries, contingent annuitants and any other third-party payees to whom IPERS is paying a monthly benefit or a lump sum distribution.

A member's right to any payment from IPERS is not transferable or assignable and is not subject to execution, levy, attachment, garnishment, or other legal process, including bankruptcy or insolvency law, except for the purpose of enforcing child, spousal, or medical support.

Only members receiving payment from IPERS, including monthly benefits and lump sum distributions, may be subject to garnishment, attachment, or execution against funds that are payable. Such garnishment, attachment, or execution is not valid and enforceable for members who have not applied for and been approved to receive funds from IPERS.

Upon receipt of an income withholding order issued by the Iowa department of human services or a court, IPERS shall send a copy of the withholding order to the member. If a garnishment has been issued by a court, the party pursuing the garnishment shall send a notice pursuant to Iowa law to the member against whom the garnishment is issued.

(2) Specify that the alternate payee shall be entitled to a fixed dollar amount or percentage of dividend payments, as follows:

1. If the court order awards a fixed dollar amount of benefits to the alternate payee, the dollar amount of dividend payments to be added or method for determining said dollar amount shall be stated in the court order or an award of a share of dividend payments shall be given no effect; and

2. If the court order awards a specified percentage of benefits to the alternate payee, IPERS shall add dividends to the alternate payee's share of the retirement allowance as necessary to keep the alternate payee's share of payments at the percentage specified in the court order;

(3) Bar a vested member from requesting a refund of the member's accumulated contributions without the alternate payee's written consent; and

(4) Name a successor alternate payee to receive the amounts that would have been payable to the member's spouse or former spouse under the order, if the alternate payee dies before the member. The designation of a successor alternate payee in an order shall be void and be given no effect if the order does not provide the successor's name, Social Security number, and last-known mailing address.

21.29(3) *Administrative provisions.*

a. Payment to an alternate payee shall be made in a like manner and at the same time that payment is made to the member. Payment to the alternate payee shall be in a lump sum if benefits are paid in a lump sum distribution or as monthly payments if a retirement option is in effect. A member shall not be able to receive an actuarial equivalent (AE) under Iowa Code section 97B.48(1) unless the total benefit payable with respect to that member meets the applicable requirements. All divisions of benefits shall be based on the gross amount of monthly or lump sum benefits payable. Federal and state income taxes shall be deducted from the member's and alternate payee's respective shares and reported under their respective federal tax identification numbers. Unrecovered basis shall be allocated on a pro rata basis to the member and alternate payee.

b. If a domestic relations order does not so provide, the alternate payee shall not be entitled to any portion of the death benefit payable with respect to a member, but the failure to award an alternate payee a share of the member's death benefits in a qualified domestic relations order shall not negate a proper beneficiary designation on file with IPERS.

c. If an alternate payee has been awarded a share of the member's benefits and dies before the member, the entire account value shall be restored to the member unless otherwise specified in the order and in the manner required under this rule.

d. An alternate payee shall not receive a share of dividends or other cost-of-living increases, unless so provided in a qualified domestic relations order.

e. The chief benefits officer, or a designee thereof, shall have exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. A final determination by the chief benefits officer, or a designee thereof, may be appealed in the same manner as any other final agency determination under Iowa Code chapter 97B.

f. A person who attempts to make IPERS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to a member shall be liable to IPERS for its costs and attorney's fees.

g. A domestic relations order shall not become effective until it is approved by IPERS. If a member is receiving a retirement allowance at the time a domestic relations order is received by the system, the order shall be effective only with respect to payments made after the order is determined to be a qualified domestic relations order. If the member is not receiving a retirement allowance at the time a domestic relations order is received by IPERS and the member applies for a refund or monthly allowance, or dies, no distributions shall be made until the respective rights of the parties under the domestic relations order are determined by IPERS.

h. IPERS and its staff shall have no liability for making or withholding payments in accordance with the provisions of this rule.

i. Alternate payees must notify IPERS of any change in mailing address. IPERS shall contact the alternate payee in writing at the last-known mailing address on file with IPERS, notifying the alternate payee that an application for a distribution has been received with respect to the member and providing the alternate payee with an application to be completed and returned by the alternate payee. The written notice shall provide that if the alternate payee does not return said application to IPERS within 60 days after such written materials are mailed by IPERS, the amounts otherwise payable to the alternate payee shall be paid to the member or the member's beneficiary(ies) until a valid application is received, and IPERS shall have no liability to the alternate payee with respect to such amounts. IPERS has no duty or responsibility to search for alternate payees. If distributions have already begun at the time that an order determined by IPERS to be a qualified domestic relations order, the qualified domestic relations order shall be deemed to be the alternate payee's application to begin receiving his or her payments under the QDRO.

j. If an alternate payee's application is received less than two weeks before the member's first or next monthly payment is to be made, payments to the alternate payee shall begin the next following month.

k. For both lump sum and monthly payments, the alternate payee's tax withholding and rollover (if eligible) elections must be received not less than two weeks in advance of the alternate payee's first payment, or IPERS will use the applicable default elections.

This rule is intended to implement Iowa Code sections 97B.4, 97B.15 and 97B.39.

581—21.30(97B) Favorable experience dividend under Iowa Code section 97B.49F(2).

21.30(1) *Allocation of favorable experience.* The department shall annually allocate the system's favorable actuarial experience, if any, between the reserve account created under Iowa Code section 97B.49F(2) and the remainder of the retirement fund according to the following schedule.

Years to Amortize Unfunded Liability	Percentage to FED Reserve
Greater than 0 but less than or equal to 3	50%
Greater than 3 but less than or equal to 6	35%
Greater than 6 but less than or equal to 9	25%
Greater than 9 but less than or equal to 12	15%
Greater than 12 but less than or equal to 15	5%
Greater than 15	0%

The portion of the favorable actuarial experience that is not allocated to the FED reserve as provided above will be retained and used by the system to pay down its unfunded actuarial accrued liability, except as otherwise required by Iowa Code section 97B.49F(2)*"c."*

21.30(2) *Determination of applicable percentage.* The department shall have sole discretion to determine the applicable percentages that will be used in calculating favorable experience dividends payable under this rule, if any, subject to the actuary's certification that the resulting favorable experience dividends meet the requirements of Iowa Code section 97B.49F(2) and this rule.

a. The department's annual applicable percentage target for calculating dividends under Iowa Code section 97B.49F(2) shall be equal to the applicable percentage used in calculating dividends payable to retirees under Iowa Code section 97B.49F(1). Notwithstanding the foregoing, the department may set a greater or lesser applicable percentage for calculating dividends under this rule depending on the funding adequacy of the reserve account. In no event shall the applicable percentage exceed 3 percent.

b. In determining the annual applicable percentage, the department shall consider, but not be limited to, the value of the reserve account, distributions made from the reserve account in previous years, and the likelihood of future credits to and distributions from the reserve account. The department shall make its annual applicable percentage decisions using at least a rolling five-year period.

c. If for any year the department cannot afford an applicable percentage equal to that payable to retirees under Iowa Code section 97B.49F(1), the department may use applicable percentages in succeeding years that are higher than those used in calculating dividends for retirees under Iowa Code section 97B.49F(1) (but not in excess of 3 percent).

d. An applicable percentage in excess of the applicable percentage declared under Iowa Code section 97B.49F(1) made for catch-up purposes shall not reduce the funding of the reserve account below the amount the system's actuary determines is necessary to pay the maximum favorable experience dividend for each of the next five years, based on reasonable actuarial assumptions.

21.30(3) *Calculation of FED for individual members and beneficiaries.* A member must be retired for one full year to qualify for a favorable experience dividend. In determining whether a member has been retired one full year, the department shall count the member's first month of entitlement as the first month of the one-year period. The month in which the favorable experience dividend is payable shall be included in determining whether a member meets the eligibility requirements.

An eligible member's favorable experience dividend shall be calculated by multiplying the total monthly benefit payments received in the prior calendar year by the number of complete years the member has been retired or would have been retired if living on the date the dividend is payable, and by the applicable percentage set by the department. The number of complete years the member has been retired shall be determined by rounding down to the nearest whole year.

21.30(4) *FED for eligible members and beneficiaries who die before the January distribution date.* If a member or beneficiary receiving monthly payments would have been eligible for a FED distribution in the following January but dies prior to the January distribution date, IPERS will pay a FED to the member's or beneficiary's account for the calendar year in which the death occurred. The FED shall be calculated using the monthly payments received in the calendar year the death occurred. A lump sum death benefit shall not constitute a monthly payment for purposes of determining FED eligibility or in making FED calculations.

The FED percentage applied to the monthly payments received in the calendar year of death shall be the most recently declared FED percentage in effect at the time of the FED payment to the member or beneficiary. This subrule shall not be construed to permit a FED distribution to a member where the total monthly benefits received by the member, counting the month of death, is less than 12, even if a period of 12 months has elapsed between the first payment of monthly benefits to the member and the January distribution date.

Notwithstanding the foregoing, if IPERS determines in January of a given year that, based on reasonable actuarial assumptions, there is a reasonable likelihood that a FED will not be declared for the next following January, IPERS may defer paying FED distributions under this subrule until the determination is made. If IPERS subsequently determines that no FED will be declared for a given year, no FED will be payable to persons whose death occurs during the applicable calendar year.

This rule is intended to implement Iowa Code section 97B.49F(2).

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c. Carpeting. Olefin or other approved carpeting may be used in locker room or dressing room areas provided there is an adequate drip area between the carpeting and the shower room, toilet facilities, swimming pool, or other area where water can accumulate.

d. All lavatories, showers, and sanitary facilities shall be functional.

e. Soap shall be available at each lavatory and at each indoor shower fixture.

15.4(6) *Management, notifications, and records.*

a. Certified operator required. Each swimming pool facility shall employ a certified operator. One certified operator may be responsible for a maximum of three swimming pool/spa facilities. Condominium associations, apartments and homeowners associations with 25 or fewer living units are exempt from this requirement.

b. Pool rules sign. A legible pool rules sign shall be posted conspicuously at a minimum of two locations within the swimming pool enclosure. The sign shall include:

(1) No diving in the shallow end of the swimming pool and in other areas where it is marked "NO DIVING."

(2) No horseplay in or around the swimming pool.

(3) No running on the deck.

c. Other rules. Management may adopt and post such other rules as it deems necessary to provide for user safety and the proper operation of the facility.

d. "No Lifeguard" signs. A sign shall be posted at each entry to a swimming pool or a wading pool where lifeguards are not required.

(1) The sign(s) at a swimming pool shall state that lifeguards are not on duty and children under the age of 12 must be accompanied by an adult.

(2) The sign(s) at a wading pool shall state that lifeguards are not on duty and children must be accompanied by an adult.

e. Water slide rules. Rules and restrictions for the use of a water slide shall be posted near the slide. The rules shall address the following as applicable:

(1) Use limits.

(2) Attire.

(3) Riding restrictions.

(4) Water depth at exit.

(5) Special rules to accommodate unique aspects of the attraction.

(6) Special warnings as to the relative degree of difficulty.

f. Operational records. The operator of a swimming pool shall have the swimming pool operational records for the previous 12 months at the swimming pool facility and shall make these records available upon request by a swimming pool inspector. These records shall contain a day-by-day account of swimming pool operation, including:

(1) Results of pH, free chlorine or total bromine residual, cyanuric acid (if used), total alkalinity, combined chlorine, and calcium hardness tests, and any other chemical test results.

(2) Results of microbiological analyses.

(3) Reports of complaints, accidents, injuries, and illness.

(4) Dates and quantities of chemical additions, including resupply of chemical feed systems.

(5) Dates when filters were backwashed, cleaned or a filter cartridge was changed.

(6) Monthly ground fault circuit interrupter test results.

(7) Dates of review of material safety data sheets.

g. Submission of records. The inspection agency (the department or a contracting board of health) may require a swimming pool facility operator to submit copies of chemical test results and microbiological analyses to the inspection agency on a monthly basis. The inspection agency shall notify the facility management of this requirement in writing at least 15 days before the reports are to be submitted for the first time. The facility operator shall submit the required reports to the inspection agency within 10 days after the end of each month of operation.

h. Certificates. Copies of certified operator certificates, and copies of lifeguard, first-aid, basic water rescue, and CPR certificates for the facility staff shall be kept at the facility.

i. Operations manual. A permanent manual for the operation of the swimming pool shall be kept at the facility. It shall include at a minimum:

(1) Operating and maintenance instructions for each type of filter, pump and safety device, including filter backwash or cleaning instructions.

(2) Operating and maintenance instructions for other equipment used at the swimming pool.

(3) Water testing procedures.

(4) A schematic drawing of the pool recirculation system. Clear labeling of the swimming pool piping with flow direction and water status (unfiltered, treated, backwash) may be substituted for the schematic drawing.

j. Material safety data sheets. Copies of material safety data sheets of the chemicals used at the swimming pool shall be kept at the facility in a location known to facility staff with chemical handling responsibilities. The material safety data sheets shall be reviewed with the facility staff at least annually.

k. Emergency plan. A written emergency plan shall be provided. The plan shall include, but may not be limited to, actions to be taken in cases of drowning, serious illness or injury, chemical handling accidents, weather emergencies, and other serious incidents. The emergency plan shall be reviewed with the facility staff at least once a year, and the dates of review or training shall be recorded in the pool records.

l. Lifeguard staffing plan. The lifeguard staffing plan for the facility shall be available to the swimming pool inspector at the facility. The plan shall include staffing assignments for all programs conducted at the pool.

15.4(7) *Reports.* Swimming pool and spa operators shall report to the department within one business day of occurrence all deaths; near drowning incidents; head, neck, and spinal cord injuries; and any injury which renders a person unconscious or requires immediate medical attention.

641—15.5(135I) Construction and reconstruction. A swimming pool constructed or reconstructed after the effective date of these rules (May 13, 1998) shall comply with the following standards. An existing swimming pool shall comply with the requirements of 641—15.4(135I). Nothing in these rules is intended to exempt swimming pools and associated structures from any applicable federal, state or local laws, rules, or ordinances. Applicable requirements may include, but are not limited to, the handicapped access and energy requirements of the state building code, the fire and life safety requirements of the state fire marshal, the rules of the Iowa department of workforce development, and the rules of the Iowa department of natural resources.

(3) Except as modified by 15.52(12)*"e"*(4), all facilities with an indoor spa which have secured entry shall be considered to have met the provisions of 15.52(12)*"e"*(1).

(4) An indoor spa shall be enclosed by a barrier at least 3 ft high if there are sleeping rooms, apartments, condominiums, or permanent recreation areas used by children which open directly into the spa area. A spa may be in the same enclosure as another spa or a swimming pool. No opening in the barrier except for a gate or door shall permit the passage of a 4-inch sphere. Gates or doors shall be lockable, self-closing and self-latching.

These rules are intended to implement Iowa Code chapter 135I.

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◊Two ARCs

CHAPTER 70
LEAD PROFESSIONAL CERTIFICATION

641—70.1(135) Applicability. Prior to March 1, 2000, this chapter applies to all persons who are certified lead professionals in Iowa. Beginning March 1, 2000, this chapter applies to all persons who are lead professionals in Iowa. While this chapter requires lead professionals to be certified and establishes specific requirements for how to perform lead-based paint activities if a property owner, manager, or occupant chooses to undertake them, nothing in this chapter requires a property owner, manager, or occupant to undertake any particular lead-based paint activity.

641—70.2(135) Definitions.

"Adequate quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"Approved course" means a course that has been approved by the department for the training of lead professionals.

"Certified elevated blood lead (EBL) inspection agency" means an agency that has met the requirements of 641—70.5(135) and that has been certified by the department.

"Certified elevated blood lead (EBL) inspector" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified lead abatement contractor" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified lead abatement worker" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Certified lead inspector" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified lead professional" means a person who has been certified by the department as a lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, lead abatement worker, project designer, or visual risk assessor.

"Certified project designer" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified visual risk assessor" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited by the same child under the age of six years, on at least two different days within any week (Sunday through Saturday period, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours). Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

"Clearance levels" means values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. These values are 100 micrograms per square foot on floors, 500 micrograms per square foot on window sills, and 800 micrograms per square foot on window troughs.

"Common area" means a portion of the building that is generally accessible to all occupants. This includes, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Component" or *"building component"* means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, countertops, and air conditions; and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, latticework, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casing, sashes and wells, and air conditioners.

"Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

"Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course test blueprint" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Department" means the Iowa department of public health.

"Deteriorated paint" means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this chapter for which individuals may receive training from approved courses and become certified by the department. For example, "lead inspector" is a discipline.

"Distinct painting history" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

"Documented methodologies" means methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Elevated blood lead (EBL) child" means any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.

"Elevated blood lead (EBL) inspection" means an inspection to determine the sources of lead exposure for an elevated blood lead (EBL) child and the provision within ten working days of a written report explaining the results of the investigation to the owner and occupant of the residential dwelling or child-occupied facility being inspected and to the parents of the elevated blood lead (EBL) child.

"Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded coating material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"Firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs or offers to perform lead-based paint activities.

"Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on work activities, or work practice components of a course.

"Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in 641—70.6(135), as well as any other skill taught in a training course.

"Hazardous waste" means any waste as defined in 40 CFR 261.3.

"Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including repairing deteriorated lead-based paint, specialized cleaning, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards in a residential dwelling or child-occupied facility. Abatement includes, but is not limited to, (1) the removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil and (2) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures. Lead abatement specifically includes, but is not limited to, (1) projects for which there is a written contract or other documentation, which provides that an individual will be conducting activities in or to a residential dwelling or child-occupied facility that shall result in or are designed to permanently eliminate lead-based paint hazards, (2) projects resulting in the permanent elimination of lead-based paint hazards, (3) projects resulting in the permanent elimination of lead-based paint hazards that are conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint abatement, and (4) projects resulting in the permanent elimination of lead-based paint that are conducted in response to an abatement order. Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.

"Lead-based paint activities" means, in the case of target housing and child-occupied facilities, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, lead abatement, and visual risk assessment.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, and impact surfaces that would result in adverse human health effects.

"Lead-contaminated dust" means surface dust in residential dwellings or child-occupied facilities that contains in excess of 100 micrograms per square foot on floors, 500 micrograms per square foot on windowsills, and 800 micrograms per square foot on window troughs.

"Lead-contaminated soil" means bare soil on residential real property and on the property of a child-occupied facility that contains lead in excess of 400 parts per million for areas where child contact is likely and in excess of 2,000 parts per million if child contact is not likely.

"Lead hazard screen" means a limited risk assessment activity that involves limited paint and dust sampling.

"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and a determination of the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards to the person requesting the lead inspection.

"Lead professional" means a person who conducts lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, or visual risk assessments.

"Living area" means any area of a residential dwelling used by at least one child under the age of six years, including, but not limited to, living rooms, kitchen areas, dens, playrooms, and children's bedrooms.

"Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Occupant protection plan" means a plan developed by a certified lead abatement contractor prior to the commencement of lead abatement in a residential dwelling or child-occupied facility that describes the measures and management procedures that will be taken during lead abatement to protect the building occupants from exposure to any lead-based paint hazards.

"Permanently covered soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

"Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

"Recognized laboratory" means an environmental laboratory recognized by the U.S. Environmental Protection Agency pursuant to Section 405(b) of the federal Toxic Substance Control Act as capable of performing an analysis for lead compounds in paint, soil, and dust.

"Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

"Refresher training course" means a course taken by a certified lead professional to maintain certification in a particular discipline.

"Residential dwelling" means (1) a detached single-family dwelling unit, including the surrounding yard, attached structures such as porches and stoops, and detached buildings and structures including, but not limited to, garages, farm buildings, and fences, or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or part, as the home or residence of one or more persons.

"Risk assessment" means an investigation to determine the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards to the person requesting the risk assessment.

"State certification examination" means a discipline-specific examination approved by the department to test the knowledge of a person who has completed an approved training course and is applying for certification in a particular discipline. The state certification examination may not be administered by the provider of an approved course.

"Target housing" means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing which does not contain a bedroom, unless at least one child under the age of six years, resides or is expected to reside in the housing for the elderly or persons with disabilities or housing which does not contain a bedroom.

"Training hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or hands-on experience.

"Training manager" means the individual responsible for administering an approved course and monitoring the performance of principal instructors and guest instructors.

"Training program" means a person or organization sponsoring a lead professional training course.

"Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

"Visual risk assessment" means a visual assessment to determine the presence of deteriorated paint or other potential sources of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the assessment to the person requesting the visual risk assessment.

"X-ray fluorescence analyzer (XRF)" means an instrument that determines lead concentrations in milligrams per square centimeter (mg/cm^2) using the principle of x-ray fluorescence.

641—70.3(135) Certification. Prior to March 1, 2000, lead professionals may be certified by the department. Beginning March 1, 2000, lead professionals must be certified by the department in the appropriate discipline before they conduct lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, and visual risk assessments, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspectors employed by or under contract with a certified elevated blood lead (EBL) inspection agency. Lead professionals shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department. Prior to March 1, 2000, elevated blood lead (EBL) inspection agencies may be certified by the department. Beginning March 1, 2000, elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department.

641—70.4(135) Course approval and standards. Prior to March 1, 1999, lead professional training courses for initial certification and refresher training may be approved by the department. Beginning March 1, 1999, lead professional training courses for initial certification and refresher training must be approved by the department. Training programs shall not state that they have been approved by the state of Iowa unless they have met the requirements of rule 70.4(135) and been issued a letter of approval by the department.

70.4(1) Training courses shall meet the following requirements:

a. The training course shall employ a training manager who has the following qualifications:

(1) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, or a related field; or two years of experience in managing a training program specializing in environmental hazards.

(2) Demonstrated experience, education, or training in lead professional activities, including lead inspection, lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

b. The training manager shall designate a qualified principal instructor for each course who has the following qualifications:

(1) Demonstrated experience, education, or training in teaching workers or adults.

(2) Certification as a lead inspector, elevated blood lead (EBL) inspector, or lead abatement contractor.

(3) Demonstrated experience, education, or training in lead professional activities, including lead inspection, lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

c. The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

d. The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment as needed.

e. The training manager shall maintain the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in subrules 70.4(3) to 70.4(9).

f. The training manager shall maintain the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

g. The course test shall be developed in accordance with the test blueprint submitted with the course approval application.

h. The training program shall issue unique course completion certificates to each individual who passes the course. The course completion certificate shall include:

(1) The name and address of the individual and a unique identification number.

(2) The name of the particular course that the individual completed.

(3) Dates of course completion and test passage.

(4) The name, address, and telephone number of the training program.

i. The training manager shall develop and implement a quality control program. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(1) Procedures for periodic revision of training materials and the course test to reflect changes in regulations and recommended practices.

(2) Procedures for the training manager to conduct an annual review of the competency of the principal instructor.

j. The training program shall offer courses that teach the work practice standards for conducting lead-based paint activities contained in rule 70.6(135) and other standards developed by the department. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

k. The training manager shall ensure that the training program complies at all times with all requirements in this rule.

l. The training manager shall allow the department to audit the training program to verify the contents of the application for approval and for reapproval.

m. The training program shall maintain, and make available to the department, upon request, the following records:

(1) All documents specified in paragraph 70.4(2)*"f."*

(2) Current curriculum/course materials and documents reflecting any changes made to these materials.

(3) The course test blueprint and the course test.

j. Approved methods for conducting lead-based paint abatement and interim controls.*

k. Prohibited methods for conducting lead-based paint abatement and interim controls.

l. Interior dust abatement and cleanup.*

m. Soil and exterior dust abatement and cleanup.*

n. Clearance standards and testing, including random sampling.

o. Cleanup and waste disposal.

p. Record keeping.

q. Role and responsibilities of a project designer.

r. Development and implementation of an occupant protection plan for large-scale abatement projects.

s. Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

t. Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

u. Clearance standards and testing for large-scale abatement projects.

v. Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large-scale abatement projects.

w. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(9) To be approved for refresher training of visual risk assessors, lead abatement contractors, lead abatement workers, and project designers, a course must be at least 8 training hours. To be approved for refresher training of lead inspectors who completed an approved 24-hour training course or elevated blood lead inspectors who completed an approved 32-hour training course, a course must be at least 8 training hours to meet the recertification requirements of subrule 70.5(3). To be approved for refresher training of lead inspectors and elevated blood lead inspectors to meet the recertification requirements of subrule 70.5(5), a course must be at least 16 training hours. All refresher courses shall cover at least the following topics:

a. A review of the curriculum topics of the initial certification course for the appropriate discipline as listed in subrules 70.4(3) to 70.4(8).

b. An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

c. Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

d. Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

e. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(10) Approvals of training courses shall expire three years after the date of issuance. The training manager shall submit the following at least 90 days prior to the expiration date for a course to be reapproved:

a. Sponsoring organization name, contact person, address, and telephone number.

b. A list of the courses for which reapproval is sought.

c. A description of any changes to the training staff, facility, equipment, or course materials since the approval of the training program.

d. A statement signed by the training manager stating that the training program complies at all times with rule 70.4(135).

e. A nonrefundable fee of $200.

70.4(11) The department shall consider a request for approval of a training course that has been approved by a state or tribe authorized by the U.S. Environmental Protection Agency.

a. The course shall be approved if it meets the requirements of rule 70.4(135).

b. If the course does not meet all of the requirements of rule 70.4(135), the department shall inform the training provider of additional topics and training hours that are needed to meet the requirements of rule 70.4(135).

641—70.5(135) Certification, interim certification, and recertification.

70.5(1) A person wishing to become a certified lead professional shall apply on forms supplied by the department. The applicant must submit:

a. A completed application form.

b. A certificate of completion of an approved course for the discipline in which the applicant wishes to become certified.

c. A person wishing to become a certified lead inspector or a certified elevated blood lead (EBL) inspector shall provide documentation of successful completion of the manufacturer's training course or equivalent for the X-ray fluorescence (XRF) analyzer that the inspector will use to conduct lead inspections.

d. Documentation that the applicant meets the additional experience and education requirements in subrule 70.5(2) for the discipline in which the applicant wishes to become certified. The following documents shall be submitted as evidence that the applicant has the education and work experience required by subrule 70.5(2):

(1) Official transcripts or diplomas as evidence of meeting the education requirements.

(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

e. Beginning March 1, 2000, to become certified as a lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, or project designer, a certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.

f. A $50 nonrefundable fee.

g. A person may receive interim certification from the department as a lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, or project designer by submitting the items required by paragraphs 70.5(1)*"a"* to *"d"* and *"f"* to the department. If the applicant completed an approved course prior to September 1, 1999, the interim certification shall expire on March 1, 2000. If the applicant completed an approved course on or after September 1, 1999, the interim certification shall expire six months from the date of completion of an approved course. An interim certification must be upgraded to a certification by submitting a certificate showing that the applicant has passed the state certification examination to the department as required by paragraph 70.5(1)*"e."* Interim certification is equivalent to certification.

70.5(2) Beginning September 1, 1999, to become certified by the department as a lead professional, an applicant must meet the education and experience requirements for the appropriate discipline:

a. Lead inspectors and elevated blood lead (EBL) inspectors must meet one of the following requirements:

(1) Bachelor's degree and one year of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(2) Associate's degree and two years of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(3) High school diploma and three years of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(4) Certification as an industrial hygienist, professional engineer, registered architect, registered sanitarian, registered environmental health specialist, or registered nurse.

b. Lead abatement contractors must meet one of the following requirements:

(1) One year of experience as a certified lead abatement worker.

(2) Two years of experience in building trades.

c. No additional education or experience is required for lead abatement workers.

d. Visual risk assessors must meet one of the following requirements:

(1) Associate's degree.

(2) High school diploma and one year of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(3) Certification as an industrial hygienist, professional engineer, registered architect, registered sanitarian, registered environmental health specialist, or registered nurse.

e. Project designers must meet one of the following requirements:

(1) Bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field.

(2) Four years of experience in building construction and design or a related field.

70.5(3) Certifications issued prior to September 1, 1999, shall expire on February 29, 2000. By March 1, 2000, lead professionals certified prior to September 1, 1999, must be recertified by submitting the following:

a. A completed application form.

b. For lead inspectors, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(3) and the completion of an 8-hour refresher course.

c. For elevated blood lead (EBL) inspectors, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(4) and the completion of an 8-hour refresher course.

d. Documentation that the applicant meets the experience and education requirements in subrule 70.5(2) for the discipline in which the applicant wishes to become certified. The following documents shall be submitted as evidence that the applicant has the education and work experience required by subrule 70.5(2):

(1) Official transcripts or diplomas as evidence of meeting the education requirements.

(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

e. If the date on which the applicant completed an approved training course is three years or more before the date of recertification, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline.

f. A certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.

g. A $50 nonrefundable fee.

70.5(4) An agency wishing to become a certified elevated blood lead (EBL) inspection agency shall apply on forms supplied by the department. The agency must submit:

a. A completed application form.

b. Documentation that the agency has the authority to require the repair of lead hazards identified through an elevated blood lead (EBL) inspection.

c. Documentation that the agency employs or has contracted with a certified elevated blood lead (EBL) inspector to provide environmental case management of all elevated blood lead (EBL) children in the agency's service area, including follow-up to ensure that lead-based paint hazards identified as a result of elevated blood lead (EBL) inspections are corrected.

70.5(5) Beginning March 1, 2000, individuals certified as lead professionals must be recertified each year. To be recertified, lead professionals must submit the following:

a. A completed application form.

b. A $50 nonrefundable fee.

c. Every three years, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline. If the applicant completed an approved training program prior to March 1, 2000, the initial refresher training course must be completed no more than three years after the date on which the applicant completed an approved training program.

70.5(6) The department shall approve the state certification examinations for the disciplines of lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, and project designer. The state certification examination may not be administered by the provider of an approved course.

a. An individual may take the state certification examination no more than three times within six months of receiving a certificate of completion from an approved course.

b. If an individual does not pass the state certification examination within six months of receiving a certificate of completion from an approved course, the individual must retake the appropriate approved course before reapplying for certification.

641—70.6(135) Work practice standards for conducting lead-based paint activities in target housing and child-occupied facilities.

70.6(1) Prior to March 1, 2000, when performing any lead-based paint activity described as an inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, visual risk assessment, or lead abatement, a certified individual must perform that activity in compliance with the appropriate requirements below. Beginning on March 1, 2000, all lead-based paint activities shall be performed according to the work practice standards in rule 70.6(135) and a certified individual must perform that activity in compliance with the appropriate requirements below.

70.6(2) A certified lead inspector or a certified elevated blood lead (EBL) inspector must conduct lead inspections according to the following standards. Beginning March 1, 2000, lead inspections shall be conducted only by a certified lead inspector or a certified elevated blood lead (EBL) inspector.

a. When conducting an inspection, the inspector shall use the documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

b. Paint shall be sampled using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface.

c. If lead-based paint is identified through an inspection, the inspector must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards.

d. A certified lead inspector or a certified elevated blood lead (EBL) inspector shall prepare a written report for each residential dwelling or child-occupied facility inspected and shall provide a copy of this report to the person requesting the inspection. A certified lead inspector or a certified elevated blood lead (EBL) inspector shall maintain a copy of each written report for no fewer than three years. The inspection report shall include, at least:

(1) Date of each inspection;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified lead inspector or certified elevated blood lead inspector conducting the investigation;

(7) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(8) Each testing method and device and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any X-ray fluorescence (XRF) device;

(9) Specific locations of each painted component tested for the presence of lead-based paint;

(10) The results of the inspection expressed in terms appropriate to the sampling method used;

(11) A description of the location, type, and severity of identified lead-based paint hazards, and any other potential lead hazards; and

(12) A description of interim controls and abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

70.6(3) A certified elevated blood lead (EBL) inspector must conduct elevated blood lead (EBL) inspections according to the following standards. Beginning March 1, 2000, elevated blood lead (EBL) inspections shall be conducted only by a certified EBL inspector.

a. When conducting an elevated blood lead (EBL) inspection, the elevated blood lead (EBL) inspector shall use the documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

b. Paint shall be sampled using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface.

c. If lead-based paint is identified through an inspection, the inspector must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards.

d. A certified elevated blood lead (EBL) inspector shall prepare a written report for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted and shall provide a copy of this report to the owner and the occupant of the dwelling. The report shall include, at least:

(1) Date of each elevated blood lead (EBL) inspection;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified elevated blood lead (EBL) inspector conducting the investigation;

(7) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(8) Each testing method and device and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any X-ray fluorescence (XRF) device;

(9) Specific locations of each painted component tested for the presence of lead-based paint;

(10) The results of the inspection expressed in terms appropriate to the sampling method used;

(11) A description of the location, type, and severity of identified lead-based paint hazards, and any other potential lead hazards; and

(12) A description of interim controls and abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

e. A certified elevated blood lead (EBL) inspector shall maintain a written record for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted for no fewer than ten years. The record shall include, at least:

(1) A copy of the written report required by paragraph 70.6(3)*"d."*

(2) Blood lead test results for the elevated blood lead (EBL) child.

(3) A record of conversations held with the owners and occupants of each residential dwelling or child-occupied facility prior to, during, and after the EBL inspection.

(4) Records of follow-up visits made to each residential dwelling or child-occupied facility where lead-based paint hazards are identified to ensure that lead-based paint hazards are safely repaired.

70.6(4) A certified lead inspector or a certified elevated blood lead (EBL) inspector must conduct lead hazard screens according to the following standards. Beginning March 1, 2000, lead hazard screens shall be conducted only by a certified lead inspector or a certified elevated blood lead (EBL) inspector.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection of the residential dwelling or child-occupied facility shall be conducted to determine if any deteriorated paint is present and to locate at least two dust sampling locations.

c. If deteriorated paint is present, each surface with deteriorated paint which is determined to have a distinct painting history must be tested for the presence of lead.

d. In residential dwellings, two composite dust samples shall be collected. One sample shall be collected from the floors and the other from the window well and window trough in rooms, hallways, or stairwells where at least one child under the age of six years is most likely to come in contact with dust.

e. In multifamily dwellings and child-occupied facilities, a composite dust sample shall also be collected from common areas where at least one child under the age of six years is likely to come in contact with dust.

f. Dust samples shall be collected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development). Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

g. Paint shall be sampled using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface.

h. A certified lead inspector or a certified elevated blood lead inspector shall prepare a written report for each residential dwelling or child-occupied facility where a lead hazard screen is conducted and shall provide a copy of this report to the person requesting the lead hazard screen. A certified lead inspector or a certified elevated blood lead inspector shall maintain a copy of each written report for no fewer than three years. The report shall include, at least:

(1) Date of each lead hazard screen;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified lead inspector or certified elevated blood lead inspector conducting the investigation;

(7) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(8) Results of the visual inspection;

(9) Each testing method and device and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any X-ray fluorescence (XRF) device;

(10) Specific locations of each painted component tested for the presence of lead-based paint;

(11) All results of laboratory analysis of collected paint, dust, and soil samples;

(12) Any other sampling results;

(13) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years; and

(14) Recommendations, if warranted, for a follow-up lead inspection or risk assessment, and, as appropriate, any further actions.

70.6(5) A certified lead inspector or a certified elevated blood lead (EBL) inspector must conduct risk assessments according to the following standards. Beginning March 1, 2000, risk assessments shall be conducted only by a certified lead inspector or a certified elevated blood lead (EBL) inspector.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead hazards and to assess the extent and causes of the paint deterioration.

c. If deteriorated paint is present, each surface with deteriorated paint which is determined to have a distinct painting history must be tested for the presence of lead.

d. Accessible, friction, and impact surfaces having a distinct painting history shall be tested for the presence of lead.

e. In residential dwellings, dust samples shall be collected from the windowsill, window trough, and floor in all living areas where at least one child is most likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

f. In multifamily dwellings and child-occupied facilities, dust samples shall also be collected from common areas adjacent to the sampled residential dwellings or child-occupied facility and in other common areas where the lead inspector or elevated blood lead (EBL) inspector determines that at least one child under the age of six years is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

g. In child-occupied facilities, dust samples shall be collected from the window well, window trough, and floor in each room, hallway, or stairwell utilized by one or more children, under the age of six years, and in other common areas where the lead inspector or elevated blood lead (EBL) inspector determines that at least one child under the age of six years is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

h. Soil samples shall be collected in exterior play areas and drip line/foundation areas where bare soil is present.

i. Dust samples, soil, and paint samples shall be collected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development). Dust and soil samples shall be analyzed by a recognized laboratory to determine the level of lead.

j. Paint shall be sampled using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface.

k. A certified lead inspector or a certified elevated blood lead (EBL) inspector shall prepare a written report for each residential dwelling or child-occupied facility where a risk assessment is conducted and shall provide a copy of the report to the person requesting the risk assessment. A certified lead inspector or a certified elevated blood lead (EBL) inspector shall maintain a copy of the report for no fewer than three years. The report shall include, at least:

(1) Date of each risk assessment;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified inspector conducting the investigation;

(7) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(8) Results of the visual inspection;

(9) Each testing method and device and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any X-ray fluorescence (XRF) device;

(10) Specific locations of each painted component tested for the presence of lead-based paint;

(11) All results of laboratory analysis of collected paint, dust, and soil samples;

(12) Any other sampling results;

(13) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years;

(14) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint hazards;

(15) A description of the location, type, and severity of identified lead-based paint hazards, and any other potential lead hazards; and

(16) A description of interim controls and abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

70.6(6) A certified lead abatement contractor or certified lead abatement worker must conduct lead abatement according to the following standards. Beginning March 1, 2000, lead abatement shall be conducted only by a certified lead abatement contractor or a certified lead abatement worker.

a. A certified lead abatement contractor must be on site during all work site preparation and during the postabatement cleanup of work areas. At all other times when lead abatement is being conducted, the certified lead abatement contractor shall be on site or available by telephone, pager, or answering service, and be able to be present at the work site in no more than two hours.

b. A certified lead abatement contractor shall ensure that lead abatement is conducted according to all federal, state, and local requirements.

c. A certified lead abatement contractor shall notify the department at least seven days prior to the commencement of lead abatement in a residential dwelling or child-occupied facility.

d. A certified lead abatement contractor or a certified project designer shall develop an occupant protection plan for all lead abatement projects prior to starting lead abatement and shall implement the occupant protection plan during the lead abatement project. The occupant protection plan shall be unique to each residential dwelling or child-occupied facility. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

e. Approved methods must be used to conduct lead abatement and prohibited work practices must not be used to conduct lead abatement. The following are prohibited work practices:

(1) Open-flame burning or torching of lead-based paint.

(2) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint unless used with High Efficiency Particulate Air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

(3) Uncontained water blasting of lead-based paint.

(4) Dry scraping or dry sanding of lead-based paint except in conjunction with the use of a heat gun or around electrical outlets.

(5) Operating a heat gun at a temperature at or above 1100 degrees Fahrenheit.

f. Soil abatement shall be conducted using one of the following methods:

(1) If soil is removed, the lead-contaminated soil shall be replaced with soil that is not lead-contaminated.

(2) If soil is not removed, the lead-contaminated soil shall be permanently covered.

g. Postabatement clearance procedures shall be conducted by a certified lead inspector or a certified elevated blood lead (EBL) inspector using the following procedures:

(1) Following an abatement, a visual inspection shall be performed to determine if deteriorated paint surfaces or visible amounts of dust, debris, or residue are still present. If deteriorated paint surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(2) Following the visual inspection and any required postabatement cleanup, clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite dust sampling.

(3) Dust samples shall be collected a minimum of one hour after the completion of final postabatement cleanup activities.

(4) Dust samples shall be collected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development). Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

(5) The following postabatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in the residential dwelling or child-occupied facility:

1. After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one windowsill and window trough (if available) and one dust sample shall be taken from the floor of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

2. After conducting an abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one windowsill and window trough (if available) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

3. Following an exterior abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the drip line or next to the foundation below any exterior surface abated. If visible dust, debris, or paint chips are present, they must be removed from the site and properly disposed of according to all applicable federal, state, and local standards.

(6) The rooms, hallways, and stairwells selected for sampling shall be selected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

(7) The certified lead inspector or certified elevated blood lead (EBL) inspector shall compare the residual lead level as determined by the laboratory analysis from each dust sample with applicable clearance levels for lead in dust on floors and window troughs. If the residual lead levels in a dust sample exceed the clearance levels, then all the components represented by the failed dust sample shall be recleaned and retested until clearance levels are met.

h. In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purpose of clearance may be conducted if the following conditions are met:

(1) The certified lead abatement contractors and certified lead abatement workers who abate or clean the dwellings do not know which residential dwellings will be selected for the random sampling.

(2) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

(3) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph 70.6(6)*"g."*

i. The certified lead abatement contractor or a certified project designer shall prepare an abatement report containing the following information:

(1) Starting and completion dates of the lead abatement project.

(2) The name and address of each certified lead abatement contractor and certified lead abatement worker conducting the abatement.

(3) The occupant protection plan required by paragraph 70.6(6)*"d."*

(4) The name, address, and signature of each certified lead inspector or certified elevated blood lead (EBL) inspector conducting clearance sampling, the date on which the clearance testing was conducted, and the results of all postabatement clearance testing and all soil analyses, if applicable.

(5) The name and address of each laboratory that conducted the analysis of clearance samples and soil samples.

(6) A detailed written description of the lead abatement project, including lead abatement methods used, locations of rooms and components where lead abatement occurred, reasons for selecting particular lead abatement methods, and any suggested monitoring of encapsulants or enclosures.

(7) Maintain all reports and plans required in this subrule for a minimum of three years.

(8) Provide a copy of all reports required by this subrule to the building owner who contracted for the lead abatement.

70.6(7) A certified lead inspector, a certified elevated blood lead (EBL) inspector, or a certified visual risk assessor must conduct visual risk assessments according to the following standards. Beginning March 1, 2000, visual risk assessments shall be conducted only by a certified lead inspector, a certified elevated blood lead (EBL) inspector, or a certified visual risk assessor.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead hazards and to assess the extent and causes of the paint deterioration.

c. A certified lead inspector, a certified elevated blood lead (EBL) inspector, or a certified visual risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a visual risk assessment is conducted and shall provide a copy of the report to the person requesting the visual risk assessment. A certified lead inspector, a certified elevated blood lead (EBL) inspector, or a certified visual risk assessor shall maintain a copy of the report for no fewer than three years. The report shall include, at least:

(1) Date of each visual risk assessment;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified visual assessor, certified lead inspector, or certified elevated blood lead (EBL) inspector conducting the visual risk assessment;

(7) Specific locations of painted components identified as likely to contain lead-based paint and likely to be lead-based paint hazards; and

(8) Information for the owner and occupants on how to reduce lead hazards in the residential dwelling or child-occupied facility.

d. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

e. When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. The proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in paragraph 70.9(4)*"f."*

f. Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for appeal shall state the reason for appeal.

g. Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing or submission to the director. The record shall include the following:

(1) All pleadings, motions, and rulings.

(2) All evidence received or considered and all other submissions by recording or transcript.

(3) A statement of all matters officially noticed.

(4) All questions and offers of proof, objection, and rulings thereon.

(5) All proposed findings and exceptions.

(6) The proposed findings and order of the administrative law judge.

h. The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

i. It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

j. Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075.

k. The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

70.9(5) Public notification.

a. The public shall be notified of the suspension, revocation, modification, or reinstatement of course approval through appropriate mechanisms.

b. The department shall maintain a list of courses for which the approval has been suspended, revoked, modified, or reinstated.

641—70.10(135) Waivers. Rules in this chapter are not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

These rules are intended to implement Iowa Code section 135.105A.

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CHAPTER 101
DEATH CERTIFICATION, AUTOPSY AND DISINTERMENT
[Prior to 7/29/87, Health Department[470] Ch 101]

641—101.1(144) Report of autopsy findings.

101.1(1) In cases where an autopsy is to be performed, it shall not be necessary to defer the entry of the cause of death pending a full report of microscopic and toxicological studies.

101.1(2) In any case where the gross findings of an autopsy are inadequate to determine the cause of death, the physician or medical examiner shall enter the cause as "pending" on the certificate and sign the certification. Immediately after the medical data necessary for determining the cause of death have been made known, the physician or medical examiner shall forward the cause of death to the registrar on a supplemental form provided by the state registrar and signed by the physician or medical examiner.

101.1(3) In any case where the autopsy findings significantly change the medical diagnosis of cause of death, a supplemental report of the cause of death shall be made by the physician or medical examiner to the registrar as soon as the findings are available. Such report shall be made a part of the original certificate.

641—101.2(144) Attending physician not available. An associate physician, who relieves the attending physician while on vacation or otherwise unavailable, may certify to the cause of death in any case where the associate physician has access to the medical history of the case, provided that the associate physician views the deceased at or after death occurs and the death is from natural causes. In all other cases in which a physician is unavailable, the medical examiner shall prepare the medical certification of cause of death.

641—101.3(144) Hospital or institution may assist in preparation of certificate. When death occurs in a hospital or other institution and the death is not under the jurisdiction of the medical examiner, the person in charge of such institution or the designated representative where the cause of death is known may aid in the preparation of the death certificate as follows:

Place the full name of the deceased, date and place of death on the death certificate blank and obtain from the attending physician the medical certification of cause of death and the signature of the attending physician;

Present the partially completed death certificate (identified by the name) and the completed medical certification to the funeral director or person who acted as such.

641—101.4(135) Removal of dead body or fetus.

101.4(1) Before assuming custody of a dead human body or fetus, any person shall:

a. Contact the attending physician and receive assurance that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death or fetal death; or

b. If the case comes within the jurisdiction of the medical examiner, contact the medical examiner and receive authorization to remove the dead human body or fetus.

101.4(2) If a person other than a funeral director, medical examiner, or emergency medical service assumes custody of a dead human body or fetus, the person shall secure a burial-transit permit.

641—101.5(144) Burial-transit permit.

101.5(1) The burial-transit permit shall be issued upon a form prescribed by the state registrar and shall state:

a. The name, date of death, cause of death and other necessary details required by the state registrar;

b. That a satisfactory certificate of death has been filed;

c. That permission is granted to inter, remove or otherwise dispose of the body; and

d. The name and location of the cemetery or crematory where final disposition of the body is to be made.

The burial-transit permit shall be issued by the county medical examiner, a funeral director, or the county registrar of the county where the certificate of death or fetal death was filed.

101.5(2) The burial-transit permit shall be delivered to the person in charge of the place of final disposition.

101.5(3) The person in charge of every place of final disposition shall see that all of the requirements of this chapter relative to burial-transit permits have been complied with before disposition. Such person shall retain the burial-transit permit for a period of one year from the date of final disposition.

101.5(4) A burial-transit permit shall not be issued prior to the filing of a certificate of death or fetal death in the county where the death occurred.

101.5(5) A burial-transit permit shall not be issued to a person other than a licensed funeral director if the death or fetal death is of a suspected or known communicable disease as defined by 641—paragraph 1.2(1)*"a."*

101.5(6) In all cases where a fetus has reached a gestation period of 20 completed weeks or more, or with a weight of 350 grams or more, a burial-transit permit must be obtained for the disposition of the fetus.

641—101.6(135) Transportation and disposition of dead body or fetus.

101.6(1) A dead human body or fetus shall be transported only after enclosure in a container for transfer that will control odor and prevent the leakage of body fluids, unless the body or fetus has been embalmed, or is being transported by a licensed funeral director, emergency medical service, or medical examiner. In addition, the transport of a dead human body or fetus shall be in a manner that, applying contemporary community standards with respect to what is suitable, is respectful of the dead, the feelings of relatives, and the sensibilities of the community.

101.6(2) When a dead human body or fetus is transported from the state, the burial-transit permit shall accompany the body or fetus. When a dead human body or fetus is brought into the state, a burial-transit permit under the law of the state in which the death occurred shall accompany the body or fetus.

101.6(3) If the final disposition of a dead human body or fetus is cremation at a licensed cremation establishment, scattering of cremated remains shall be subject to the local ordinances of the political subdivision, and any and all regulations of the cemetery, if applicable, in which the scattering site is located. However, such local ordinances and cemetery regulations shall not allow scattering of cremated remains upon state property or upon private property without the property owner's consent. In the absence of an applicable local ordinance or cemetery regulation, scattering of cremated remains shall not be allowed upon any public property or upon private property without the property owner's consent. Cremation shall be considered final disposition by the department and no further burial-transit permits shall be required.

101.6(4) If the final disposition of a dead human body or fetus is burial, interment or entombment, local ordinances of the political subdivision in which the final disposition site is located and any and all regulations of the cemetery, if applicable, shall apply. In the absence of an applicable local ordinance, the depth of the grave at its shallowest point shall be at least three feet from the top of the burial container.

641—101.7(135,144) Disinterment permits.

101.7(1) Disinterment permits shall be required for any relocation (above or below ground) of a body from its original site of interment. Disinterment permits shall be valid for 30 days after the date of issuance. Disinterment permits are to be issued on a four-copy form prescribed by the state registrar: one copy filed with the sexton or person in charge of the cemetery in which disinterment is to be made; one copy to be used during transportation; one copy filed with the sexton or person in charge of the cemetery of reinterment; and one copy to be returned within ten days after the date of disinterment by the funeral director or embalmer to the state registrar.

101.7(2) A dead body, properly prepared by an embalmer and deposited in a receiving vault, shall not be considered a disinterment when removed from the vault for final burial.

641—101.8(144) Extension of time. If the attending physician or medical examiner is unable to complete the medical certification of cause of death or if the funeral director is unable to obtain the personal information about the deceased within the statutory time period, the funeral director shall file a death certificate form completed with all information available. Such certificate shall be authority for the county registrar to issue a burial-transit permit. As soon as possible, but in all cases within 15 days, a supplemental report shall be filed with the local registrar providing the information missing from the original certificate.

These rules are intended to implement Iowa Code sections 135.11(9), 144.3 and 144.32.

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641—106.6(144) Unlawful acts—punishment. Any person who knowingly violates a provision of these rules is guilty of a serious misdemeanor.

These rules are intended to implement 1997 Iowa Acts, Senate File 128.

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CHAPTER 107
MUTUAL CONSENT VOLUNTARY ADOPTION REGISTRY

641—107.1(78GA,HF497) Definitions.

"Adult" means an individual who has reached the age of 18 years at the time of making application to the registry.

"Department" means the department of public health.

"Sibling" means one of two or more persons born of the same parents or, sometimes, having one parent in common; brother or sister.

641—107.2(78GA,HF497) Eligibility. The state registrar shall establish a mutual consent voluntary adoption registry through which adult adopted children, adult siblings and the biological parents of adult adoptees may register to obtain identifying information. All identifying information maintained in the registry is confidential. Any person who discloses such information in violation of Iowa law is subject to criminal penalties. All requests shall be completed on the form provided by the department.

107.2(1) The state registrar shall reveal the identity of the biological parent to the adult adopted child or the identity of the adult adopted child to the biological parent if the following conditions are met:

a. A biological parent has filed a completed request form and provided consent to the revelation of the biological parent's identity to the adult adopted child, upon request of the adult adopted child; and

b. An adult adopted child has filed a completed request form and provided consent to the revelation of the identity of the adult adopted child to a biological parent, upon request of the biological parent.

107.2(2) The state registrar shall reveal the identity of the adult adopted child to an adult sibling and shall notify the parties involved that the requests have been matched, and disclose the identifying information to those parties if all of the following conditions are met:

a. An adult adopted child has filed a completed request form and provided consent to the revelation of the adult adopted child's identity to an adult sibling;

b. The adult sibling has filed a completed request form and provided consent to the revelation of the identity of the adult sibling to the adult adopted child; and

c. The state registrar has been provided sufficient information to make the requested match.

641—107.3(78GA,HF497) Exception. If the adult adopted person has a sibling who is a minor and who has also been adopted, the state registrar shall not grant the request of either the adult adopted person or the biological parent to reveal the identities of the parties.

641—107.4(78GA,HF497) Application. Application forms shall be provided by the department and shall be the only application accepted for registration. The adult adoptee, adult sibling, and biological parent completing an application shall be responsible for updating the contact information required.

641—107.5(78GA,HF497) Notification. Notification of parties shall be initiated via telephone at which time address information shall be verified and written notice sent to the parties involved. Written notice shall be mailed via certified mail with return notification requested.

641—107.6(78GA,HF497) Withdrawal. A person who has filed a request or provided consent may withdraw the consent at any time prior to the release of any information by completing and filing a written withdrawal of consent statement on the form provided by the department.

641—107.7(78GA,HF497) Fees. The state registrar shall collect a fee of $25 for the filing of a completed application for the registry. A fee of $2 shall be charged for updating applicant information maintained in the registry.

These rules are intended to implement 1999 Iowa Acts, House File 497, section 19.

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CHAPTERS 108 and 109
Reserved

641—137.4(147A) Offenses and penalties.

137.4(1) The department may deny verification as a trauma care facility or deny authorization as a service program, may give a citation and warning, or may place on probation, suspend, or revoke existing trauma care facility verification or service program authorization if the department finds reason to believe that the facility or service program has not been or will not be operated in compliance with Iowa Code sections 147A.27 and these administrative rules. The denial, citation and warning, period of probation, suspension, or revocation shall be effected and may be appealed in accordance with the requirements of Iowa Code section 17A.12.

137.4(2) All complaints regarding the operation of a trauma care facility or service program, or those purporting to be or operating as the same, shall be reported to the department. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

137.4(3) Complaints and the investigative process shall be treated as confidential to the extent they are protected by Iowa Code section 22.7.

137.4(4) Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

137.4(5) Notice of denial, citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, citation and warning, probation, suspension, or revocation shall be served by certified mail, return receipt requested, or by personal service.

137.4(6) Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

137.4(7) A request for a hearing shall be forwarded within five working days of receipt of the request to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

137.4(8) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

137.4(9) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

137.4(10) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

137.4(11) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings on them.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

137.4(12) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or personal service.

137.4(13) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

137.4(14) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

137.4(15) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

137.4(16) Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, news media or employer.

These rules are intended to implement Iowa Code chapter 147A.

[Filed 5/14/99, Notice 2/10/99—published 6/2/99, effective 7/7/99]

CHAPTER 138
TRAUMA SYSTEM EVALUATION QUALITY IMPROVEMENT COMMITTEE

641—138.1(147A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Department" means the Iowa department of public health.

"EMS provider" means emergency medical care personnel, other health care practitioners or members of the general public involved in the provision of emergency medical care.

"SEQIC" means system evaluation quality improvement committee established by the department pursuant to Iowa Code section 147A.25 to develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement.

"Trauma care system" means an organized approach to providing personnel, facilities, and equipment for effective and coordinated trauma care.

641—138.2(147A) System evaluation quality improvement committee (SEQIC). The system evaluation quality improvement committee shall develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement in accordance with Iowa Code chapter 147A, Iowa Administrative Code 641—Chapter 191 and these rules.

138.2(1) *Duties.* The scope of the duties of SEQIC shall include, but not be limited to:

a. Analyzing trauma-related information and data provided by the department.

b. Evaluating the standards for trauma care in Iowa's trauma system.

c. Evaluating the effectiveness of Iowa's trauma care system.

d. Recommending quality improvement strategies related to trauma care.

e. Designing and recommending corrective action plans to the department for trauma care and trauma system improvement.

f. Monitoring, evaluating, and reevaluating trauma system-related corrective action plans implemented by the department.

g. Assisting with development of an annual SEQIC report.

138.2(2) *Membership.* The director, pursuant to Iowa Code section 147A.25, shall appoint members of SEQIC.

Pursuant to Iowa Administrative Code rule 641—191.6(135), SEQIC may establish a subcommittee of medical care consultants whose expertise is needed. Subcommittees are subject to the approval of the department.

138.2(3) *Meetings/member attendance.* SEQIC shall establish bylaws pursuant to Iowa Administrative Code rule 641—191.5(135).

138.2(4) *Confidentiality.*

a. The data collected by and furnished to the department pursuant to Iowa Code section 147A.26 shall not be a public record under Iowa Code chapter 22. The confidentiality of patients is to be protected, and the laws of this state shall apply with regard to patient confidentiality.

b. Proceedings, records, and reports reviewed or developed pursuant to Iowa Code section 147A.25 constitute peer review records under Iowa Code section 147.135 and are not subject to discovery by subpoena or admissible as evidence. All information and documents received from a hospital or emergency care facility under Iowa Code chapter 147A shall be confidential pursuant to Iowa Code section 272C.6, subsection 4.

c. SEQIC may enter into a closed session proceeding pursuant to Iowa Code section 21.5.

d. All committee and subcommittee members shall sign a confidentiality agreement not to divulge or discuss information obtained during a SEQIC closed session proceeding. Subcommittee members may be present only for that portion of the closed session proceeding pertaining to their expertise.

e. The signed confidentiality statements shall be kept on file at the department.

138.2(5) *Documentation.* The department, pursuant to Iowa Code section 21.3, shall keep minutes of open session proceedings. The department, pursuant to Iowa Code section 21.5, shall also maintain minutes and tape recordings of closed session proceedings.

a. The department, at the close of each meeting, shall collect all confidential documents. No copies of confidential documents may be made or possessed by committee or subcommittee members.

b. The department shall approve all correspondence and communication generated by SEQIC prior to dissemination.

These rules are intended to implement Iowa Code chapter 147A.

[Filed 9/17/99, Notice 6/30/99—published 10/6/99, effective 11/10/99]

CHAPTER 176
CRITERIA FOR AWARDS OR GRANTS

641—176.1(135,17A) Purpose. The department provides funds to a variety of entities throughout the state for the support of public health programs. The department considers that all funds, unless proscribed by appropriation language, the Iowa Code, Iowa Administrative Code or federal regulations, are subject to competition. To ensure equal access and objective evaluation of applicants for these funds, grant application materials shall contain, at a minimum, specific content. Competitive grant application packets shall contain the review criteria to be used, including the number of points allocated per required component.

641—176.2(135,17A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Competitive grant" means the competitive grant application process to determine the grant award for a project period.

"Continuous grant" means the subsequent grant years within a project period following a competitive grant process.

"Department" means the Iowa department of public health.

"Project" means the activities or program(s) funded by the department.

"Project period" means the period of time which the department intends to support the project without requiring the recompetition for funds. The project period is specified within the grant application period and may extend to five years.

"Service delivery area" means the defined geographic area for delivery of project services. Competitive applications shall not fragment existing integrated service delivery within the defined geographic area.

641—176.3(135,17A) Exceptions. Exceptions to these rules are as follows:

1. New funds (including pilot studies and demonstration grants) that become available for new services.
2. Federal or private funding agency specified a sole source.
3. An organization failed to meet conditions and performance standards specified in the contract awards.
4. Mutual agreement among department and contract organizations.

641—176.4(135,17A) Requirements. The following shall be included in all grant application materials made available by the department:

1. Funding source.
2. Project period.
3. Services to be delivered.
4. Service delivery area.
5. Funding purpose.
6. Funding restrictions.
7. Funding formula (if any).
8. Matching requirements (if any).
9. Reporting requirements.
10. Performance criteria (experience of applicant in administering grants).

11. Description of eligible applicants.
12. Need for letters of support or other materials (if applicable).
13. Application due date.
14. Anticipated date of award.
15. Eligibility guidelines for those receiving the service or product and the source of those guidelines, including fees or sliding fee scales (if applicable).
16. Target population to be served (if applicable).
17. Appeal process in the event an application is denied.

641—176.5(135,17A) Review process (competitive applications only). The review process to be followed in determining amount of funds to be approved for award of contract shall be described in the application. The review criteria and point allocation for each shall also be described in the grant application material.

The competitive grant application review committee shall be determined by the bureau chief, with oversight from the respective division director. The review committee members shall allocate points per review criteria in conducting the review.

In the event competitive applications for a service delivery area receive an equal number of points, a second review shall be conducted by two division directors and the respective bureau chief administering the program.

641—176.6(135,17A) Opportunity for review and comment. Program advisory committees or related task forces of the program shall be provided with an opportunity to review and comment upon the criteria and point allocation prior to implementation. Exceptions may occur when the funding source to the department has already included such criteria and point allocation within the award or the time frame allowed is insufficient for such review and comment.

641—176.7(135,17A) Public notice of available grants. The program making funds available through a competitive grant application process shall, at least 60 days prior to the application due date, issue a public notice on the department of public health's Web site at http://www.idph.state.ia.us that identifies the availability of funds and how to request the application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas and eligible applicants shall also be described in the public notice.

Exceptions to following the 60-day public notice prior to the application due date are:

1. The receipt of the official notice of award by the department precludes a full 60-day notice on the department of public health's Web site. The program shall nonetheless issue the public notice on the department of public health's Web site at the earliest date.

2. In the event that posting the notice on the Web site would not allow at least 30 days for interested parties to request an application packet and apply for funds, the program shall then (at the earliest opportunity) directly notify current contractors and other interested parties of the availability of funds through press releases and other announcements.

These rules are intended to implement Iowa Code chapters 17A and 135.

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TITLE III
LICENSING

CHAPTER 10
GENERAL

[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—10.1(153) Licensed personnel. Persons engaged in the practice of dentistry in Iowa must be licensed by the board as a dentist and persons performing services under Iowa Code section 153.15, must be licensed by the board as a dental hygienist.

This rule is intended to implement Iowa Code sections 147.2 and 153.17.

650—10.2(153) Display of license and license renewal. The license to practice dentistry or dental hygiene and the current license renewal must be prominently displayed by the licensee at the principal office of employment.

10.2(1) Additional license certificates shall be obtained from the board whenever a licensee practices at more than one address. If more than two additional certificates are requested, explanation must be made in writing to the board.

10.2(2) Duplicate licenses shall be issued by the board upon satisfactory proof of loss or destruction of original license.

This rule is intended to implement Iowa Code sections 147.7, 147.10 and 147.80(17).

650—10.3(153) Supervision of dental hygienist.

***10.3(1)** The monitoring of nitrous oxide inhalation analgesia pursuant to 650—29.6(153) and the administration of local anesthesia shall only be provided under the direct supervision of a dentist. Direct supervision of the dental hygienist requires that the supervising dentist be present in the treatment facility, but it is not required that the dentist be physically present in the treatment room.

10.3(2) All other authorized services provided by a dental hygienist shall be performed under the general supervision of a dentist currently licensed in the state of Iowa. General supervision shall mean that a dentist has examined the patient and has prescribed authorized services to be provided by a dental hygienist. The dentist need not be present in the facility while these services are being provided. If a dentist will not be present, the following requirements shall be met:

1. Patients or their legal guardian must be informed prior to the appointment that no dentist will be present and therefore no examination will be conducted at that appointment.
2. The hygienist must consent to the arrangement.
3. Basic emergency procedures must be established and in place and the hygienist must be capable of implementing these procedures.
4. The treatment to be provided must be prior prescribed by a licensed dentist and must be entered in writing in the patient record.

Subsequent examination and monitoring of the patient, including definitive diagnosis and treatment planning, is the responsibility of the dentist and shall be carried out in a reasonable period of time in accordance with the professional judgment of the dentist based upon the individual needs of the patient.

General supervision shall not preclude the use of direct supervision when in the professional judgment of the dentist such supervision is necessary to meet the individual needs of the patient.

Nothing in these rules shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening, or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

*Effective date (9/15/99) delayed until the end of the 2000 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held September 15, 1999.

10.3(3) A dental hygienist shall not practice independent from the supervision of a dentist nor shall a dental hygienist establish or maintain an office or other workplace separate or independent from the office or other workplace in which the supervision of a dentist is provided.

This rule is intended to implement Iowa Code section 153.15.

650—10.4(153) Unauthorized practice. A dental hygienist who assists a dentist in practicing dentistry in any capacity other than as an employee or independent contractor supervised by a licensed dentist or who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor, director, or supervisor of a practice as a guise or subterfuge to enable such dental hygienist to engage in the practice of dentistry or dental hygiene, or who renders dental service(s) directly or indirectly on or for members of the public other than as an employee or independent contractor supervised by a licensed dentist shall be deemed to be practicing illegally. The unauthorized practice of dental hygiene means allowing a person not licensed in dentistry or dental hygiene to perform dental hygiene services authorized in Iowa Code section 153.15 and rule 650—1.1(153). The unauthorized practice of dental hygiene also means the performance of services by a dental hygienist which exceeds the scope of practice granted in Iowa Code section 153.15.

This rule is intended to implement Iowa Code sections 147.10, 147.57 and 153.15.

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[Filed 7/23/99, Notice 5/19/99—published 8/11/99, effective 9/15/99*]

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c. Has submitted evidence of successful completion of conscious sedation experience at the graduate level, which is approved by the board. The applicant shall document this experience by specifying the type of experience; the number of hours; the length of training; and the number of patient contact hours including documentation of the number of supervised conscious sedation cases; or

d. Has successfully completed a formal training program, approved by the board, which included physical evaluation, IV sedation, airway management, monitoring, basic life support and emergency management.

29.4(2) When an applicant has not met the above requirements, the applicant must complete a remedial training program in conscious sedation and related academic subjects beyond the undergraduate dental school level. The remedial training program shall be prior approved by the board. The applicant may be subject to professional evaluation as part of the application process. The professional evaluation shall be conducted by the anesthesia credentials committee and include at a minimum the evaluation of the applicant's knowledge of case management and airway management.

29.4(3) A dentist utilizing conscious sedation shall maintain a properly equipped facility. The facility shall maintain and the dentist shall be trained on the following equipment: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. The facility shall be staffed with trained auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident to the administration of conscious sedation. A licensee may submit a request to the board for waiver of any of the provisions of this subrule. Waiver requests will be considered by the board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the waiver.

29.4(4) A dentist administering conscious sedation must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course, and the auxiliary personnel shall maintain certification in basic life support and be capable of administering basic life support.

29.4(5) A dentist who is performing a procedure for which conscious sedation is being employed shall not administer the pharmacologic agents and monitor the patient without the presence and assistance of at least one qualified auxiliary personnel in the room who is qualified under subrule 29.4(4).

29.4(6) A licensed dentist who has been utilizing conscious sedation on an outpatient basis in a competent manner for five years preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in subrules 29.4(3), 29.4(4) and 29.4(5).

29.4(7) Dentists qualified to administer conscious sedation may administer nitrous oxide inhalation analgesia provided they meet the requirement of 29.6(153).

29.4(8) If conscious sedation results in a general anesthetic state, the rules for deep sedation/general anesthesia apply.

650—29.5(153) Application for permit.

29.5(1) No dentist shall use or permit the use of deep sedation/general anesthesia or conscious sedation in a dental office for dental patients, unless the dentist possesses a current permit issued by the Iowa board of dental examiners. A dentist holding a permit shall be subject to review and facility inspection as deemed appropriate by the board.

29.5(2) An application for a deep sedation/general anesthesia permit must include the appropriate fee as specified in 650—Chapter 15, as well as evidence indicating compliance with rule 29.3(153).

29.5(3) An application for a conscious sedation permit must include the appropriate fee as specified in 650—Chapter 15, as well as evidence indicating compliance with rule 29.4(153).

29.5(4) A provisional permit may be granted the new applicant based solely on credentials until all processing and investigation have been completed. A provisional permit may be issued only if the applicant will be practicing at a facility that has been previously inspected and approved by the board.

29.5(5) Permits shall be renewed biennially following submission of proper application and may involve board reevaluation of credentials, facilities, equipment, personnel, and procedures of a previously qualified dentist to determine if the dentist is still qualified. The appropriate fee for renewal as specified in 650—Chapter 15 of these rules must accompany the application.

29.5(6) Based on the evaluation of credentials, facilities, equipment, personnel and procedures of a dentist, the board may determine that restrictions may be placed on a permit.

29.5(7) The actual costs associated with the on-site evaluation of the facility shall be the primary responsibility of the licensee. The cost to the licensee shall not exceed $150 per facility.

650—29.6(153) Nitrous oxide inhalation analgesia.

29.6(1) A dentist may use nitrous oxide inhalation analgesia sedation on an outpatient basis for dental patients provided the dentist:

a. Has completed a board approved course of training; or

b. Has training equivalent to that required in 29.6(1)*"a"* while a student in an accredited school of dentistry, and

c. Has adequate equipment with fail-safe features and minimum oxygen flow which meets FDA standards.

d. Performs routine maintenance on equipment every two years and maintains documentation of such maintenance, and provides such documentation to the board upon request.

29.6(2) A dentist utilizing nitrous oxide inhalation analgesia and auxiliary personnel shall be trained and capable of administering basic life support.

29.6(3) A licensed dentist who has been utilizing nitrous oxide inhalation analgesia in a dental office in a competent manner for the 12-month period preceding July 9, 1986, but has not had the benefit of formal training outlined in paragraph 29.6(1)*"a"* or 29.6(1)*"b,"* may continue the use provided the dentist fulfills the requirements of paragraphs 29.6(1)*"c"* and *"d"* and subrule 29.6(2).

***29.6(4)** Dental hygienists may under direct supervision, pursuant to 650—10.3(153) of these rules, assist the dentist with the monitoring of nitrous oxide inhalation analgesia, so long as the dentist has established an office protocol for taking vital signs, adjusting anesthetic concentrations, and addressing emergency situations that may arise during monitoring. The requirements of 29.6(2) and 29.6(5) must be satisfied. The dentist must carry out the appropriate physical evaluation of the patient. The dentist shall induce the nitrous oxide inhalation analgesia and shall be available for consultation or treatment during the rest of the procedure. It must be determined by the dentist that the patient is appropriately responsive and physiologically stable prior to discharge.

***29.6(5)** The dental hygienist shall satisfactorily complete a course of instruction in the use of nitrous oxide inhalation analgesia which includes both didactic and clinical instruction offered by a teaching institution accredited by the American Dental Association. The course of study shall include instruction in the theory of pain control, anatomy, medical history, pharmacology and emergencies and complications. Dental hygienists who have been assisting in the monitoring of nitrous oxide inhalation analgesia under the direct supervision of a licensed dentist in a competent manner for the previous 12-month period, but have not had the benefit of a formal course of instruction, may continue to assist with the monitoring of nitrous oxide inhalation analgesia under the direct supervision of a licensed dentist provided the dental hygienist meets the requirements of subrule 29.6(2).

***29.6(6)** If the dentist intends to achieve a state of conscious sedation from the administration of nitrous oxide inhalation analgesia, the rules for conscious sedation apply.

*Effective date (9/15/99) delayed until the end of the 2000 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held September 15, 1999.

650—29.7(153) Antianxiety premedication.

29.7(1) Antianxiety premedication is the prescription or administration of pharmacologic substances for the relief of anxiety and apprehension.

29.7(2) The regulation and monitoring of this modality of treatment are the responsibility of the ordering dentist.

29.7(3) If a dentist intends to achieve a state of conscious sedation from the administration of an antianxiety premedication, the rules for conscious sedation shall apply.

29.7(4) A dentist utilizing antianxiety premedication and auxiliary personnel shall be trained in and capable of administering basic life support.

650—29.8(153) Noncompliance. Violations of the provisions of this chapter may result in revocation or suspension of the dentist's permit or other disciplinary measures as deemed appropriate by the board.

650—29.9(153) Reporting of adverse occurrences related to deep sedation/general anesthesia, conscious sedation, nitrous oxide inhalation analgesia, and antianxiety premedication.

29.9(1) *Reporting.* All licensed dentists in the practice of dentistry in this state must submit a report within a period of 30 days to the board of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of, antianxiety premedication, nitrous oxide inhalation analgesia, conscious sedation or deep sedation/general anesthesia related thereto. The report shall include responses to at least the following:

a. Description of dental procedure.

b. Description of preoperative physical condition of patient.

c. List of drugs and dosage administered.

d. Description, in detail, of techniques utilized in administering the drugs utilized.

e. Description of adverse occurrence:

1. Description, in detail, of symptoms of any complications, to include but not be limited to onset, and type of symptoms in patient.
2. Treatment instituted on the patient.
3. Response of the patient to the treatment.

f. Description of the patient's condition on termination of any procedures undertaken.

29.9(2) *Failure to report.* Failure to comply with subrule 29.9(1), when the occurrence is related to the use of deep sedation/general anesthesia, conscious sedation, nitrous oxide inhalation analgesia, or antianxiety premedication, may result in the dentist's loss of authorization to administer deep sedation/general anesthesia, conscious sedation, nitrous oxide inhalation analgesia, or antianxiety premedication or in other sanctions provided by law.

650—29.10(153) Anesthesia credentials committee.

29.10(1) The anesthesia credentials committee is a peer review committee appointed by the board to assist the board in the administration of this chapter. This committee shall be chaired by a member of the board and shall include at least six additional members who are licensed to practice dentistry in Iowa. At least four members of the committee shall hold deep sedation/general anesthesia or conscious sedation permits issued under this chapter.

29.10(2) The anesthesia credentials committee shall perform the following duties at the request of the board:

a. Review all permit applications and make recommendations to the board regarding those applications.

b. Conduct site visits at facilities under subrule 29.5(1) and report the results of those site visits to the board. The anesthesia credentials committee may submit recommendations to the board regarding the appropriate nature and frequency of site visits.

c. Perform professional evaluations under subrules 29.3(2) and 29.4(2) and report the results of those evaluations to the board.

650—29.11(153) Renewal. Beginning 12 months from December 10, 1997, and for each renewal thereafter, permit holders are required to maintain evidence of renewal of ACLS certification.

Beginning 12 months from December 10, 1997, and for each renewal thereafter, permit holders are required to submit a minimum of six hours of continuing education in the area of sedation. These hours may also be submitted as part of license renewal requirements.

650—29.12(153) Rules for denial or nonrenewal. A dentist who has been denied a deep sedation/general anesthesia or conscious sedation permit or renewal may appeal the denial and request a hearing on the issues related to the permit or renewal denial by serving a notice of appeal and request for hearing upon the executive director not more than 30 days following the date of the mailing of the notification of the permit or renewal denial, or not more than 30 days following the date upon which the dentist was served notice if notification was made in the manner of service of an original notice. The hearing shall be considered a contested case proceeding and shall be governed by the procedures set forth in 650 IAC 51.

650—29.13(153) Record keeping. The patient chart must include preoperative and postoperative vital signs, drugs administered, dosage administered, anesthesia time in minutes, and monitors used. Intermittent vital signs shall be taken and recorded in patient chart during procedures and until the patient is fully ambulatory. The chart should contain the name of the person to whom the patient was discharged.

These rules are intended to implement Iowa Code sections 153.33 and 153.34.

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CHAPTER 15
CORRECTIONAL FACILITY
PHARMACY LICENSES

15.1(124,126,155A) General requirements
15.2(124,126,155A) Sanitation
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657—2.1(147) Licensure examination dates. The board of pharmacy examiners, in conjunction with the National Association of Boards of Pharmacy (NABP), shall provide for the administration of pharmacist licensure examinations at various sites and intervals. Applications must be presented to the board at least 30 days before the test date or the beginning of any window of test dates.

657—2.2(147) Examination fee. The fee for examination shall consist of the biennial license fee established by 657—3.1(147,155A) including surcharge, an administration fee, and an examination registration fee. The administration fee shall be $40 and, combined with the license fee and surcharge, shall be payable to the Iowa Board of Pharmacy Examiners. No refunds of the $40 administration fee shall be made for cancellations. The examination registration fee shall be an amount determined by the National Association of Boards of Pharmacy (NABP). The examination registration fee shall be payable to NABP in the form of a certified check, bank draft or money order. The biennial license fee including surcharge, the administration fee, and the examination registration fee must accompany the applications.

This rule is intended to implement Iowa Code sections 147.94 and 155A.39.

657—2.3(147) Notarized statement. The application for examination shall be made as a sworn statement.

657—2.4(147) Reexamination applications and fees. Each applicant for reexamination shall make a request on proper forms provided by the board. Administration fees of $40 and $20 will be charged to take the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition, respectively. In addition, candidates will be required to pay an examination registration fee. Payment of administration fees and examination registration fees shall be as described in rule 657—2.2(147).

This rule is intended to implement Iowa Code section 147.94.

657—2.5(147) Records preserved. All applications, with necessary statements or requests for reexamination, shall be preserved in the files of the board of pharmacy examiners.

657—2.6(147) Date of notice. Grades and certificates shall be mailed to each new licensee as soon after the examination as possible.

657—2.7(155A) Internship requirements. Each applicant must furnish to the board one or more supervising pharmacist's affidavit giving complete information covering internship experience in a pharmacy. Said experience must comply with the "Pharmacist-Intern Registration and Minimum Standards for Evaluating Practical Experience," as set forth in Chapter 4 of these rules.

657—2.8(155A) College graduate certification. Each applicant shall furnish a certificate from a recognized college of pharmacy stating that the applicant has successfully graduated from a school or college of pharmacy with either a bachelor of science degree in pharmacy or a doctor of pharmacy (Pharm. D.) degree. A recognized, approved or accredited college of pharmacy is an institution which meets the minimum standards of the American Council on Pharmaceutical Education and appears on its list of accredited colleges of pharmacy as published by the council as of July 1 of each year.

657—2.9(155A) Application for examination—requirements. Application for examination or re-examination shall be on forms provided by the board, and all requested information shall be provided on or with such application. The applicant shall provide the following with the initial application for examination: name; address; telephone number; mother's maiden name; date of birth; social security number; name and location of college of pharmacy and date of graduation; one current photograph of a quality at least similar to a passport photograph; and internship experience. In addition each applicant must declare the following: history of prior licensure examinations and record of offenses including but not limited to charges, convictions, and fines which may affect the licensee's ability to practice pharmacy.

657—2.10(155A) Examination subjects.

2.10(1) Applicants shall take the following components: the North American Pharmacist Licensure Examination (NAPLEX) with a passing score of no less than 75. Applicants shall also take the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition, with a passing score of no less than 75 percent.

2.10(2) To be eligible for a license by examination, the candidate must pass all components in Iowa within a period of three years beginning with the date the candidate passed an initial component.

These rules are intended to implement Iowa Code section 155A.8.

657—2.11(155A) Transfer of exam scores.

2.11(1) The board of pharmacy examiners will accept NAPLEX scores transferred from another state board of pharmacy through NABP in lieu of the applicant's taking NAPLEX in Iowa. Score transfer candidates shall be required to meet the standards established in rule 2.10(155A) within 12 months of the date of transfer.

2.11(2) Fees to the board of pharmacy examiners for licensure pursuant to the NABP score transfer program shall consist of the fees identified in 657—2.2(147) excluding the NAPLEX examination registration fee.

This rule is intended to implement Iowa Code section 155A.8.

657—2.12(155A) Foreign pharmacy graduates.

2.12(1) Any applicant who is a graduate of a school or college of pharmacy located outside the United States which has not been recognized and approved by the board, but who is otherwise qualified to apply for a license to practice pharmacy in Iowa, shall be deemed to have satisfied the requirements of Iowa Code section 155A.8, subsection 1, by verification to the board of the applicant's academic record and graduation. Each applicant shall have successfully passed the Foreign Pharmacy Graduate Equivalency Examination (FPGEE) given by the Foreign Pharmacy Graduate Examination Commission established by the National Association of Boards of Pharmacy which examination is hereby recognized and approved by the board. Each applicant shall also demonstrate proficiency in English by passing the Test of English as a Foreign Language (TOEFL) and the Test of Spoken English (TSE) given by the educational testing service which examinations are hereby recognized and approved by the board. The FPGEE, TSE, and TOEFL examinations are prerequisites to taking the licensure examination required in Iowa Code section 155A.8, subsection 3.

2.12(2) Foreign pharmacy graduate applicants shall also be required to obtain 1500 hours of internship experience in a community or hospital pharmacy licensed by the board as provided in 657—4.7(155A). Internship requirements shall, in all other aspects, meet the requirements established under 657—Chapter 4.

This rule is intended to implement Iowa Code sections 155A.8 and 155A.9.

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CHAPTER 3
LICENSE FEES, RENEWAL DATES, FEES FOR DUPLICATE LICENSES AND CERTIFICATION OF EXAMINATION SCORES

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 4]

657—3.1(147,155A) Renewal date and fee—late application. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license. The license renewal form shall be issued upon payment of a $100 fee plus applicable surcharge pursuant to 657—30.8(155A).

Failure to renew the license before July 1 following expiration shall require a renewal fee of $200 plus applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before August 1 following expiration shall require a renewal fee of $300 plus applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before September 1 following expiration shall require a renewal fee of $400 plus applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before October 1 following expiration shall require an appearance before the board and a renewal fee of $500 plus applicable surcharge pursuant to 657—30.8(155A). In no event shall the fee for late renewal of the license exceed $500 plus applicable surcharge pursuant to 657—30.8(155A). The provisions of Iowa Code section 147.11 shall apply to a license which is not renewed within five months of the expiration date.

This rule is intended to implement Iowa Code sections 147.10, 147.80, 147.94, 155A.11, and 155A.39.

657—3.2(155A) Fees. Only original or duplicate certificates for licensed pharmacists issued by the board of pharmacy examiners are valid. Duplicate certificates for licensed pharmacists may be issued for a fee of $5 each.

This rule is intended to implement Iowa Code section 155A.10.

657—3.3(147) Certification of examination scores. Certification of examination scores shall be made upon request at no charge.

657—3.4(155A) Pharmacy license—general provisions. General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed on January 1 of each year. All areas where prescription drugs are dispensed or nonproduct pharmacy services are provided by a pharmacist will require a general pharmacy license, a hospital pharmacy license, or a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy license except where specific exemptions have been granted. Applicants for general or hospital pharmacy license shall comply with board rules regarding general or hospital pharmacy license except where specific exemptions have been granted. Applicants who are granted exemptions shall be issued a "general pharmacy license with exemption," a "hospital pharmacy license with exemption," a "nonresident pharmacy license with exemption," or a "limited use pharmacy license with exemption" and shall comply with the provisions set forth by that exemption. A written request for exemption from certain licensure requirements, submitted pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C), will be determined on a case-by-case basis. Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and other limited use practice settings shall be determined on a case-by-case basis.

3.4(1) *Application form.* Application shall be on forms provided by the board. The application form for a pharmacy license shall indicate whether a pharmacy is a sole proprietorship (100 percent ownership) and give the name and address of the owner; or if a partnership, the names and addresses of all partners; or if a limited partnership, the names and addresses of the partners; or if a corporation, the names and addresses of the officers and directors. In addition, the form shall require the name, signature, and license number of the pharmacist in charge, the names and license numbers of all pharmacists engaged in practice in the pharmacy, the names and registration numbers of all pharmacy technicians working in the pharmacy, and the average number of hours worked by each pharmacist and pharmacy technician.

3.4(2) *Fee.* The fee for a new or renewal license shall be $100. Failure to renew the license before January 1 following expiration shall require a renewal fee of $200. Failure to renew the license before February 1 following expiration shall require a renewal fee of $300. Failure to renew the license before March 1 following expiration shall require a renewal fee of $400. Failure to renew the license before April 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of a pharmacy license exceed $500.

3.4(3) *Change of owner—closed pharmacy.* When a pharmacy changes ownership, a new completed application shall be filed with the board, and the old license returned. A fee of $100 will be charged for issuance of a new license. Closed pharmacies must remit their pharmacy licenses to the board office within ten days of closing.

3.4(4) *Change of name.* When a pharmacy changes names, a new completed application shall be filed with the board and the old license returned to the board office. A fee of $100 will be charged for issuance of a new license.

3.4(5) *Change of location.* When a pharmacy changes location, a new completed application shall be filed with the board and the old license returned to the board office. A fee of $100 will be charged for issuance of a new license. A change of location will require an on-site inspection of the new location.

3.4(6) *Change of pharmacist in charge.* When the pharmacist in charge position becomes vacant, a newly completed application shall be filed with the board within 90 days of the vacancy indicating the name of the new pharmacist in charge and the old license returned to the board office. A fee of $100 will be charged for issuance of a new license.

3.4(7) *Change of pharmacists.* Rescinded IAB 7/16/97, effective 8/20/97.

657—3.5(155A) Wholesale drug license — renewal and fees. A wholesale drug license shall be renewed no later than January 1 of each year. The fee for a new or renewal license shall be $100.

Failure to renew the license before January 1 following expiration shall require a renewal fee of $200. Failure to renew the license before February 1 following expiration shall require a renewal fee of $300. Failure to renew the license before March 1 following expiration shall require a renewal fee of $400. Failure to renew the license before April 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of a wholesale drug license exceed $500.

This rule is intended to implement Iowa Code sections 155A.13, 155A.14, and 155A.17.

657—3.6(124,147,155A) Returned check fee. A fee of $20 may be charged for any check returned for any reason. If a license, registration, or permit had been issued by the board office based on a check for the payment of fees and the check is later returned by the bank, the board shall request payment by certified check, cashier's check, or money order. If the fees, including returned check fee, are not paid within 15 calendar days of notification of the returned check, the license, registration, or permit is no longer in effect and the status reverts to what it would have been had the license, registration, or permit not been issued. Late payment penalties will be assessed, as provided in board rules, for subsequent requests to renew or reissue the license, registration, or permit.

This rule is intended to implement Iowa Code sections 124.301, 147.100, 155A.6, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

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CHAPTER 4
PHARMACIST-INTERN REGISTRATION AND MINIMUM STANDARDS FOR EVALUATING PRACTICAL EXPERIENCE

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 3]

657—4.1(155A) Definitions.

"Pharmacist-intern" means a person enrolled in a college of pharmacy or actively pursuing a pharmacy degree, who is registered with the Iowa board of pharmacy examiners. The purpose of this registration is to obtain instruction in the practice of pharmacy from a preceptor pursuant to the requirements of Iowa Code section 155A.6. Registration is required of all students enrolled in Iowa colleges of pharmacy after they have successfully completed one semester in a college of pharmacy.

"Pharmacist preceptor" or *"preceptor"* means a pharmacist licensed to practice pharmacy whose license is current and in good standing. Preceptors shall meet the conditions and requirements of rule 4.9(155A). No pharmacist shall serve as a preceptor if the pharmacist's license to practice pharmacy has been the subject of an order of the licensing authority having jurisdiction over the pharmacist's license imposing any disciplinary sanctions during the time the pharmacist is serving as preceptor or within the three-year period immediately preceding the time the pharmacist begins serving as a preceptor. Provided, however, a pharmacist who has been the subject of such disciplinary order may petition the board in writing for approval to act as preceptor.

657—4.2(155A) Goal and objectives of internship.

4.2(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, responsibilities, and ability to safely, efficiently, and effectively practice pharmacy under the laws and rules of the state of Iowa.

4.2(2) The objectives of internship are as follows:

a. Managing drug therapy to optimize patient outcomes. The pharmacist-intern shall evaluate the patient and patient information to determine the presence of a disease or medical condition, to determine the need for treatment or referral, and to identify patient-specific factors that affect health, pharmacotherapy, or disease management; ensure the appropriateness of the patient's specific pharmacotherapeutic agents, dosing regimens, dosage forms, routes of administration, and delivery systems; and monitor the patient and patient information and manage the drug regimen to promote health and ensure safe and effective pharmacotherapy.

b. Ensuring the safe and accurate preparation and dispensing of medications. The pharmacist-intern shall perform calculations required to compound, dispense, and administer medication; select and dispense medications; and prepare and compound extemporaneous preparations and sterile products.

c. Providing drug information and promoting public health. The pharmacist-intern shall access, evaluate, and apply information to promote optimal health care; educate patients and health care professionals regarding prescription medications, nonprescription medications, and medical devices; and educate patients and the public regarding wellness, disease states, and medical conditions.

d. Adhering to professional and ethical standards. The pharmacist-intern shall comply with professional, legal, moral, and ethical standards relating to the practice of pharmacy and the operation of the pharmacy.

e. Understanding the management of pharmacy operations. The pharmacist-intern shall develop a general understanding of the business procedures of a pharmacy and develop knowledge concerning the employment and supervision of pharmacy employees.

657—4.3(155A) 1500-hour requirements. Internship credit may be obtained only after internship registration with the board and successful completion of one semester in a college of pharmacy. Internship shall consist of a minimum of 1500 hours, 1000 hours of which may be a college-based clinical program approved or accepted by the board. Programs shall be structured to provide experience in community, institutional, and clinical pharmacy practices. The remaining 500 hours shall be acquired under the supervision of the preceptor in a licensed pharmacy or other board-approved location, at a rate of no more than 48 hours per week. At least 250 hours shall be earned in a traditional licensed general or hospital pharmacy where the goal and objectives of internship in rule 657—4.2(155A) apply. Internship credit toward the stipulated 500 hours will not be allowed if it is acquired concurrent with academic training. "Concurrent time" means internship experience acquired while the person is a full-time student carrying, in a given school term, at least 75 percent of the average number of credit hours per term needed to graduate and receive an entry level degree in pharmacy. Credit toward the 500 hours will be granted for experience gained during recognized holiday periods, such as spring break and Christmas break. The competencies in subrule 4.2(2) shall not apply to college-based clinical programs.

657—4.4(155A) Iowa colleges of pharmacy clinical internship programs. The board shall periodically review the clinical component of internship programs of the colleges of pharmacy located in Iowa. The board reserves the right to set conditions relating to the approval of such programs.

657—4.5(155A) Requirements for internships obtained under other state programs. Graduates from out-of-state colleges of pharmacy will be deemed to have met Iowa internship requirements upon presentation of documents attesting to completion of their state internship requirements. Graduates of colleges of pharmacy in states which have no internship requirements must meet the requirements established for Iowa college of pharmacy graduates.

657—4.6(155A) Registration and reporting.

4.6(1) *Registration requirements and term of registration.* Every person shall register before beginning the person's internship experience, whether or not for the purpose of fulfilling the requirements of rule 4.3(155A). Colleges of pharmacy located in Iowa shall certify to the board the names of students who have successfully completed one semester in the college of pharmacy. Registration shall remain in effect as long as the board is satisfied that the intern is pursuing a degree in pharmacy in good faith and with reasonable diligence. A pharmacist-intern may request the intern's registration be extended beyond the automatic termination of such registration pursuant to the procedures and requirements of 657—1.3(17A),124,126,147,155A,205,272C). Registration shall automatically terminate upon the earliest of any of the following:

a. Licensure to practice pharmacy in any state;

b. Lapse, exceeding one year, in the pursuit of a degree in pharmacy; or

c. One year following graduation from the college of pharmacy.

4.6(2) *Identification, reports, and notifications.* Credit for internship time will not be granted unless registration and other required records and affidavits are completed.

a. The pharmacist-intern shall be so designated in all relationships with the public and health professionals. The intern shall wear a badge or name tag with the intern's name and designation, pharmacist-intern or pharmacy student, clearly and visibly imprinted thereon.

b. Registered interns shall notify the board office within ten days of a change of name, employment or residence.

c. Notarized affidavits of experience in non-college-sponsored programs shall be filed with the board office within 90 days after the successful completion of internship. These affidavits shall include certification of competencies and shall certify only the number of hours and dates of training which are nonconcurrent with college of pharmacy enrollment as provided in rule 4.3(155A).

4.6(3) *No credit prior to registration.* Credit will not be given for internship experience obtained prior to registration as a pharmacist-intern. Credit for Iowa college-based clinical programs (1000 hours) will not be granted unless registration is completed before the student begins the program.

4.6(4) *Nontraditional internship.* Credit shall not be given for internship experience obtained at a nontraditional site or program unless the board, prior to the intern's beginning the period of internship, approves the program. Internship training at any site which is not licensed as a general or hospital pharmacy is considered nontraditional internship. Written application for approval of a nontraditional internship program shall include site or program specific competencies, consistent with the goal and objectives of internship in 657—4.2(155A), to be attained during that internship. Application shall be on forms provided by the board. A preceptor supervising a nontraditional internship program shall be a pharmacist, and the requirements of 657—4.9(155A) shall apply to all preceptors.

657—4.7(155A) Foreign pharmacy graduates. Foreign pharmacy graduates who are candidates for licensure in Iowa will be required to obtain a minimum of 1500 hours of internship in a licensed pharmacy or other board-approved location. These candidates must register with the board as per rule 4.6(155A). Internship credit will not be granted until the candidate has been issued an intern registration card. Applications for registration must be accompanied by documentation that the foreign pharmacy graduate has passed the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), the Test of Spoken English (TSE), and the Test of English as a Foreign Language (TOEFL). The board may waive any or all of the 1500 hours if they determine that the candidate's experience as a practicing pharmacist in the foreign country meets the goals and objectives established in rule 4.2(155A).

657—4.8(155A) Fees. The fee for registration as a pharmacist-intern is $10, plus applicable surcharge pursuant to 657—30.8(155A), which fee shall be payable with the application.

657—4.9(155A) Preceptor requirements.

4.9(1) A preceptor shall be a licensed pharmacist in good standing pursuant to the definition of pharmacist preceptor in 657—4.1(155A).

4.9(2) A preceptor shall be responsible for initialing and dating those competencies the intern attained under the supervision of the preceptor and for completing the affidavit certifying the number of hours and the dates of each internship training period under the supervision of the preceptor.

4.9(3) A preceptor may supervise no more than two pharmacist-interns concurrently.

4.9(4) A preceptor shall be responsible for all functions performed by a pharmacist-intern.

657—4.10(155A) Denial of pharmacist-intern registration. The board may deny an application for registration as a pharmacist-intern for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A or 205, or any rule of the board.

657—4.11(155A) Discipline of pharmacist-interns.

4.11(1) The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205, or any rule of the board.

4.11(2) The board may impose the following disciplinary sanctions:

a. Revocation of a pharmacist-intern registration.

b. Suspension of a pharmacist-intern registration until further order of the board or for a specified period.

c. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.

d. Such other sanctions allowed by law as may be appropriate.

These rules implement Iowa Code section 155A.6.

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CHAPTER 5
LICENSURE BY RECIPROCITY
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 5]

657—5.1(147) Reciprocity fee. The fee for reciprocal licensure shall consist of the biennial license fee established by 657—3.1(147,155A) including surcharge and an administration fee of $50, which must accompany the application. No refunds of the $50 administration fee shall be made for cancellations. Applicants shall also be required to submit the application registration fee, as determined by NABP, for the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

657—5.2(147) Necessary credentials. Application shall consist of the final application for license transfer prepared by NABP pursuant to the NABP license transfer program and the application for registration for the MPJE, Iowa Edition. Applications, together with other necessary credentials and fees, shall be filed with the executive secretary of the Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

657—5.3(147) Fiscal licensure. No additional collection of licensure fees shall be made for the balance of the biennial renewal period in which the applicant has been declared fully licensed by reciprocity by the board.

657—5.4(147) Eligibility for reciprocity. The applicant must be a licensed pharmacist by examination in some state of the United States with which Iowa has a reciprocal agreement and must be in good standing at the time of the application. Further, all applicants for reciprocity to this state who obtain their original licensure after January 1, 1980, must have passed the National Association of Boards of Pharmacy (NABP) Licensure Examination (NABPLEX), the North American Pharmacist Licensure Examination (NAPLEX), or an equivalent examination as determined by NABP. Reciprocal licensure will not be granted until after the applicant has shown proof of qualifications; has passed, within the preceding year, the Multistate Pharmacy Jurisprudence Examination, Iowa Edition; and the application has been approved by the executive secretary/director of the board. If the applicant is a graduate of a school or college of pharmacy located outside the United States which has not been recognized and approved by the board, proof of qualifications shall include evidence that the applicant has successfully passed the Foreign Pharmacy Graduate Equivalency Examination (FPGEE) given by the Foreign Pharmacy Graduate Examination Commission established by NABP.

These rules are intended to implement Iowa Code section 147.94.

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657—6.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following categories. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

1. Current Iowa pharmacy laws, rules, and regulations.
2. A patient information reference, updated at least annually, such as:
- United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);
- Facts and Comparisons Patient Drug Facts; or
- Leaflets which provide patient information in compliance with rule 657—8.20(155A).
3. A current reference on drug interactions, such as:
- Phillip D. Hansten's Drug Interactions; or
- Facts and Comparisons Drug Interactions.
4. A general information reference, updated at least annually, such as:
- Facts and Comparisons with current supplements;
- United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider); or
- American Hospital Formulary Service with current supplements.
5. A current drug equivalency reference, including supplements, such as:
- Approved Drugs Products With Therapeutic Equivalence Evaluations (FDA Orange Book);
- ABC - Approved Bioequivalency Codes; or
- USP DI, Volume III.
6. Basic antidote information or the telephone number of a poison control center.
7. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

657—6.4(155A) Prescription department equipment. The prescription department shall have, as a minimum, the following:

1. Measuring devices such as syringes or graduates capable of measuring 1 ml to 250 ml;
2. Suitable refrigeration unit. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration;
3. Other equipment as necessary for the particular practice of pharmacy.

A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

657—6.5(155A) Environment.

6.5(1) *Space, equipment, and supplies.* There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy.

6.5(2) *Clean and orderly.* The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner.

6.5(3) *Sink.* A pharmacy shall have a sink with hot and cold running water within the prescription department, available to all pharmacy personnel, and maintained in a sanitary condition. A pharmacy may request waiver or variance from a provision of this subrule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

6.5(4) *Counseling area.* A pharmacy shall contain an area which is suitable for confidential patient counseling. Such area shall:

a. Be easily accessible to both patients and pharmacists and not allow patient access to prescription drugs;

b. Be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

6.5(5) *Lighting and ventilation.* The pharmacy shall be properly lighted and ventilated.

6.5(6) *Temperature.* The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.

657—6.6(155A) Security. Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

6.6(1) The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on site except as provided in subrule 6.6(2).

6.6(2) In the temporary absence of the pharmacist, only the pharmacist in charge may designate persons who may be present in the prescription department to perform technical and nontechnical functions designated by the pharmacist in charge. Activities identified in subrule 6.6(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours.

6.6(3) Activities which shall not be designated and shall not be performed during the temporary absence of the pharmacist include:

a. Dispensing or distributing any prescription medications to patients or others.

b. Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

c. Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.19(155A).

d. Providing patient counseling, consultation, or patient-specific drug information.

e. Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.

f. Prescription transfers to or from other pharmacies.

657—6.7(155A) Procurement and storage of drugs. The pharmacist in charge shall have the responsibility for the procurement and storage of drugs.

6.7(1) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a secure storage area.

6.7(2) All drugs shall be stored at the proper temperature, as defined by the following terms:

a. Controlled room temperature — temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

b. Cool — temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit) which may, alternatively, be stored in a refrigerator unless otherwise specified on the labeling;

c. Refrigerate — temperature maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit); and

d. Freeze — temperature maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit).

6.7(3) Out-of-date drugs or devices.

a. Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

b. Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined until such drugs or devices are disposed of properly.

657—6.8(155A) Records. Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or 657—Chapter 6 shall be kept at the licensed location of the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record except as otherwise required in this rule. Controlled substance records shall be maintained in a readily retrievable manner in accordance with federal requirements. Those requirements, in summary, are as follows:

6.8(1) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances;

6.8(2) Records of controlled substances in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V and all other records;

6.8(3) A Schedule V nonprescription registry book shall be maintained in accordance with 657—subrule 10.13(13).

6.8(4) Invoices involving the distribution of Schedule III, IV, or V controlled substances to another pharmacy or practitioner must show the actual date of distribution; the name, strength, and quantity of controlled substances distributed; the name, address, and DEA registration number of the distributing pharmacy and of the practitioner or pharmacy receiving the controlled substances;

6.8(5) Copy 1 of DEA Order Form 222, furnished by the pharmacy or practitioner to whom Schedule II controlled substances are distributed, shall be maintained by the distributing pharmacy and shall show the quantity of controlled substances distributed and the actual date of distribution;

6.8(6) Copy 3 of DEA Order Form 222 shall be properly dated, initialed, and filed and shall include all copies of each unaccepted or defective order form and any attached statements or other documents;

6.8(7) If controlled substances, prescription drugs, or nonprescription drug items are listed on the same record, the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable from all other items appearing on the records;

6.8(8) Suppliers' invoices of prescription drugs and controlled substances shall clearly record the actual date of receipt by the pharmacist or other responsible individual;

6.8(9) Suppliers' credit memos for controlled substances and prescription drugs shall be maintained;

6.8(10) A biennial inventory of controlled substances shall be maintained for a minimum of four years from the date of the inventory;

6.8(11) Reports of theft or significant loss of controlled substances shall be maintained;

6.8(12) Reports of surrender or destruction of controlled substances shall be maintained;

6.8(13) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

a. The records maintained in the alternative system contain all of the information required on the manual record; and

b. The data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

657—6.9(126) Return of drugs and appliances. For the protection of the public health and safety, prescription drugs shall not be returned, exchanged, or resold unless, in the professional judgment of the pharmacist, the integrity of the prescription drug has not in any way been compromised. Under no circumstances shall a pharmacist accept from a patient or patient's agent any controlled substances for return, exchange, or resale except to the same patient. Prescription drugs, excluding controlled substances, may, however, be returned and reused as authorized in 657—subrule 23.12(5). No items of personal contact nature which have been removed from the original package or container after sale shall be accepted for return, exchanged, or resold by any pharmacist.

657—6.10(155A) Training and utilization of pharmacy technicians. General pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

These rules are intended to implement Iowa Code sections 124.303, 124.306 to 124.308, 126.10, 155A.13, 155A.31, 155A.32, and 155A.35.

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CHAPTER 7
HOSPITAL PHARMACY LICENSES
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 12]

657—7.1(155A) General requirements. Hospital pharmacy means and includes a pharmacy: licensed by the board, located within any hospital, institution, or establishment which maintains and operates organized facilities for the diagnosis, care, and treatment of human illnesses to which persons may be admitted for overnight stay, and which meets all of the requirements of Iowa Code chapter 135B and the rules and regulations of the board. This chapter does not apply to a pharmacy located within such a facility for the purpose of serving noninstitutionalized patients. Such a pharmacy is a general pharmacy and shall be licensed pursuant to 657—Chapter 6. Pharmacists shall be responsible for any delegated act performed by supportive personnel under their supervision.

657—7.2(155A) Sanitation. Drugs shall be stored in a manner to protect their identity and integrity. A sink with hot and cold running water shall be available within the pharmacy and shall be maintained in a sanitary condition at all times.

657—7.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following categories. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

1. Current Iowa pharmacy laws, rules, and regulations.
2. A patient information reference, updated at least annually, such as:
- United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);
- Facts and Comparisons Patient Drug Facts; or
- Leaflets which provide patient information in compliance with rule 657—8.20(155A).
3. A current reference on drug interactions, such as:
- Phillip D. Hansten's Drug Interactions; or
- Facts and Comparisons Drug Interactions.
4. A general information reference, updated at least annually, such as:
- Facts and Comparisons with current supplements;
- United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider); or
- American Hospital Formulary Service with current supplements.
5. A current drug equivalency reference, including supplements, such as:
- Approved Drugs Products With Therapeutic Equivalence Evaluations;
- ABC - Approved Bioequivalency Codes; or
- USP DI, Volume III.
6. A current IV mixing guide such as:
- Betty Gahart's Intravenous Medications; or
- Trissel's Handbook on Injectable Drugs.
7. A current drug identification reference such as:
- Generex;
- Ident-a-Drug; or
- Other drug identification reference to enable identification of drugs brought into the facility by patients.
8. Basic antidote information or the telephone number of a poison control center.
9. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

657—7.4(155A) Space and equipment requirements. There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy.

1. The pharmacy shall be located in an area or areas that facilitate the provision of services to patients and shall be integrated with the facility's communication and transportation systems.

2. Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available. Equipment shall include a refrigeration unit. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

3. There shall be appropriate space and equipment suitable for the preparation of sterile products and other drug compounding and packaging operations. An appropriate IV preparation hood or room, certified annually pursuant to 657—8.30(126,155A), shall be accessible to personnel preparing IV solutions and other sterile products.

4. The pharmacist in charge shall ensure the availability of any other equipment necessary for the particular practice of pharmacy. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

657—7.5(124,155A) Security. The following conditions must be met to ensure appropriate control over drugs and chemicals in the pharmacy:

7.5(1) *Access when pharmacist absent.* Policies and procedures shall be established which identify who will have access to the pharmacy when the pharmacist is absent from the premises and the procedures to be followed for obtaining drugs and chemicals during that absence. In determining the adequacy of security measures, the board will consider the factors outlined in rule 657—6.6(155A).

7.5(2) *Pharmacist in charge responsible.* The pharmacist in charge shall be responsible for implementing policies and procedures for the security of the hospital pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

657—7.6(155A) Pharmacist in charge. The pharmacy shall be directed by a professionally competent, legally qualified pharmacist.

7.6(1) *Qualifications—pharmacist in charge.* The pharmacist in charge shall be licensed by the board to practice pharmacy in Iowa. The pharmacist in charge shall be knowledgeable about hospital pharmacy practice and management.

7.6(2) *Support staff.* Sufficient supportive personnel, including technical, clerical, and secretarial staff, shall be available to minimize the use of pharmacists in nonjudgmental tasks. Appropriate supervisory controls for supportive personnel shall be maintained.

7.6(3) *Pharmacy personnel.* The pharmacist in charge shall employ an adequate number of qualified personnel commensurate with the size and scope of services provided by the facility.

a. All personnel shall possess the education and training needed for their responsibilities. Competence of all staff shall be maintained through relevant continuing education programs or other activities.

b. Personnel shall be selected and assigned solely on the basis of job-related qualifications and performance. The employment and discharge of pharmacy personnel shall be the responsibility of the pharmacist in charge. There shall be an established procedure, based on predetermined objectives, for orienting new personnel to the pharmacy and their respective positions. Procedures for the routine evaluation of pharmacy personnel performance shall be established.

c. Lines of authority and areas of responsibility within the pharmacy shall be clearly defined. Written position descriptions for all categories of pharmacy personnel shall be prepared and revised as necessary.

7.6(4) *Policies and procedures.* An operations manual governing all pharmacy functions shall be prepared. It shall be continually revised to reflect changes in procedures, organization, and other pharmacy functions. All pharmacy personnel shall be familiar with the contents of the manual.

7.6(5) *Pharmaceutical services.* There shall be an ongoing, systematic program for achieving performance improvement and ensuring the quality of pharmaceutical services.

a. The services of a pharmacist shall be available at all times. Where 24-hour operation of the pharmacy is not feasible, a pharmacist shall be available on an "on call" basis. The use of night cabinets and drug dispensing by nonpharmacists shall be minimized and eliminated wherever possible.

7.13(1) *Medication order information.* Each original medication order contained in inpatient records shall bear the following information:

a. Patient name and identification number;

b. Drug name, strength, and dosage form;

c. Directions for use;

d. Date;

e. Practitioner's signature or that of the practitioner's authorized agent. Any order signed by an authorized agent shall be cosigned by the practitioner within 72 hours.

7.13(2) *Medication order maintained.* The original medication order shall be maintained with the medication administration record in the medical records of the patient following discharge.

7.13(3) *Documentation of drug administration.* Each dose of medication administered shall be properly recorded in the patient's medical record.

7.13(4) *Controlled substances records.* Controlled substances records shall be maintained as follows:

a. All records for controlled substances shall be maintained in a readily retrievable manner.

b. Controlled substances records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

c. Schedule II controlled substances records shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records.

d. Distribution records for non-patient-specific, floor-stocked controlled substances shall bear the following information:

(1) Patient's name;

(2) Prescriber who ordered drug;

(3) Name of drug, dosage form, and strength;

(4) Time and date of administration to patient and quantity administered;

(5) Signature or unique electronic signature of individual administering controlled substance;

(6) Returns to the pharmacy;

(7) Waste, which is required to be witnessed and cosigned by another licensed health professional.

7.13(5) *Other pharmacy records.* Other records to be maintained by a pharmacy include:

a. Copy 3 of DEA order Form 222 which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents.

b. Supplier's invoices of prescription drugs and controlled substances upon which is clearly recorded the actual date of receipt of the controlled substances by the pharmacist or other responsible individual.

c. Suppliers' credit memos for controlled substances and prescription drugs.

d. Biennial inventory of controlled substances required by the Drug Enforcement Administration that shall be maintained for a minimum of four years from the date of the inventory.

e. Drug Enforcement Administration reports of theft or significant loss of controlled substances.

f. Reports of surrender, destruction, or disposition of controlled substances.

g. Schedule V nonprescription register book, if applicable.

h. If a pharmacy distributes controlled substances to another pharmacy or a practitioner, the following records shall be maintained by the distributing pharmacy:

(1) If for Schedule III, IV, or V controlled substances, invoices showing the actual date of distribution; the name, strength, and quantity of controlled substances distributed; the name, address, and DEA registration number of the distributing pharmacy; and the name, address, and DEA registration number of the pharmacy or practitioner to whom the controlled substances are distributed.

(2) If for Schedule I or II controlled substances, copy 1 of DEA order Form 222, furnished by the pharmacy or practitioner to whom the controlled substances are distributed, showing the quantity of controlled substances distributed and the actual date of distribution.

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306 to 124.308, 126.10, 155A.13, 155A.28, 155A.31 and 155A.32.

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CHAPTER 11
DRUGS IN EMERGENCY MEDICAL SERVICE PROGRAMS
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 11]

657—11.1(124,147A,155A) Definitions. For the purpose of this chapter, the following definitions shall apply:

"Ambulance service" means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and emergency medical care at the scene of an emergency or while en route to a hospital or during transfer from one medical care facility to another or to a private home. An ambulance service may use first response or nontransport rescue vehicles to supplement ambulance vehicles.

"Board" means the Iowa board of pharmacy examiners.

"Department" means the Iowa department of public health.

"Drug" means a substance as defined in Iowa Code section 155A.3(13) or a device as defined in Iowa Code section 155A.3(10).

"Emergency medical technician" means any emergency medical technician or EMT as defined in 641—132.1(147A).

"EMS" means emergency medical services.

"Medical director" means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who has completed a medical director workshop, sponsored by the department, within one year of assuming duties.

"Physician" means any individual licensed under Iowa Code chapter 148, 150, or 150A.

"Physician assistant" means any individual licensed under Iowa Code chapter 148C.

"Physician designee" means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners, who holds a current course completion card in advanced cardiac life support (ACLS). The physician designee may act as an intermediary for a supervising physician in directing the actions of advanced emergency medical care personnel in accordance with written policies and protocols.

"Rescue service" means any privately or publicly owned service program which does not provide patient transportation and utilizes only rescue or first response vehicles to provide emergency medical care at the scene of an emergency.

"Responsible individual" means, in a medical director-based service, the medical director for the service; in a pharmacy-based service, the pharmacist in charge of the base pharmacy.

"Service" or *"service program"* means any 24-hour emergency medical care ambulance service, rescue, or first response service that has received authorization by the department.

"Supervising physician" means any physician licensed under Iowa Code chapter 148, 150, or 150A. The supervising physician is responsible for medical direction of emergency medical care personnel when such personnel are providing emergency medical care.

657—11.2(124,147A,155A) Ownership of drugs—options. Ownership of any and all drugs used by an emergency medical service shall be maintained under one of the following options:

11.2(1) *Pharmacy-based services.* Any and all drugs shall be provided by a licensed pharmacy. Under this arrangement, all drugs shall remain the property of the pharmacy. For purposes of this chapter and unless otherwise noted, the pharmacist in charge of the base pharmacy shall be the responsible individual for the service program.

a. A formal written agreement shall be made between the base pharmacy and the service establishing that the EMS is operating as an extension of the base pharmacy with respect to the drugs.

b. Pharmacies shall provide drugs limited to the drugs listed in the service program's written protocols.

11.2(2) *Medical director-based services.* Any and all drugs shall be provided by the medical director. Under this arrangement, all drugs shall remain the property of the medical director. For purposes of this chapter and unless otherwise noted, the medical director shall be the responsible individual for the service program.

Whenever necessary and appropriate, the medical director may consult with a pharmacist in regard to all matters relating to the proper use, storage, and handling of drugs and intravenous infusion products which may be administered to patients of the service program.

657—11.3(124,147A,155A) General requirements.

11.3(1) *Exchange program.* Any pharmacy may replace drugs, including controlled substances, which have been administered to patients upon receipt of an order issued by a physician, physician assistant, or physician designee so authorized.

11.3(2) *Controlled substance prescribing.* Controlled substances shall be prescribed only by a person who is so authorized by state law.

11.3(3) *Controlled substance disposal or destruction.* The disposal or destruction of the unused portion of a controlled substance shall be documented in writing and signed by two emergency service program personnel. Outdated or unwanted controlled substances shall be returned to the service base for proper disposal or destruction.

11.3(4) *Administration of drugs and intravenous infusion products.* An emergency medical technician shall not administer a drug or intravenous infusion product without the verbal or written order of a physician, physician assistant, physician designee, or by written protocol. The service program's responsible individual shall be responsible for ensuring proper documentation of orders given and drugs administered.

11.3(5) *Drug control policies and procedures.* The service program's responsible individual shall be responsible for developing and implementing a written drug and intravenous infusion product safeguard and control policy for the service. The policy shall include, but not be limited to, procedures regarding the following:

a. Controlled substances;
b. Medication orders;
c. Physician orders;
d. Adverse drug and intravenous infusion product reaction reports;
e. Drug and intravenous infusion product administration;
f. Drug and intravenous infusion product defect reports;
g. Drug and intravenous infusion product recalls;
h. Outdated or unused drugs and intravenous infusion products;
i. Verbal orders;
j. Inventory control;
k. Drug and intravenous infusion product security;
l. Records;
m. Drug and intravenous infusion product procurement, storage, and ownership;
n. Inspections;
o. Drug exchange programs.

657—11.4(124,147A,155A) Procurement and storage. The responsible individual for the service shall be responsible for the procurement and storage of drugs and intravenous infusion products for the service program.

11.4(1) All drugs and intravenous infusion products shall be stored at the proper temperatures as defined by the USP/NF.

11.4(2) Any drug or intravenous infusion product bearing an expiration date may not be administered after the expiration date.

11.4(3) Outdated drugs and intravenous infusion products shall be quarantined together until such time as the items can be lawfully disposed.

657—11.5(124,147A,155A) Records. Every inventory or other record required to be kept under Iowa Code chapter 124 or 155A and board rules shall be kept by the responsible individual for the service program and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record.

657—11.6(124,147A,155A) Inspections.

11.6(1) The responsible individual for the service program shall ensure proper inspection of the drugs and intravenous infusion products used by the service on a periodic basis. Proof of periodic inspection shall be in writing and made available upon request of the board or department.

11.6(2) Drugs and intravenous infusion products used by the service program, as well as records maintained by the responsible individual or service program, shall be subject to inspection and audit by the board. They shall also be subject to inspection by the federal Drug Enforcement Administration.

657—11.7(124,147A,155A) Security and control. The responsible individual for the service program shall be responsible for developing and implementing policies and procedures for the security and control of the service program's drug and intravenous infusion products, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs The following conditions must be met to ensure appropriate control over drugs and intravenous infusion products.

11.7(1) Policies and procedures shall identify who will have access to the drugs and intravenous infusion products.

11.7(2) Drugs and intravenous products shall be secured at all times in a manner that limits access to authorized personnel only.

These rules are intended to implement Iowa Code chapter 147A.

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CHAPTER 12
PRECURSOR SUBSTANCES

657—12.1(124B) Precursor substances program administrator. For the purpose of carrying out the regulatory provisions of Iowa Code chapter 124B, the executive secretary of the board of pharmacy examiners shall serve as the precursor substances program administrator.

657—12.2(124B) Precursor substance defined. Precursor substance is defined as follows:

12.2(1) For the purpose of this chapter a precursor substance is any of the following substances:

a. Anthranilic acid and its salts;
b. Benzyl Cyanide;
c. Ephedrine, its salts, optical isomers, and salts of optical isomers;
d. Ergonovine and its salts;
e. Ergotamine and its salts;
f. 3,4-methylenedioxyphenyl-2-propanone;
g. N-acetylanthranilic acid and its salts;
h. Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
i. Phenylacetic acid and its salts;
j. Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
k. Piperidine and its salts;
l. Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;
m. Methylamine, its salts, optical isomers, and salts of optical isomers;
n. Ethylamine, its salts, optical isomers, and salts of optical isomers;
o. D-lysergic acid, its salts, optical isomers, and salts of optical isomers;
p. Propionic anhydride, its salts, optical isomers, and salts of optical isomers;
q. Isosafrole, its salts, optical isomers, and salts of optical isomers;
r. Safrole, its salts, optical isomers, and salts of optical isomers;
s. Piperonal, its salts, optical isomers, and salts of optical isomers;
t. N-methylephedrine, its salts, optical isomers, and salts of optical isomers;
u. N-ethylephedrine, its salts, optical isomers, and salts of optical isomers;
v. N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
w. N-ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
x. Hydriodic acid, its salts, optical isomers, and salts of optical isomers.

12.2(2) The definition in subrule 12.2(1) shall not include any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine or any cosmetic containing a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription in accordance with Iowa Code chapter 126.

657—12.3(124B) Revision of precursor substances list. The board of pharmacy examiners may add a substance to, or remove a substance from, the list of precursor substances in Iowa Code section 124B.2 or rule 12.2(124B). In determining whether to add or remove a substance from the list, the board shall consider the following:

1. The likelihood that the substance may be used as a precursor in the illegal production of a controlled substance.
2. The availability of the substance.
3. The appropriateness of including the substance under this chapter or under Iowa Code chapter 124.
4. The extent and nature of legitimate uses for the substance.

657—12.4(124B) Who must obtain a permit.

12.4(1) Persons who manufacture, wholesale, retail, or otherwise sell, transfer, or furnish in this state a precursor substance, and persons in this state who purchase, transfer, or otherwise receive a precursor substance from a source outside the state, shall obtain a permit on forms provided by the office of the precursor substances program administrator.

12.4(2) A permit is not required of a vendor of a drug containing ephedrine, phenylpropanolamine, or pseudoephedrine or of a cosmetic that contains a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished either over the counter without a prescription in accordance with Iowa Code chapter 126 or with a prescription pursuant to Iowa Code chapter 155A.

657—12.5(124B) Permit and permit fee. For each permit or permit renewal to manufacture, wholesale, retail, sell, transfer, or furnish in this state a precursor substance, or to purchase, transfer, or receive a precursor substance from a source outside the state, permit applicants and permit holders shall pay an annual fee of $100. A permit shall be effective for not more than one year from the date of issuance.

657—12.6(124B) Time and method of payment. Permit and renewal fees shall be paid at the time when the permit application is submitted for filing. Payment shall be made in the form of a personal, certified or cashier's check or money order made payable to the Iowa Board of Pharmacy Examiners for deposit in the general fund. Payments made in the form of stamps, foreign currency or third-party endorsed checks will not be accepted.

657—12.7(124B) Late application. Persons required to obtain a permit or renew a permit who file a late application shall pay an additional $50 late payment fee.

657—12.8(124B) Time for application for permit. Any person who is required to obtain a permit may apply for a permit at any time. No person required to obtain a permit shall engage in any activity for which a permit is required until the application for a permit is granted and a permit certificate is issued by the precursor substances program administrator to such person.

657—12.9(124B) Expiration date for application for permit. Any person who holds a permit may apply to renew a permit not less than 30 days, nor more than 60 days, before the expiration date of the permit. A permit holder who fails to file a permit renewal at least 30 days before the expiration date of the permit must apply for a new permit; the existing permit will expire on the date specified.

657—12.10(124B) Exemption of law enforcement officials. In order to enable law enforcement agency laboratories to obtain and transfer precursor substances for use as standards in chemical analysis, such laboratories shall annually obtain a permit to conduct chemical analysis. Such laboratories shall be exempted from payment of a permit fee. Laboratory personnel, when acting in the scope of their official duties, are deemed to be officials exempted by this rule. For purpose of this rule, laboratory activities shall not include field or other preliminary chemical tests by officials exempted by this rule.

657—12.11(124B) Application forms—contents—signature.

12.11(1) Application forms may be obtained at the board office or by writing to the Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Des Moines, Iowa 50319. Forms will be mailed, as applicable, to each permit holder approximately 60 days before the expiration date of the permit; if any permit holder does not receive such forms within 45 days before the expiration date of the permit, the permit holder shall promptly give notice of the fact and request forms by writing to the board at the foregoing address.

12.11(2) Each application shall include all information called for in the form, unless the item is not applicable, in which case this fact shall be indicated.

12.11(3) Each application, attachment or other document filed as part of an application shall be signed by the applicant, if an individual; by a partner of the applicant, if a partnership; or by the chief executive officer of the applicant, if a corporation, corporate division, association, trust or other entity.

657—12.12(124B) Filing of application. All applications for a permit shall be submitted for filing to the Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Des Moines, Iowa 50319. The appropriate permit fee and any required attachments must accompany the application.

657—12.13(124B) Acceptance for filing—defective applications.

12.13(1) Applications for a permit and a permit renewal submitted for filing are dated upon receipt. If found to be complete the application will be accepted for filing. Applications failing to comply with the requirements of this rule will not be accepted for filing. In the case of minor defects as to completeness, the board may accept the application for filing with a request to the applicant for additional information. A defective application will be returned to the applicant within 14 days following its receipt with a statement of the reason for not accepting the application for filing. A defective application may be corrected and resubmitted for filing at any time. The board shall accept for filing any application upon resubmission by the applicant, whether complete or not.

12.13(2) Accepting an application for filing does not preclude any subsequent request for additional information and has no bearing on whether the application will be granted.

12.13(3) The board may require an applicant to submit documents or written statements of fact relevant to the application as it deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within 14 days after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the board in granting or denying the application.

12.13(4) An application for a permit or permit renewal may be amended or withdrawn without permission of the board at any time before the date on which the applicant receives an order to show cause. An application may be amended or withdrawn with permission of the board at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest. After an application has been accepted for filing, the request by the applicant that it be returned or the failure of the applicant to respond to official correspondence regarding the application, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application.

657—12.14(124B) Termination of permit. The permit of any person shall terminate if and when the person dies, ceases legal existence, discontinues business, or changes name or address as shown on the permit certificate. Any permit holder who ceases legal existence, discontinues business, or changes a name or address as shown on the permit certificate shall notify the board within 30 days of the occurrence. In the event of a change in name or address, the person may apply for a new permit certificate in advance of the effective date of the change by filing an application and paying the appropriate fee in the same manner as an application for a new permit.

657—12.15(124B) Refusal, suspension, or revocation of permit.

12.15(1) The board shall refuse, suspend, or revoke a permit upon finding that any conditions specified in Iowa Code section 124B.12 exist.

12.15(2) The board may suspend any permit for any period of time it determines to be justified upon the facts of the case.

12.15(3) All administrative matters pertaining to the suspension or revocation of a permit shall conform procedurally to the general provisions for suspension or revocation of an Iowa controlled substances registration contained in rules 657—10.7(124), 10.8(124), and 10.9(124).

657—12.16(124B) Security requirements generally. All applicants and permit holders shall provide effective controls and procedures to guard against theft and diversion of precursor substances. In order to determine whether a person has provided effective controls against diversion, the board shall use the security requirements set forth in rule 657—10.10(124) as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial compliance with these standards may be deemed sufficient by the board after evaluation of the overall security system and needs of the applicant or permit holder.

657—12.17(124B) Form of proper identification required for purchases of precursor substances.

12.17(1) Before selling, transferring, or otherwise furnishing any precursor substance specified in Iowa Code section 124B.2 or rule 12.2(124B) to a person in this state, a vendor shall require proper identification from the purchaser.

12.17(2) For purchases of precursor substances which are face-to-face, a vendor shall require proper identification from the purchaser as specified in Iowa Code section 124B.3.

12.17(3) For purchases of precursor substances which are not face-to-face, a vendor shall require a letter of authorization from the business or person who is making the purchase.

a. If the purchaser is a person, the letter shall include the following:

(1) The name of the person,
(2) The person's residential or mailing address (other than a post office box number),
(3) Residential telephone number,
(4) Place of employment including employer's address and telephone number,
(5) Date of birth,
(6) Place of birth,
(7) Social security number,
(8) The person's signature,
(9) A description of how the substance will be used.

b. If the purchaser is a business, the letter shall include the following:

(1) The name of the business,
(2) The business address and telephone number,
(3) A description of how the substance will be used,
(4) The signature of an officer, agent, or employee of the business.

657—12.18(124B) Who must report.

12.18(1) A manufacturer, wholesaler, retailer, or other person who is required to report pursuant to Iowa Code chapter 124B, and who sells, transfers, or otherwise furnishes to any person in this state any precursor substance listed in Iowa Code section 124B.2 or rule 12.2(124B), shall file a report with the board.

12.18(2) A manufacturer, wholesaler, retailer, or other person who is required to report pursuant to Iowa Code chapter 124B, and who purchases, transfers, or otherwise receives a precursor substance from a source outside the state, shall file a report with the board.

12.18(3) The reporting requirements of subrule 12.18(1) do not apply to any of the following:

a. A licensed pharmacist or other person authorized under Iowa Code chapter 155A to sell or furnish a precursor substance upon the prescription of a practitioner.

b. A practitioner who administers or furnishes a precursor substance to a patient.

c. A manufacturer, wholesaler, retailer, or other person who holds a permit issued by the board and who sells, transfers, or otherwise furnishes a precursor substance to a practitioner or a pharmacy as defined in Iowa Code section 155A.3.

12.18(4) A manufacturer, wholesaler, retailer, or other person who is required to report pursuant to Iowa Code chapter 124B and subrule 12.18(1) or 12.18(2), or a person listed as an exemption under Iowa Code section 124B.6 or subrule 12.18(3), shall report to the board either of the following occurrences:

a. Loss or theft of a precursor substance.

b. A difference between the amount of a precursor substance shipped and the amount of a precursor substance received.

657—12.19(124B) Frequency of reports.

12.19(1) Persons who manufacture, wholesale, retail, or otherwise sell, transfer, or furnish in this state a precursor substance shall submit a report of the transaction to the board at least 21 days prior to the delivery of a precursor substance to a recipient. Regular, repeated transactions of a particular precursor substance between a vendor and a recipient may be reported monthly pursuant to the provisions of Iowa Code section 124B.4.

12.19(2) A manufacturer, wholesaler, retailer, or other person who purchases, transfers, or otherwise receives a precursor substance from a source outside the state shall submit a report of such transaction to the board within 14 days of the receipt of that substance.

12.19(3) A manufacturer, wholesaler, retailer, or other person who is required to report pursuant to Iowa Code chapter 124B and subrules 12.18(1) and 12.18(2), or a person listed as an exception under Iowa Code section 124B.6 or subrule 12.18(3), shall report missing quantities of a precursor substance within seven days of knowledge of the loss or occurrence.

657—12.20(124B) Reporting forms—contents—signature. Reporting forms may be obtained at the board office or by writing to the Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Des Moines, Iowa 50319.

12.20(1) Each form which reports the sale, transfer, or other furnishing of a precursor substance shall contain the following information:

a. Name of substance;

b. Quantity of substance;

c. Date sold, transferred, or furnished;

d. Name and address of business or person selling, transferring, or furnishing the substance;

e. The signature of the person selling, transferring, or furnishing the substance or the signature of an officer, agent, or employee of a business selling, transferring, or furnishing the substance;

f. Name and address of person or business purchasing or receiving the substance.

12.20(2) Each form which reports the receipt of a precursor substance shall contain the following information:

a. Name of substance;

b. Quantity of substance;

c. Date received;

d. Name and address of person or business receiving the substance;

e. The signature of the person receiving the substance or the signature of an officer, agent, or employee of a business receiving the substance;

f. Name and address of the person or business selling, transferring, or furnishing the substance.

12.20(3) In lieu of an approved form the board will accept a copy of an invoice, packing list, or other shipping document which contains the applicable information set forth in subrule 12.20(1) or 12.20(2). Under this option purchase price information appearing on the document may be deleted.

12.20(4) Each form which reports a missing quantity of a precursor substance shall contain the following information:

a. Name of substance missing;

b. Quantity of substance missing;

c. Date on which the substance was discovered to be missing;

d. Name and address of person or business reporting the missing quantity;

e. The permit number of the person or business reporting the missing quantity, if applicable;

f. The signature of the person reporting the missing quantity or the signature of an officer, agent, or employee of a business reporting the missing quantity;

g. The name and address of the person who transported the precursor substance and the date of shipment, if applicable.

657—12.21(124B) Monthly reporting option.

12.21(1) Permit holders who regularly transfer the same precursor substance to the same recipient may apply to the board for authorization to submit the report of said transactions on a monthly basis. Requests for monthly reporting authorization must be received at the board office at least 14 days prior to the board meeting at which the request will be considered. The board will review each request to determine if the requirements of Iowa Code chapter 124B are met and will notify the permit holder of its decision and the reporting format that will be authorized.

12.21(2) Permit holders may also petition the board to accept the monthly report on a computer-generated basis. If approved, the report may be furnished in hard copy or on board-approved data storage methods. The permit holder will be responsible for the accuracy of the report and the prompt correction of any data entry or transmission errors.

12.21(3) The authorization to use monthly reports or computer-generated monthly reports may be rescinded at the board's discretion and with 30 days' notice.

These rules are intended to implement Iowa Code chapter 124B.

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CHAPTER 15
CORRECTIONAL FACILITY PHARMACY LICENSES

657—15.1(124,126,155A) General requirements. It is the intent of this rule to authorize the department of corrections to distribute prescription drugs to inmates in correctional institutions by and through a network of pharmacies licensed by the board with limited-use pharmacy licenses designated as correctional facility pharmacy licenses and located in facilities operated pursuant to Iowa Code chapter 904. Pharmacists shall be responsible for any delegated act performed by supportive personnel under their supervision.

657—15.2(124,126,155A) Sanitation. Drugs shall be stored in a manner to protect their identity and integrity. A sink with hot and cold running water shall be available within the pharmacy and shall be maintained in a sanitary condition at all times. A pharmacy may request waiver or variance from the provisions of this rule regarding a sink pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

657—15.3(124,126,155A) Reference library. References may be printed or computer-accessed. Each correctional facility pharmacy shall have on site, as a minimum, one reference from each of the following categories. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

1. Current Iowa pharmacy laws, rules, and regulations.
2. A patient information reference, updated at least annually, such as:
- United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);
- Facts and Comparisons Patient Drug Facts; or
- Leaflets which provide patient information in compliance with rule 657—8.20(155A).
3. A current reference on drug interactions, such as:
- Phillip D. Hansten's Drug Interactions; or
- Facts and Comparisons Drug Interactions.
4. A general information reference, updated at least annually, such as:
- Facts and Comparisons with current supplements;
- United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Health Care Provider); or
- American Hospital Formulary Service with current supplements.
5. A current drug equivalency reference, including supplements, such as:
- Approved Drug Products With Therapeutic Equivalence Evaluations (FDA Orange Book);
- ABC - Approved Bioequivalency Codes; or
- USP DI, Volume III.
6. Basic antidote information or the telephone number of a poison control center.
7. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

657—15.4(124,126,155A) Prescription department equipment. Each correctional facility pharmacy shall have on site, as a minimum, the following equipment:

1. Refrigeration unit capable of maintaining temperatures within a range compatible with the proper storage of drugs requiring refrigeration;
2. Graduates capable of measuring 1 ml to 250 ml;
3. Other equipment as necessary for the particular practice of pharmacy;
4. Access to a Class A prescription balance sensitive to 10 mg., with weights, shall be available within the network of correctional facility pharmacies where compounding takes place.

A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

657—15.5(124,126,155A) Security. The pharmacist in charge, with the concurrence of the department of corrections, shall establish policies and procedures which identify who will have access to correctional facility pharmacies when the pharmacist is absent and the procedures to be followed for obtaining prescription drugs and chemicals during that absence. In determining the adequacy of security measures, the board will consider the factors outlined in rule 6.6(155A).

15.5(1) All areas occupied by the correctional facility pharmacy shall be capable of being locked by key or combination so as to prevent access by unauthorized personnel.

15.5(2) The pharmacist in charge shall develop and implement policies and procedures for the security of correctional facility pharmacies, including adequate safeguards against theft or diversion of prescription drugs, controlled substances, and records for such drugs. Policies and procedures shall be developed with the approval of the department of corrections.

15.5(3) All drugs distributed from the pharmacy to other areas of the correctional facility for subsequent administration to inmates shall be kept in locked storage when not in use, with access restricted to the medication nurse or qualified designee.

657—15.6(124,126,155A) Procurement and storage of drugs. The pharmacist in charge shall be responsible for the procurement and storage of all drugs.

15.6(1) The pharmacist in charge shall have the responsibility for determining specifications of all drugs procured by the facility.

15.6(2) All drugs shall be stored at the proper temperatures, as defined in the USP/NF.

15.6(3) Any drug bearing an expiration date may not be dispensed or distributed beyond the expiration date of the drug.

15.6(4) Outdated drugs shall be removed from dispensing stock and quarantined until such drugs are lawfully disposed.

657—15.7(124,126,155A) Records. Every inventory or other record required to be kept under Iowa Code chapters 124, 155A, and 205, or board rules, shall be kept by the pharmacy and be available for inspection and copying by the board or its representative and to other authorized local, state or federal law enforcement agencies for at least two years from the date of the inventory or record except as otherwise required in this rule.

15.7(1) "Medication prescription orders" are orders for medication for persons in custody status in a correctional institution, originated by a practitioner authorized to prescribe, which meet the information requirements for a prescription order but are recorded, distributed, and administered as though they were medication orders. Medication prescription orders written in inmate health records shall include the following information:

a. Inmate name, identification number, and location;

b. Drug name, strength, dosage form, and quantity or duration;

c. Directions for use;

d. Date of issue;

e. Prescriber's name or signature and office address if different from that of the correctional facility;

f. Prescriber's DEA number for controlled substances if not on file in the correctional facility pharmacy.

15.7(2) The original medication prescription order shall be maintained with the medication administration record in the health record of the inmate for a minimum of two years.

15.7(3) The pharmacist in charge at each correctional facility pharmacy shall determine that combination of manual and computerized records that constitutes a readily retrievable record of drugs dispensed.

15.11(2) Whenever prescription drugs or medical devices are obtained in the absence of the pharmacist from the pharmacy or provisional stock, the following is applicable:

a. Access to the pharmacy or provisional stock is restricted to those individuals as specified in rule 15.5(124,126,155A);

b. Prescription and nonprescription drugs may be removed from the pharmacy or provisional stock only in the original manufacturer's container or in a container prepackaged by the correctional facility pharmacy in accordance with rule 657—8.3(126);

c. A record shall be made of all withdrawals by the authorized person removing the drugs, which shall include the following information:

(1) Name and identification number of inmate;

(2) Name, strength, dosage form, and quantity of drug removed;

(3) Date and time of withdrawal of the drug;

(4) Signature or initials of the authorized person making the withdrawal.

d. The original or properly verified copy of new medication prescription orders shall be left with the record of withdrawal.

657—15.12(155A) Training and utilization of pharmacy technicians. Correctional facility pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

These rules are intended to implement Iowa Code sections 124.303, 124.306, 124.307, 124.308, 126.10, 155A.13, 155A.31, and 155A.32.

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4. Attain a minimum of 160 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an accredited college of pharmacy;
5. Submit an affidavit of experience and training to the board of pharmacy examiners.

657—16.5(155A) Library. Each nuclear pharmacy shall have access to the following reference books. All books must be current editions or revisions. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

1. United States Pharmacopoeia/National Formulary, with supplements;
2. State laws and regulations relating to pharmacy;
3. State rules or federal regulations governing the use of applicable radioactive materials.

657—16.6(155A) Minimum equipment requirements. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

1. Laminar flow hood;
2. Dose calibrator;
3. Refrigerator;
4. Single channel scintillation counter;
5. Microscope;
6. Autoclave, or access to one;
7. Incubator;
8. Radiation survey meter;
9. Other equipment necessary for radiopharmaceutical services provided as required by the board of pharmacy examiners.

657—16.7(155A) Training and utilization of pharmacy technicians. Nuclear pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

These rules are intended to implement Iowa Code sections 155A.4(2)*"f,"* 155A.13, 155A.28 and 155A.31.

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CHAPTER 19
NONRESIDENT PHARMACY LICENSES

657—19.1(155A) Definitions.

"Board" means the Iowa board of pharmacy examiners.

"Home state" means the state in which a pharmacy is located.

"Nonresident pharmacy" means a pharmacy located outside the state of Iowa which delivers, dispenses, or distributes, by any method, prescription drugs or devices to an ultimate user physically located in this state. "Nonresident pharmacy" shall include a pharmacy located outside the state of Iowa which provides routine pharmacy services to an ultimate user in this state.

"Nonresident pharmacy license" means a pharmacy license issued to a nonresident pharmacy.

"Pharmacy service" includes, but is not limited to, product and nonproduct services such as delivering, dispensing, or distributing prescription drugs or devices, providing patient counseling and drug information, assessing health risks, and participating in pharmaceutical care planning.

657—19.2(155A) Application and license requirements. A nonresident pharmacy shall apply for and obtain a nonresident pharmacy license from the board prior to providing pharmacy services to an ultimate user in this state. Change of pharmacy name, ownership, location, or pharmacist in charge shall require a new completed application and license fee pursuant to 657—subrules 3.4(3) to 3.4(6).

19.2(1) A nonresident pharmacy license shall expire on December 31 of each year. The fee for a new or renewal license shall be $100. A nonresident pharmacy license form shall be issued upon receipt of the license application information required in subrule 19.2(2) and payment of the license fee.

Failure to renew the license before January 1 following expiration shall require a renewal fee of $200. Failure to renew the license before February 1 following expiration shall require a renewal fee of $300. Failure to renew the license before March 1 following expiration shall require a renewal fee of $400. Failure to renew the license before April 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of the license exceed $500.

19.2(2) A nonresident pharmacy shall submit all of the following in order to obtain or renew a nonresident pharmacy license:

a. A completed application form, available from the board, and an application fee as provided in subrule 19.2(1).

b. Evidence of possession of a valid license, permit, or registration as a pharmacy in compliance with the laws of the home state. Such evidence shall consist of one of the following:

(1) Copy of the current license, permit, or registration certificate issued by the regulatory or licensing agency of the home state; or

(2) Letter from the regulatory or licensing agency of the home state certifying the pharmacy's compliance with the pharmacy laws of that state.

c. A copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the home state.

d. Evidence of correction of any noncompliance noted on inspection reports of the regulatory or licensing agency of the home state and all other regulatory agencies.

e. A list of the names, titles, and home addresses of all principal owners, partners, and officers of the nonresident pharmacy.

f. A list of the names and license numbers of all pharmacists and, if available, the names and license or registration numbers of all supportive personnel employed by the nonresident pharmacy who deliver, dispense, or distribute, by any method, prescription drugs to an ultimate user in this state, and the name, license number, and signature of the pharmacist in charge of the nonresident pharmacy.

g. A copy of the nonresident pharmacy's policies and procedures regarding the records of controlled substances delivered, dispensed, or distributed to ultimate users in this state to be maintained and detailing the format and location of those records. If policies and procedures are unchanged since previously submitted to the board, the applicant shall so indicate and need not include a copy with the application for license renewal or change.

h. A copy of the nonresident pharmacy's policies and procedures evidencing that the pharmacy provides, during its regular hours of operation for at least 6 days and for at least 40 hours per week, toll-free telephone service to facilitate communication between ultimate users in this state and a pharmacist who has access to the ultimate user's records in the nonresident pharmacy, and that the toll-free number is printed on the label affixed to each container of prescription drugs delivered, dispensed, or distributed in this state. A copy of a prescription label including the toll-free number shall be included. If policies and procedures are unchanged since previously submitted to the board, the applicant shall so indicate and need not include a copy with the application for license renewal or change.

19.2(3) A nonresident pharmacy shall update lists required by subrule 19.2(2), paragraphs *"e"* and *"f,"* within 30 days of any addition, deletion, or other change to a list.

657—19.3(155A) Discipline. Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, or revoke a nonresident pharmacy license for any violation of Iowa Code section 155A.13A; section 155A.15, subsection 2, paragraph *"a," "b," "d," "e," "f," "g," "h,"* or *"i"*; Iowa Code chapter 124, 124A, 124B, 126, or 205; or a rule of the board promulgated thereunder unless the Iowa Code or Iowa Administrative Code conflicts with law, administrative rule, or regulation of the home state. The more stringent of the two shall apply when there is a conflict of law regarding services to Iowa residents.

657—19.4(155A) Training and utilization of pharmacy technicians. Nonresident pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

657—19.5(135C,155A) Personnel histories. Pursuant to the requirements of Iowa Code section 135C.33, the provisions of this rule shall apply to any pharmacy employing any person to provide patient care services in a patient's home within the state of Iowa. For the purposes of this rule, "employed by the pharmacy" shall include any individual who is paid, either by the pharmacy or by any other entity such as a corporate entity, a temporary agency, or an independent contractor, to provide treatment or services to any patient in the patient's home in Iowa. Specifically excluded from the requirements of this rule are individuals such as delivery persons or couriers who do not enter the patient's home for the purpose of instructing the patient or the patient's caregiver in the use or maintenance of the equipment, device, or medication being delivered, or who do not enter the patient's home for the purpose of setting up or servicing the equipment, device, or medication used to treat the patient in the patient's home.

19.5(1) *Applicants questioned, informed.* The pharmacy shall ask the following question of each person seeking employment in a position which will provide in-home services in Iowa: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" The applicant shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The applicant shall indicate, by signed acknowledgment, that the applicant has been informed that such record checks will be conducted.

19.5(2) *Procedures and forms.* Prior to the employment of any person to provide in-home services in Iowa, the pharmacy shall submit a form specified by the department of public safety to the department of public safety and receive the results of a criminal history check and dependent adult abuse record check. The pharmacy may submit a form specified by the department of human services to the department of human services to request a child abuse history check.

19.5(3) *Employment prohibition—exception.* A person who has a criminal record, founded dependent adult abuse report, or founded child abuse report shall not be employed by a pharmacy to provide in-home services in Iowa unless the department of human services has evaluated the crime or founded abuse report and concluded that the crime or founded abuse does not merit prohibition from such employment.

19.5(4) *Records.* The pharmacy shall keep copies of all record checks and evaluations.

657—19.6(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following categories. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

1. Current Iowa pharmacy laws, rules, and regulations.
2. A patient information reference, updated at least annually, such as:
- United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);
- Facts and Comparisons Patient Drug Facts; or
- Leaflets which provide patient information in compliance with rule 657—8.20(155A).
3. A current reference on drug interactions, such as:
- Phillip D. Hansten's Drug Interactions; or
- Facts and Comparisons Drug Interactions.
4. A general information reference, updated at least annually, such as:
- Facts and Comparisons with current supplements;
- United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider); or
- American Hospital Formulary Service with current supplements.
5. A current drug equivalency reference, including supplements, such as:
- Approved Drug Products With Therapeutic Equivalence Evaluations (FDA Orange Book);
- ABC - Approved Bioequivalency Codes; or
- USP DI, Volume III.
6. Basic antidote information or the telephone number of a poison control center.
7. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

657—19.7(155A) Confidential and electronic data. The pharmacist in charge shall be responsible for developing, implementing, and enforcing policies and procedures to ensure patient confidentiality and to protect patient identity and patient-specific information from inappropriate or nonessential access, use, or distribution pursuant to the requirements of 657—Chapter 21.

657—19.8(124,155A) Storage and shipment of drugs and devices. The pharmacist in charge shall be responsible for developing, implementing, and enforcing policies and procedures to ensure compliance with 657—6.7(155A) and USP standards for the storage and shipment of medications and devices. Policies and procedures shall provide for the shipment of controlled substances via a secure and traceable method and all records of such shipment and delivery to Iowa patients shall be maintained for a minimum of two years from date of delivery.

657—19.9(155A) Patient records, prospective drug review, and patient counseling.

19.9(1) *Patient records.* A patient record system shall be maintained pursuant to 657—8.18(155A) for Iowa patients for whom prescription drug orders are dispensed.

19.9(2) *Prospective drug review.* A pharmacist shall, pursuant to the requirements of 657—8.19(155A), review the patient record and each prescription drug order presented for initial dispensing or refilling.

19.9(3) *Patient counseling.* The pharmacist in charge shall be responsible for developing, implementing, and enforcing policies and procedures to ensure that Iowa patients receive appropriate counseling pursuant to the requirements of 657—8.20(155A).

These rules are intended to implement Iowa Code sections 124.306, 155A.13, 155A.13A, 155A.31, and 155A.35.

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CHAPTER 22
PHARMACY TECHNICIANS

657—22.1(155A) Definitions.

"Board" means the Iowa board of pharmacy examiners.

"Pharmacy technician" means a person registered by the board who is in a technician training program or who is employed by a licensed pharmacy located in Iowa under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, as provided in rules 22.14(155A) and 22.15(155A).

"Supervising pharmacist" means an Iowa-licensed pharmacist who is on duty in an Iowa-licensed pharmacy and who is responsible for the actions of a pharmacy technician or other supportive personnel.

"Supportive personnel" means a person, other than a licensed pharmacist, a registered pharmacist-intern, or a registered pharmacy technician, who may perform nontechnical duties assigned by the pharmacist under the pharmacist's supervision, including but not limited to delivery, billing, cashier, and clerical functions.

657—22.2(155A) Purpose of registration. A registration program for pharmacy technicians is established for the purposes of identification, tracking, and disciplinary action. The registration shall not include any determination of the competency of the registered individual. The use of pharmacy technicians to assist the pharmacist with technical functions associated with the practice of pharmacy enables the pharmacist to provide pharmaceutical care to the patient.

657—22.3(155A) Denial of registration. The board may deny an application for registration as a pharmacy technician for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205, or any rule of the board.

657—22.4(155A) Registration required.

22.4(1) *Effective date.* Beginning January 1, 1998, a pharmacy technician shall register with the board pursuant to the requirements of this chapter.

22.4(2) *Registration number.* Each pharmacy technician registered with the board will be assigned a unique registration number.

22.4(3) *Original application required.* Any person not previously registered with the board as a pharmacy technician shall complete an application for registration within 90 days of accepting employment in an Iowa pharmacy as a pharmacy technician. Such application shall be received in the board office before the expiration of this 90-day period.

22.4(4) *College-based training program.* A person who is in a college-based technician training program is required to obtain a pharmacy technician registration prior to beginning on-site practical experience.

657—22.5(155A) Registration application form.

22.5(1) *Required information.* The application form for a pharmacy technician registration shall require the following:

a. Information sufficient to identify the applicant including, but not limited to, name, address, date of birth, gender, and social security number;

b. Educational background;
c. Work experience;
d. Current place or places of employment;
e. Any other information deemed necessary by the board.

22.5(2) *Declaration of current impairment or limitations.* The applicant shall declare any current use of drugs, alcohol, or other chemical substances which in any way impair or limit the applicant's ability to perform the duties of a pharmacy technician with reasonable skill and safety.

22.5(3) *History of felony or misdemeanor crimes.* The applicant shall declare any history of being charged, convicted, found guilty of, or entering a plea of guilty or no contest to a felony or misdemeanor crime (other than minor traffic violations with fines under $100).

22.5(4) *Sworn signature.* The applicant shall sign the application under penalty of perjury and shall submit it to the board.

657—22.6(155A) Registration renewal. A pharmacy technician registration shall expire on the second last day of the birth month following initial registration. Registration shall not require continuing education for renewal.

657—22.7(155A) Registration fee.

22.7(1) *Initial fee.* The fee for obtaining an initial registration shall be $30 plus applicable surcharge pursuant to 657—30.8(155A).

22.7(2) *Renewal fee.* The renewal fee for obtaining a biennial registration shall be $30 plus applicable surcharge pursuant to 657—30.8(155A).

22.7(3) *Timeliness.* Fees shall be paid at the time when the new application or the renewal application is submitted for filing.

22.7(4) *Form of payment.* Fee payment shall be in the form of a personal check, certified or cashier's check, or money order payable to Iowa Board of Pharmacy Examiners.

657—22.8(155A) Late application.

22.8(1) *Fee.* Persons required to register or renew their registration under the provisions of Iowa Code section 155A.6, who file late application, shall pay an additional $30 late payment fee.

22.8(2) *Timeliness of initial application.* An application for initial registration shall be assessed a late payment fee if not received within the applicable period specified in rule 22.4(155A).

22.8(3) *Timeliness of renewal application.* An application for registration renewal shall be assessed a late payment fee if not received by the expiration date of that registration.

657—22.9(155A) Registration certificates. The original certificate for a registered pharmacy technician issued by the board shall be maintained by the technician. Verification of current registration shall be maintained in each pharmacy where the pharmacy technician is employed and shall be available for inspection by the board.

657—22.10(155A) Notifications to the board. A pharmacy technician shall report to the board within ten days a change of name, address, or place of employment.

22.21(2) *Confidentiality.* In the absence of express consent from the patient or order or direction of a court, except where the best interests of the patient require, a pharmacy technician shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, or a person duly authorized by law to receive such information, the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber.

22.21(3) *Discrimination.* It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, sex, age, national origin, or disease state when providing pharmaceutical services.

22.21(4) *Unethical conduct or behavior.* A pharmacy technician shall not exhibit unethical behavior in connection with the technician's pharmacy employment. Unethical behavior shall include, but is not limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

This rule is intended to implement Iowa Code sections 147.55, 155A.6, and 155A.23.

These rules are intended to implement Iowa Code sections 155A.3, 155A.6, and 155A.33.

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CHAPTER 7
DEVICES AND METHODS TO TEST BODY FLUIDS FOR ALCOHOL OR DRUG CONTENT

[Ch 7 as appeared prior to 6/27/79 rescinded]
[Rules 7.1 to 7.5 appeared as rule 3.13 prior to 6/27/79]
[Prior to 4/20/88, see Public Safety Department[680] Ch 7]

661—7.1(321J) Approval of devices and methods to test for alcohol or drug concentration. The commissioner, by these rules, approves the following devices and methods to take a specimen of a person's breath or urine for the purpose of determining the alcoholic or drug concentration.

661—7.2(321J) Direct breath testing.

7.2(1) A peace officer desiring to perform direct testing of a subject's breath for the purpose of determining the alcohol concentration shall employ, or cause to be used, a breath testing device of a type meeting the minimum performance requirements established by Highway Safety Programs; Standard for Devices to Measure Breath Alcohol, Federal Register/Vol. 49, No. 242 (December 14, 1984), pp. 48854-48855, or by Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol, Federal Register, Volume 58, No. 179 (September 17, 1993), pp. 48705-48708. All devices so used must be certified to be in proper working order within a period of one year immediately preceding use. The operator of the device shall proceed in accordance with the instructions furnished by the division of criminal investigation criminalistics laboratory, and shall have been certified as competent in the operation of the breath testing device. All certifications of devices and operators shall be made by the division of criminal investigation criminalistics laboratory, established by Iowa Code chapter 691.

7.2(2) A direct breath testing device is a device designed and constructed to measure a subject's breath alcohol concentration by utilizing a sample of the subject's breath.

7.2(3) Although any breath testing device that meets the minimum performance requirements established by the National Highway Traffic Safety Administration, and cited in subrule 7.2(1), is authorized by the commissioner to be employed or to be caused to be used to determine the alcohol concentration, the following devices are being used in Iowa and meet those standards:

a. Intoxilyzer Model 4011A-CMI, Inc.;

b. Datamaster cdm, National Patents Analytical Systems, Inc.

661—7.3(321J) Urine collection. A peace officer desiring to collect a sample of a subject's urine for the purpose of determining the alcohol or drug concentration shall proceed as follows:

7.3(1) As soon as practicable after arrest, the subject should provide the sample by being required to urinate into a bottle, cup, or other suitable container which is clean, dry, and free from any visible contamination.

7.3(2) It is not necessary that the bladder be completely emptied. Later samples may be taken if desired, but are not necessary.

7.3(3) Rescinded IAB 8/7/91, effective 9/15/91.

7.3(4) The collection shall be made in the presence of a peace officer or other reliable person under the supervision of a peace officer. The peace officer or other person in the presence of the subject shall be of the same gender as the subject.

7.3(5) Upon collection, a peace officer shall cause the sample to be sealed within a clean, dry container. The container shall be free of visible contamination. If the blood alcohol kit of any manufacturer is utilized for the preservation of a urine sample, the anticoagulant and antibacterial substances in that kit do not constitute visible contamination. The peace officer shall cause a tag or other device to be attached to the container showing the date and time the sample was collected and identifying the arresting officer, the subject, the collecting officer and the person present during the collection of the sample, if other than the collecting officer.

7.3(6) Rescinded IAB 8/7/91, effective 9/15/91.

7.3(7) Rescinded IAB 8/7/91, effective 9/15/91.

661—7.4(321J) Submission of samples for alcohol and drug testing to the department's criminalistics laboratory. Any sample of urine or blood may be submitted to the department's criminalistics laboratory or other appropriate laboratory via ordinary mail or hand delivery.

661—7.5(321J) Preliminary breath screening test.

7.5(1) A peace officer desiring to perform preliminary screening tests of a person's breath shall use an Iowa department of public safety division of criminal investigation criminalistics laboratory-approved device. Such devices are approved for accuracy and precision using a Nalco Standard or breath simulating device. The division of criminal investigation criminalistics laboratory shall employ scientifically established tests or methods appropriate to a particular device in determining whether it meets an acceptable standard for accuracy, or it may accept test results from another laboratory at its discretion. The standards shall include the requirement that in all cases where the level is over 0.12 alcohol concentration, the device shall so indicate and in all cases where the level is under 0.08 alcohol concentration, the device shall so indicate. Devices must be of a type that can be calibrated on a monthly basis by officers in the field.

The division of criminal investigation criminalistics laboratory shall maintain a list of devices approved by the commissioner for use as preliminary breath screening devices. The list is available without cost by writing or contacting the Iowa Department of Public Safety, Division of Criminal Investigation Criminalistics Laboratory, Wallace State Office Building, Des Moines, Iowa 50319, or calling (515)281-3666.

7.5(2) Any peace officer using an approved device shall follow the instructions furnished by the manufacturer for use of such a device. Each unit shall be calibrated at least once per month using either a wet alcohol standard or a Nalco Standard (minimum 5 cubic foot volume). The officer or officer's department shall keep a record of each calibration. This record shall include:

a. The officer performing the calibration.

b. Date.

c. The value and type of standard used.

d. Unit type and identification number.

661—7.6 Rescinded IAB 7/26/89, effective 7/1/89.

7.8(14) Each installer or distributor of ignition interlock devices approved for use in Iowa pursuant to this rule shall maintain general liability insurance coverage effective in Iowa, and issued by an insurance carrier authorized to operate in Iowa by the Iowa division of insurance, in an amount of not less than $1 million. Each installer or distributor shall furnish the division of criminal investigation with proof of this insurance coverage in the form of a certificate of insurance from the insurance company issuing the policy. All insurance policies required by this subrule shall carry an endorsement requiring that the division of criminal investigation criminalistics laboratory be provided with written notice of cancellation of insurance coverage required by this subrule at least ten days prior to the effective date of cancellation.

7.8(15) Any distributor or installer of ignition interlock devices in Iowa shall cease installing or distributing these devices immediately if any of the following occur:

a. The insurance coverage required under subrule 7.8(14) lapses.

b. Approval by the commissioner of public safety pursuant to Iowa Code sections 321J.4 and 321J.20 of an ignition interlock device which they distribute or install ceases to be valid. If approval by the commissioner of public safety for distribution or installation of an ignition interlock device in Iowa ceases to be valid, a distributor or installer of such a device may continue to distribute or install another ignition interlock device currently approved for use in Iowa, unless the distributor or installer has been ordered by the commissioner of public safety to cease operation as a distributor or installer of ignition interlock devices in Iowa, pursuant to 7.8(15)*"c."*

c. The commissioner of public safety orders the distributor or installer to cease operation as a distributor or installer of ignition interlock devices, and the order has become effective. An order to cease operation may be issued for cause including, but not limited to, any one or more of the following:

(1) Any act of theft or fraud including, but not limited to, violation of Iowa Code chapter 714, or any act of deception or material omission of fact related to the distribution, installation, or operation of any device subject to this chapter.

(2) Any violation of Iowa Code chapter 321J.

(3) Any violation of this chapter.

(4) Any act involving moral turpitude. For purposes of this rule, "moral turpitude" is an act of baseness, vileness, or depravity or conduct which is contrary to justice, honesty, or good morals.

An order to cease operation shall be delivered to the distributor or installer to whom the order is issued at the distributor or installer's place of business or, if this is not practical, at the residence or last-known mailing address of the owner of the business or an officer of the corporation which owns the business, if applicable. Notice shall be given in writing either by personal service or by restricted certified mail.

An order to cease operation as an installer or distributor of ignition interlock devices shall be effective 30 days after its transmittal by the department, unless the order is appealed. An order shall not become effective if it has been appealed until agency action on the appeal process is completed.

EXCEPTION: Upon a finding by the commissioner of public safety that the continued operation of an installer or distributor of ignition interlock devices presents an imminent threat to public safety, an order to cease operation shall become effective immediately upon receipt by the installer or distributor. Notice in these cases shall be by personal service.

An order to cease operation in Iowa as a distributor or installer of ignition interlock devices may be appealed to the department of public safety by filing a protest in accordance with the procedures specified in rule 661—10.101(17A), within ten days of the issuance of the order to cease operation.

661—7.9(321J) Detection of drugs other than alcohol.

7.9(1) Adoption of federal standards. Initial test requirements adopted by the federal Substance Abuse and Health Services Administration in "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 59 FR 29908, as amended in "Revisions to the Mandatory Guidelines," 62 FR 51118, are hereby adopted as standards for determining detectable levels of controlled substances in the division of criminal investigation criminalistics laboratory initial screening for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines. The following table shows the minimum levels of these substances which will result in a finding that a controlled substance is present at a detectable level:

Substance	Minimum Level (ng/ml)
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	2000
Phencyclidine	25
Amphetamines	1000

NOTE: "ng/ml" means "nanograms per milliliter."

7.9(2) Reserved.

This rule is intended to implement Iowa Code section 321J.2.

These rules are intended to implement Iowa Code chapter 321J.

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REVENUE AND FINANCE DEPARTMENT[701]

Created by 1986 Iowa Acts, Chapter 1245.

CHAPTERS 3 and 4
Reserved

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

TITLE I
ADMINISTRATION

CHAPTER 6
ORGANIZATION, PUBLIC INSPECTION

CHAPTER 7
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF REVENUE AND FINANCE

DIVISION I
INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS COMMENCED PRIOR TO JULY 1, 1999

TITLE I
ADMINISTRATION

CHAPTER 6
ORGANIZATION, PUBLIC INSPECTION

[Prior to 10/7/87, see Revenue Department[730] Ch 6]

701—6.1(17A) Establishment, organization, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests.

6.1(1) *Establishment of the department of revenue and finance.* By an Act of the general assembly (chapter 1245, Acts of the 71st GA), a department of revenue and finance was created in lieu of three separate state agencies. The department is administered by the director with a three-member state board of tax review and a five-member lottery board established within the department for administrative and budgetary purposes. As to the organization and functions of the state board of tax review, see rules contained in 701—Chapters 1 to 5. As to the organization and functions of the lottery board, see rules contained in 705—Chapters 1 to 10.

The department of revenue and finance in recognizing its responsibilities has adopted the following creed to guide and lend direction to its endeavors:

"The Department of Revenue and Finance is dedicated to serving the citizens of Iowa and other public officials, while performing the following missions:

"• Collect all taxes due, which any person may be required by law to pay, but no more;

"• Conduct the Iowa lottery in an effort to maximize the amount of revenues for the state in a manner that maintains the dignity of the state and the general welfare of its people;

"• Manage the state's financial resources by utilizing generally accepted accounting principles and procedures, by operating cost-effective accounting and payroll systems, by processing claims timely and accurately, and by preparing and issuing financial statements.

"In carrying out these missions, the department resolves to provide the best service possible in a cordial and helpful manner and to provide maximum opportunity and incentive for the professional growth and development of all our employees."

The office of the department is maintained at the seat of government in the Hoover State Office Building, P.O. Box 10460, Des Moines, Iowa 50306. The lottery division maintains an office at 2015 Grand Avenue, Des Moines, Iowa 50312.

The department maintains field offices in six regions of the state and in seven cities outside the state.

6.1(2) *Organization.* For ease of administration, the director has organized the department into divisions which are in some instances further divided into bureaus, sections, subsections and units.

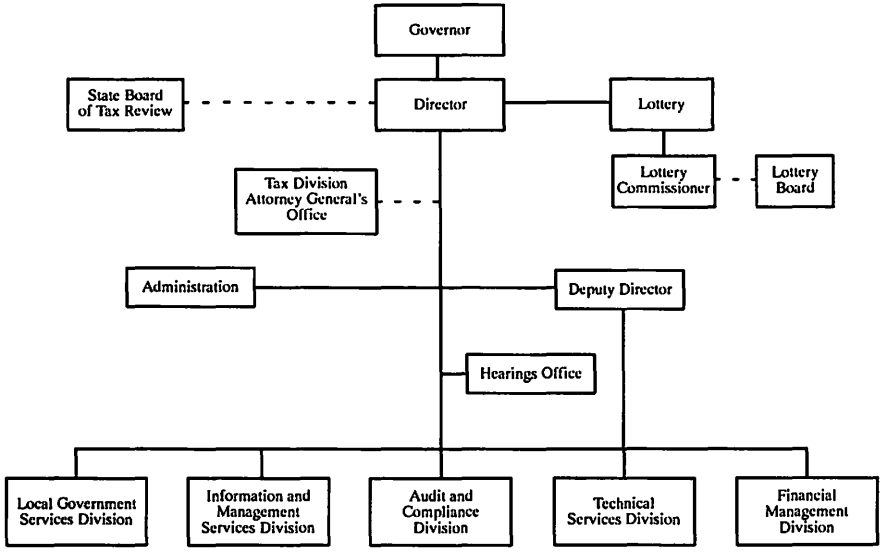
6.1(3) *Methods by which and location where the public may obtain information or make submissions or requests.* The department of revenue and finance maintains its principal office in the Hoover State Office Building, P.O. Box 10460, Des Moines, Iowa 50306, and maintains regional offices located in Sioux City, Waterloo, Council Bluffs, Des Moines, Cedar Rapids, and Davenport. This affords members of the public two possible alternatives for obtaining information or making submissions or requests depending upon the person's particular location and the type of information needed.

a. Principal office. Members of the public wishing to obtain information or make submissions or requests on any matters may do so at the department's principal office. Applications for permits or licenses may be obtained and submitted at the principal office and any assistance needed in filling out the applications will be provided if the taxpayer so desires. Requests for confidential information should be submitted to the director and the appropriate form will be provided and should be filled out and submitted to the director. Members of the public wishing to inspect information required to be made available to members of the public may do so in the director's office.

b. Regional offices. The regional offices provide an excellent means of aiding taxpayers. Members of the public desiring forms, aid, assistance or other information are encouraged to contact the regional office located in their particular area. However, regional offices do not have facilities for making available all matters available for public inspection under 6.2(17A). The regional offices and auditors do have copies of all rules and will make them available to the public. Members of the public needing forms or needing assistance in filling out forms are encouraged to contact the regional offices.

This rule is intended to implement Iowa Code sections 421.14 and 422.1.

DEPARTMENT OF REVENUE AND FINANCE



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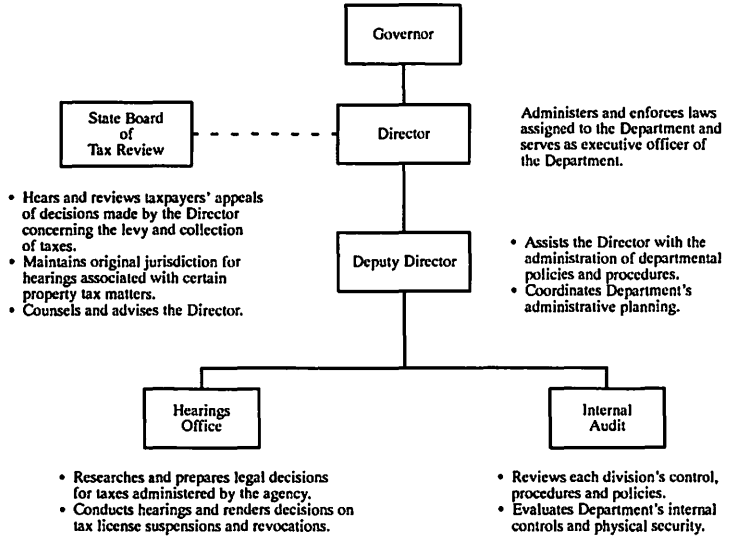
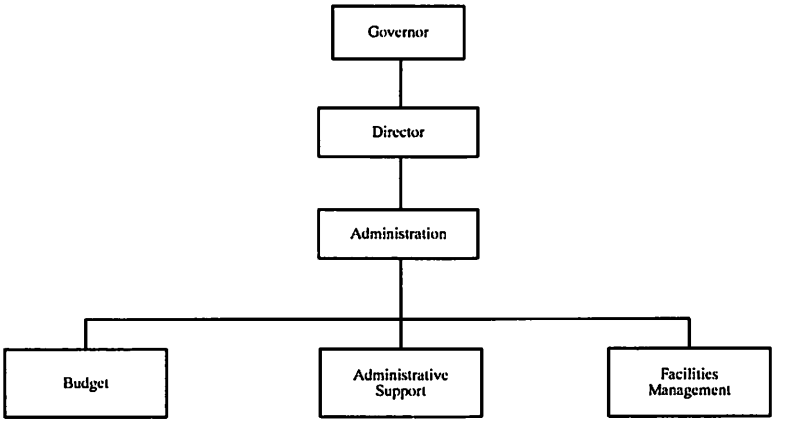


ADMINISTRATION

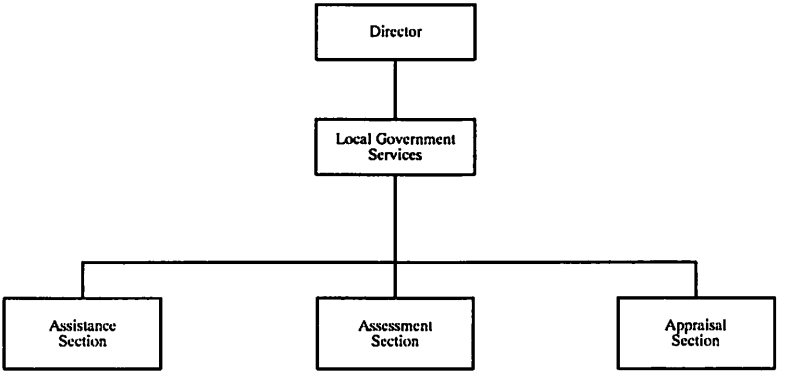


- Prepares departmental budget, budget forecasts, monthly expenditure reports and cost studies.
- Approves payments of Department's bills, prepares purchase orders, and processes travel claims.
- Processes payroll; benefit applications and billings and handles inquiries.

- Provides technical and management liaison with the Department of Personnel.
- Coordinates and develops media presentations, press releases, speeches, newsletters and speaking engagements.
- Purchases office equipment and supplies.
- Administers collective bargaining agreements.
- Administers technical training programs.

- Reviews and recommends facility changes.
- Prepares bulk tax forms requested by the public.
- Performs moving, construction, delivery and storage services for the Department divisions.
- Distributes office supplies and equipment.

LOCAL GOVERNMENT SERVICES

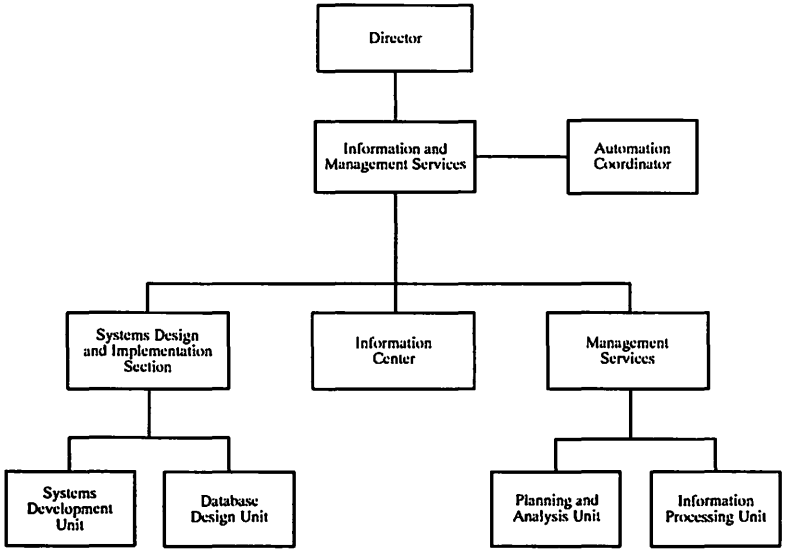


- Administers all property tax credits and exemptions.
- Provides reimbursements to local governments according to statutory assistance programs.
- Assists and advises local officials concerning imposition and collection of certain state and local taxes.

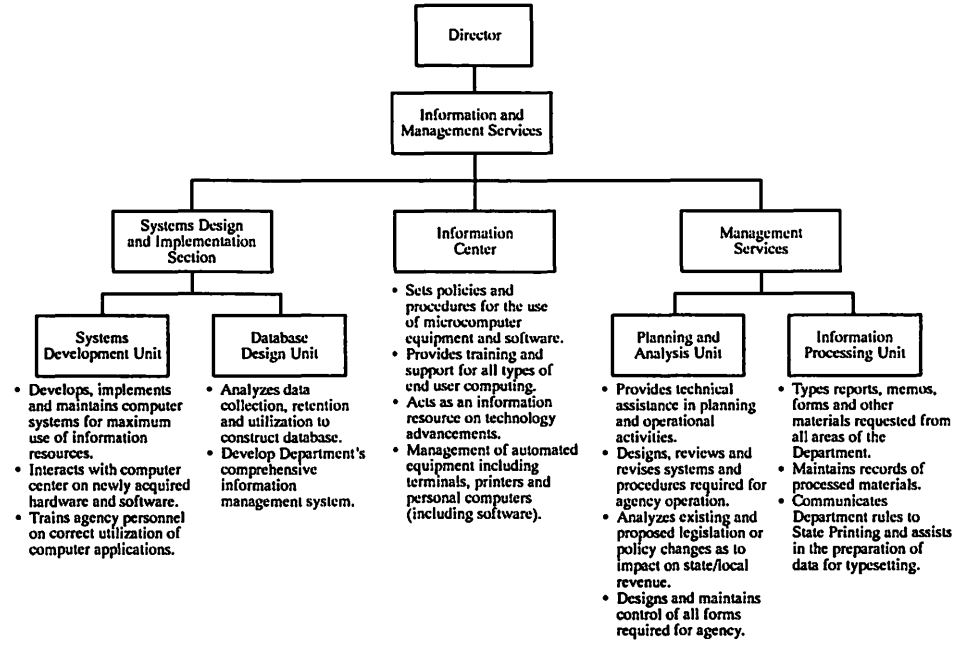
- Determines assessments of public service companies and certifies these assessments to the county auditors.
- Advises the Director on central assessment related matters.
- Processes and compiles data to be used in equalization of assessments.
- Produces annual assessment/ sales ratio study and related statistical reports.

- Performs all appraisal functions for division.
- Provides technical training and assistance for local assessment personnel.
- Advises the Director on appraisal-related matters.

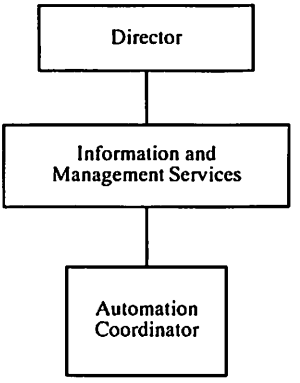
INFORMATION AND MANAGEMENT SERVICES



ADMINISTRATION

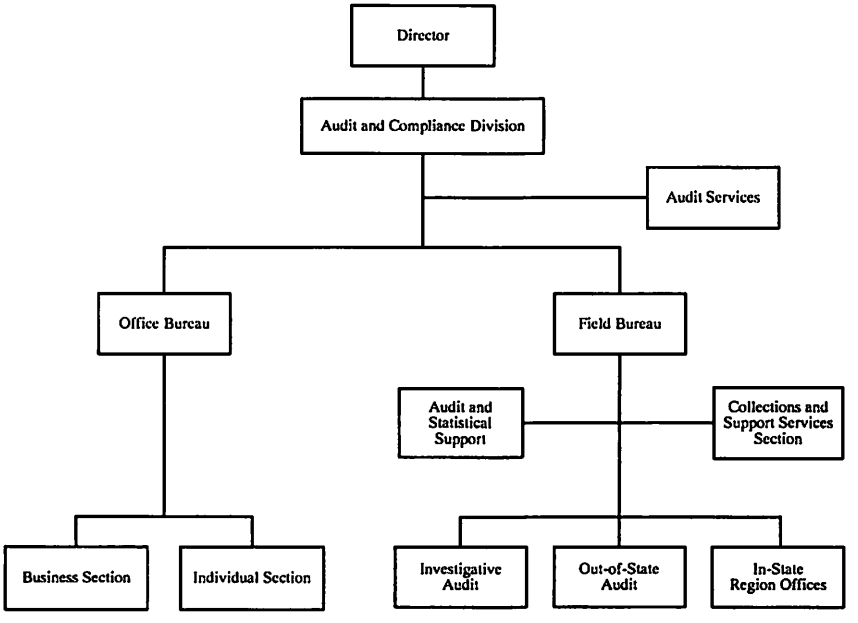


INFORMATION AND MANAGEMENT SERVICES

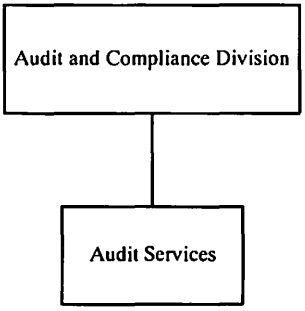


- Coordinates long- and short-range planning for automation of agency activities.
- Reviews and recommends further enhancements for automation equipment.
- Coordinates necessary security procedures relevant to automated information system.

AUDIT AND COMPLIANCE DIVISION

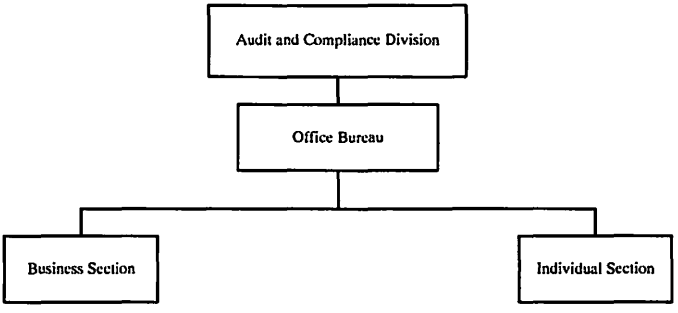


AUDIT AND COMPLIANCE DIVISION
Audit Services



- Develops selective audit criteria for both field audits and office audits; selects programs for testing; monitors test results and makes recommendation for audit programs.
- Participates in the formal appeal process through writing fact sheets, resolution letters, informal conferences and audit matters.
- Conducts various special projects for the Department such as: selective office and field audit review; drafting audit manuals, developing audit standards and quality control; conducting training sessions; and preparing statistical information for various reports.

AUDIT AND COMPLIANCE DIVISION
Office Bureau

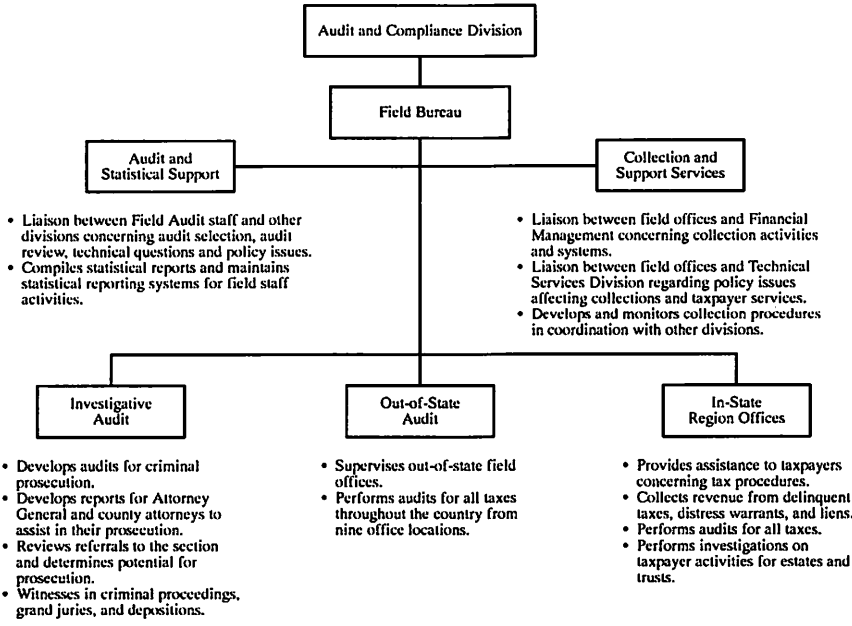


- Conducts office audit of corporation returns for assessment or refund and enforces corporate nexus regulations and compliance with regard to Iowa nonfilers.
- Performs franchise tax office examinations and determines the distribution of the franchise tax.
- Examines, verifies and approves sales/use claims for refund and requests warrants for issue.
- Reviews and corrects errors on motor vehicle fuel tax monthly and quarterly reports; reviews and approves MVF credit claims; and verifies gallonage shown on motor fuel terminal reports and matches to the motor fuel gallons reported as received by individual motor fuel distributors.
- Processes and examines cigarette and tobacco reports and verifies sales of cigarette revenue to cigarette distributors.

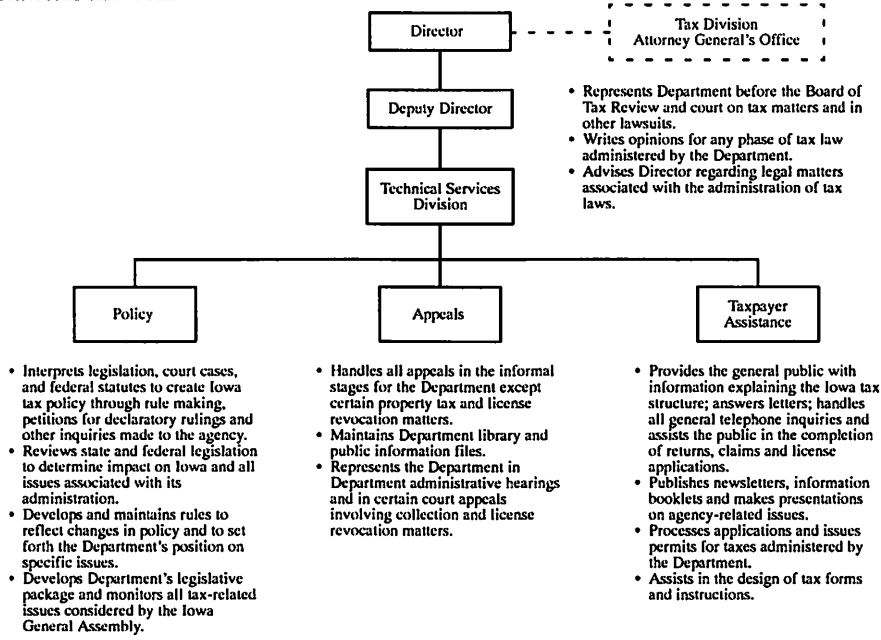
- Office examination of fiduciary, inheritance, and individual income tax returns.
- Generates billings/refunds from office examinations.
- Reviews federal audits and participates in federal/state exchange program.
- Maintains federal printouts as required by the federal/state agreement.
- Performs match programs to identify nonfilers and under reporting of income and refers potential criminal cases to Investigative Audit Unit.

AUDIT AND COMPLIANCE DIVISION

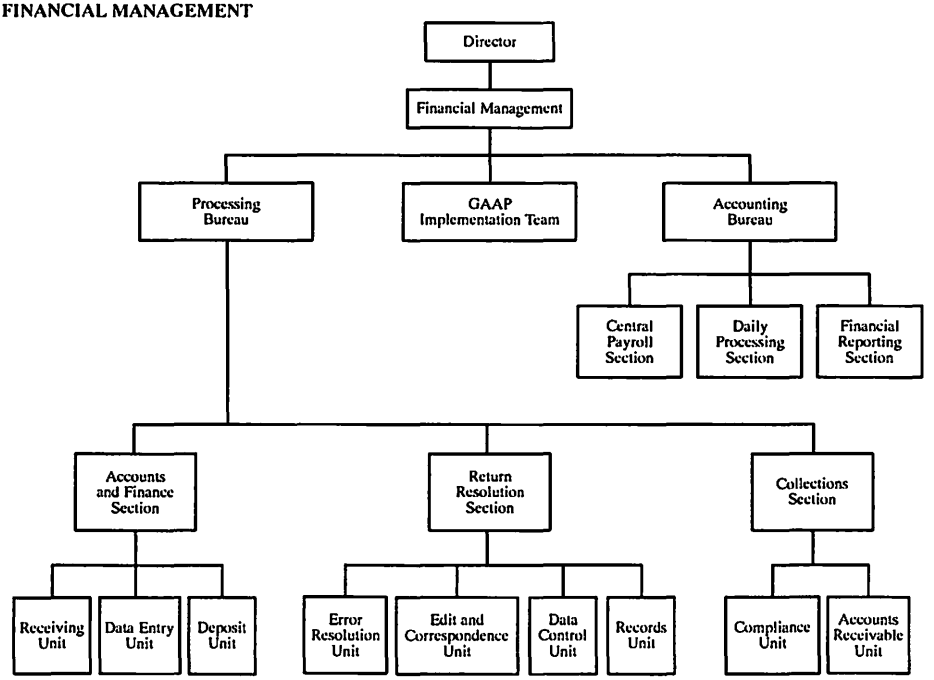
Field Bureau



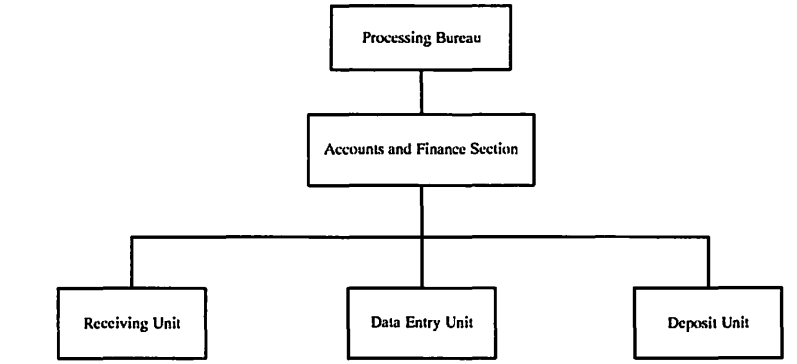
TECHNICAL SERVICES



FINANCIAL MANAGEMENT



FINANCIAL MANAGEMENT
Processing Bureau
Accounts and Finance

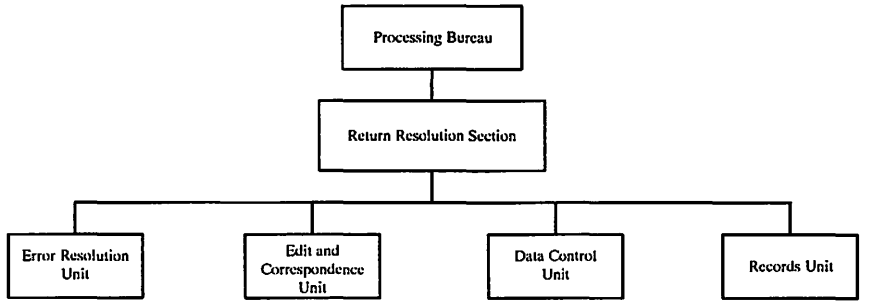


- Reconciles amount of money remitted to the amount reported on the returns.
- Routes returns and documents to proper processing points.
- Processes changes and cancellations for all tax systems administered by the Department.

- Transcribes data from forms and documents onto magnetic disks for computer utilization.

- Validates and batches incoming documents.
- Keeps bookkeeping records of revenue received and prepares monthly revenue reports.
- Separates checks from returns and encodes and deposits the checks.
- Routes and maintains control of document flow.
- Sells cigarette stamps to licensed distributors.

FINANCIAL MANAGEMENT
Processing Bureau
Return Resolution



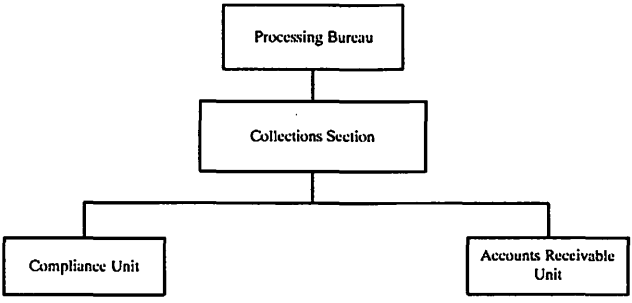
- Receives returns that are rejected by computer math verification audit.
- Determines the errors that have caused the rejection.
- Resolves errors so that returns can be processed.

- Edits and corrects tax documents in preparation for data entry and completion of processing.
- Answers written correspondence, telephone inquiries and walk-in taxpayers on current year income tax returns.

- Maintains records of status of source data from user divisions.
- Schedules computer processing time.
- Posts ledgers and balances money totals generated by the machine run.
- Corrects and resubmits to computer system programs all data provided by departmental users.
- Operates mini-computer to run batch job applications.

- Maintains control of all files except elderly credit and property tax files and microfilms sales/use history files and other special projects.
- Retrieves needed documents from files and performs searches in conjunction with error resolution and the locating of documents.
- Responsible for storage and destruction of all departmental records and returns and maintains off-site records storage operation.
- Updates and complies with Records Management Manual.

FINANCIAL MANAGEMENT
Processing Bureau
Collections Section

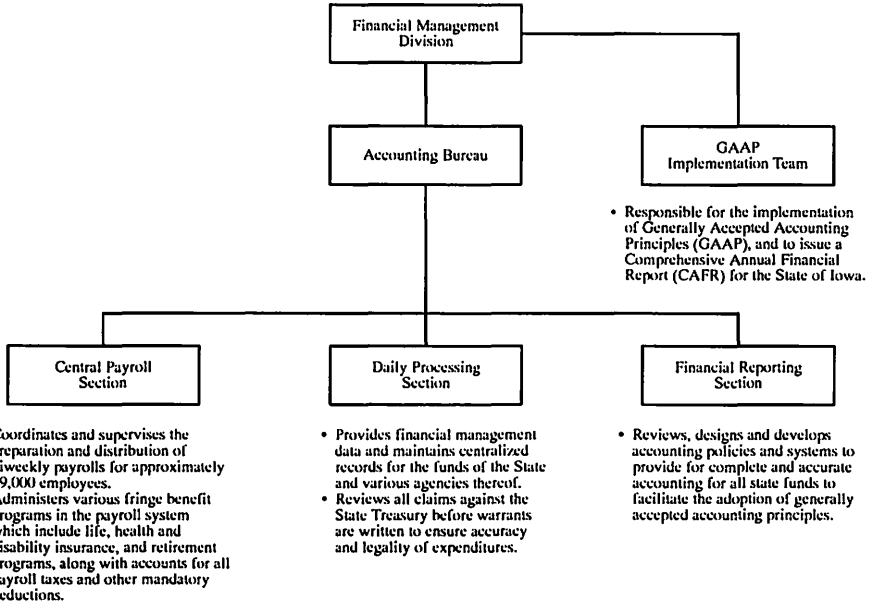


- Telephones and corresponds with taxpayers regarding delinquent and tax due situations.
- Initiates and participates in license/permit revocation proceedings.
- Enforces the Department's bonding rules and maintains records of bond accounts and amounts.

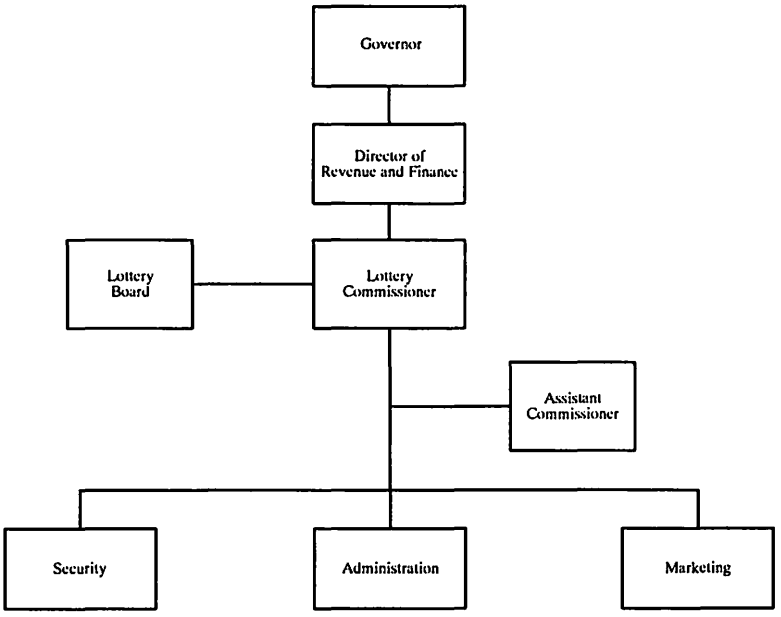
- Issues all bills for taxes administered by the Department of Revenue and Finance.
- Processes payments, offsets refunds against amounts due and files tax liens when necessary.
- Coordinates the collection activities with the other affected units within the Department of Revenue and Finance.

FINANCIAL MANAGEMENT

Accounting Bureau



LOTTERY



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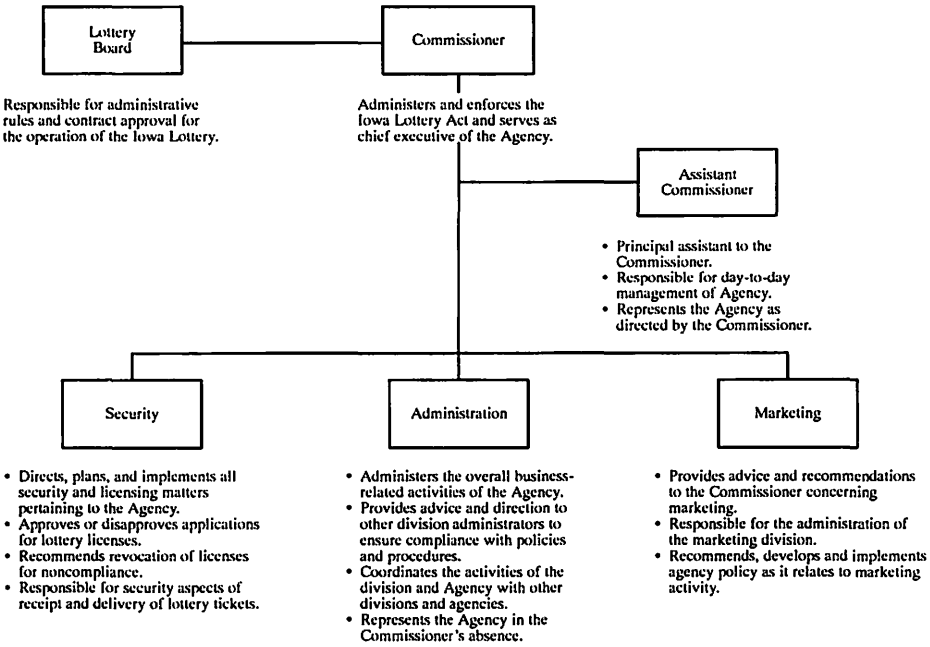

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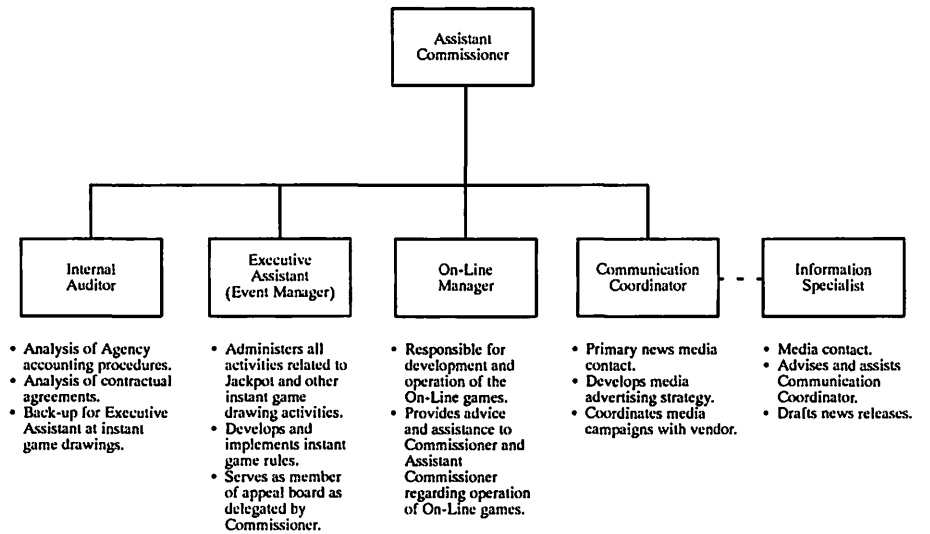

701—6.2(17A) Public inspection. Effective July 1, 1975, Iowa Code section 17A.3(1)*"c"* and *"d"* provides that the department shall index and make available for public inspection certain information. Pursuant to this requirement the department shall:

1. Make available for public inspection all rules;
2. Make available for public inspection and index by subject all written statements of law or policy, or interpretations formulated, adopted, or used by the department in the discharge of its functions;
3. Make available for public inspection and index by name and subject all final orders, decisions and opinions.

Section 17A.3(1)*"c"* and *"d"* also excepts certain matters from the public inspection requirement:

Except as provided by constitution or statute, or in the use of discovery or in criminal cases, the department shall not be required to make available for public inspection those portions of its staff manuals, instructions or other statements issued by the department which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would: (1) enable law violators to avoid detection; or (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the state.

Identifying details which would clearly warrant an invasion of personal privacy or trade secrets will be deleted from any final order, decision or opinion which is made available for public inspection upon a proper showing by the person requesting such deletion as provided in 701—7.42(17A).

Furthermore, the department shall not make available for public inspection or disclose information deemed confidential under Iowa Code sections 422.20 and 422.72.

Unless otherwise provided by statute, by rule or upon a showing of good cause by the person filing a document, all information contained in any petition or pleading shall be made available for public inspection.

All information accorded public inspection treatment shall be made available for inspection in the office of the Policy Section, Compliance Division, Department of Revenue and Finance, P.O. Box 10457, Des Moines, Iowa 50306, during established office hours.

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

701—6.3(17A) Examination of records by other state officials. Upon the express written approval of the director or deputy director of revenue and finance, officers or employees of the state of Iowa may examine state tax returns and information belonging to the department to the extent required as part of their official duties and responsibilities. Written approval will be granted in those situations where the officers or employees of the state of Iowa have (1) statutory authority to obtain information from the department of revenue and finance and (2) the information obtained is used for tax administration purposes. Where information is obtained from the department of revenue and finance on a regular basis, the director of revenue and finance may enter into a formal agreement with the state agency or state official who is requesting the information. The agreement will cover the conditions and procedures under which specific information will be released. The following persons do not need written approval from the director or deputy director of revenue and finance to examine state information and returns:

1. Assistant attorneys general assigned to the department of revenue and finance.
2. Local officials acting as representatives of the state in connection with the collection of taxes or in connection with legal proceedings relating to the enforcement of tax laws.
3. The child support recovery unit of the department of human services to secure a taxpayer's name and address per the terms of an interagency agreement. (Also see Iowa Code section 252B.9.)

4. The job service division per the terms of an interagency agreement.

5. The legislative fiscal bureau regarding sample individual income tax information to be used for statistical purposes. (Also see Iowa Code section 422.72(1).)

6. The auditor of state, to the extent that the information is necessary to complete the annual audit of the department as required by Iowa Code section 11.2. (Also see Iowa Code section 422.72(1).)

Tax information and returns will not be released to officers and employees of the state who do not meet the requirements set forth above. (See Letter Opinions, November 25, 1981, Richards to Bair, Director of Revenue, and March 4, 1982, Richards to Johnson, Auditor, and Bair, Director of Revenue.)

The director may disclose state tax information, including return information, to tax officials of another state or the United States government for tax administration purposes provided that a reciprocal agreement exists which has laws that are as strict as the laws of Iowa protecting the confidentiality of returns and information.

This rule is intended to implement Iowa Code sections 252B.9, 421.18, 421.19, 422.20, 422.72, and 452A.63.

701—6.4(17A) Copies of proposed rules. A trade or occupational association, which has registered its name and address with the department of revenue and finance, may receive, by mail, copies of proposed rules. Registration of the association's name and address with the department is accomplished by written notification to the Administrator, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. In the written notification, the association must designate, by reference to rule 701—7.36(421,17A), the type of proposed rules and the number of copies of each rule it wishes to receive. If the association wishes to receive copies of proposed rules not enumerated in rule 701—7.36(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of such rules. A charge of 20 cents per single-sided page shall be charged to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

This rule does not prevent an association which has registered with the department in accordance with this rule from changing its designation of types of proposed rules or number of copies of proposed rules which the association desires to receive. If an association makes such changed designation, it must do so by written notification to the Administrator, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 17A.4 as amended by 1998 Iowa Acts, chapter 1202.

701—6.5(17A) Regulatory analysis procedures. Any small business as defined in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] or organization of small businesses which has registered its name and address with the department of revenue and finance shall receive by mail a copy or copies of any proposed rule which may have an impact on small business. Registration of the business's or organization's name and address with the department is accomplished by written notification to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. In the written notification, the business or organization must state that it wishes to receive copies of rules which may have an impact on small business, the number of copies of each rule it wishes to receive, and must also designate, by reference to rule 701—7.36(421,17A), the types of proposed rules it wishes to receive. If the small business or organization of small businesses wishes to receive copies of proposed rules not enumerated in rule 701—7.36(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of the rules. A charge of 20 cents per single-sided page shall be imposed to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

The administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons may request issuance of a regulatory analysis by writing to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319. The request shall contain the following information: the name of the persons qualified as a small business and the name of the small business or the name of the organization as stated in its request for registration and an address; if a registered organization is requesting the analysis, a statement that the registered organization represents at least 25 persons; the proposed rule or portion of the proposed rule for which a regulatory analysis is requested; the factual situation which gives rise to the business's or organization's difficulties with the proposed rule; any of the methods for reducing the impact of the proposed rule on small business contained in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] which may be particularly applicable to the circumstances; the name, address and telephone number of any person or persons knowledgeable regarding the difficulties which the proposed rule poses for small business and other information as the business or organization may deem relevant.

This rule is intended to implement Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202].

701—6.6(422) Retention of records and returns by the department. The director may destroy any records, returns, reports or communications of a taxpayer after they have been in the custody of the department for three years, or at such later time when the statute of limitations for audit of the returns or reports has expired. The director may destroy any records, returns, reports or communications of a taxpayer before they have been in the custody of the department for three years provided that the amount of tax and penalty due has been finally determined.

This rule is intended to implement Iowa Code section 422.62.

701—6.7(68B) Consent to sell. In addition to being subject to any other restrictions in outside employment, self-employment or related activities imposed by law, an official of the department of revenue and finance may only sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the authority of the department of revenue and finance when granted permission subsequent to completion and approval of an Iowa department of revenue and finance application to engage in outside employment. The application to engage in outside employment must be approved by the official's immediate supervisor, division administrator, and the administration division administrator. Approval to sell may only be granted when conditions listed in Iowa Code section 68B.4 are met.

This rule is intended to implement Iowa Code section 68B.4.

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g. Effect on hard-copy record-keeping requirements. Except as otherwise provided, the provisions of this subrule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on alternative storage media as indicated in paragraph *"f"* above and subrule 11.4(2).

If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), hard-copy records need not be created.

Hard-copy records generated at the time of transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in 11.4(4)*"b"*(2)"1."

Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

Nothing in this rule will prevent the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

11.4(5) *Preservation of records.* The records required in this rule shall be preserved for a period of five years and open for examination by the department during this period of time. *McCarville v. Ream,* 247 Iowa, 72 N.W.2d 476 (1956).

The department shall be able to examine the records of a taxpayer for a period of years as is necessary to adequately determine if tax is due in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and the department will compute the tax liability as authorized in Iowa Code section 422.54.

This rule is intended to implement Iowa Code sections 422.47, 422.50, 422.54, 423.16 and 423.21.

701—11.5(422,423) Audit of records. The department shall have the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return filed or estimating the tax liability of any taxpayer. The right to examine records includes the right to examine copies of the taxpayer's state and federal income tax returns. When a taxpayer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the department deems necessary or expedient to examine and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to sales and use tax.

The department shall have the legal obligation to inform the taxpayer when an examination of the taxpayer's books, papers, records, memoranda, or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

This rule is intended to implement Iowa Code sections 422.50, 422.70, 423.21, and 423.23.

701—11.6(422,423) Billings.

11.6(1) *Notice of adjustments.*

a. An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that gross receipts, gross purchases, or services subject to sales and use tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of this discovery by ordinary mail. This notice is not an assessment. It informs the person what amount would be due if the information discovered is correct.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the person wishes to contest the matter, they should then file a claim for refund. However, payment will not be required until an assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the person may discuss with the agent, auditor, clerk, or employee who notified them of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Audit and Compliance Division, Des Moines, Iowa. Documents and records supporting the person's position may be required.

c. Power of agent, auditor or employee to compromise tax claim. No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk or employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

11.6(2) *Notice of assessment.* If, after following the procedure outlined in subrule 11.6(1), paragraph *"b,"* no agreement is reached and the person does not pay the amount determined to be correct, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.41(17A), proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by the appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 30 days following the date of assessment notice. See rule 701—7.4(17A). For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing such claims.

11.6(3) *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—7.41(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 the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code sections 422.54(1), 422.54(2), 422.57(1), 422.57(2), 422.70, 423.21 and 423.23.

11.10(3) *Amount of bond or security.* When it is determined that a permit holder or applicant for a sales tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the permit holder or applicant will be or is a semimonthly depositor, a bond or securities in an amount sufficient to cover three months' sales tax liability will be required. If the permit holder or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months' sales tax liability will be required. If the applicant or permit holder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability. If the applicant or permit holder will be or is an annual filer, the bond or securities which will be required would be in the amount of one year's tax liability. The department does not accept bonds for less than $100. If the bond amount is calculated to be less than $100, a $100 bond is required.

This rule is intended to implement Iowa Code section 422.52.

701—11.11(422) Retailers newly liable, as of July 1, 1988, for collection of sales tax. Rescinded IAB 10/13/93, effective 11/17/93.

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◊Two ARCs

701—12.4(422) Nonpermit holders. Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals and the like shall collect and remit tax on a nonpermit basis. In such cases, a nonpermit identification certificate will be issued by the department for record-keeping purposes and may be displayed in the same manner as a sales tax permit. If the department deems it necessary and advisable in order to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be acceptable, provided the bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined according to the rules promulgated by the director.

The department shall determine the due date of returns and payment of tax for temporary permit holders, giving due consideration to the type of business and frequency of sales. Persons holding nonpermit identification certificates may be required to remit tax upon demand or at the end of the event.

Persons regularly engaged in selling tangible personal property which is exempt from tax, making nontaxable transactions, or engaged in performing a service which is not enumerated in Iowa Code section 422.43 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this rule.

This rule is intended to implement Iowa Code section 422.53.

701—12.5(422,423) Regular permit holders responsible for collection of tax. A regular permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in possession or in the vehicle, which authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 422.53 and 423.9.

701—12.6(422,423) Sale of business. A retailer selling the business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and the tax becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. See 701—subrule 18.28(2) regarding possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code sections 422.51(2) and 422.52.

701—12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 422.51(2).

701—12.8(422) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return which includes gross receipts from all machines or devices operated by the retailer in Iowa during the period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the gross receipts.

This rule is intended to implement Iowa Code sections 422.42(16), 422.43, 422.51, and Iowa Code chapter 455C.

701—12.9(422) Claim for refund of tax. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. See 1968 O.A.G. 879. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 30 days following the date of denial. See rule 701—7.41(17A). For refunds denied on or after January 1, 1995, the department will consider a protest to be timely if filed no later than 60 days following the date of denial.

When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 422.73(1). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax, penalty or interest involved. Nonexclusive examples of such action would be: court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE: X, an Iowa sales tax permit holder, is audited by the department for the period July 1, 1972, to June 30, 1977. A $10,000 tax, penalty and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position, but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 1983.

X, on October 1, 1983, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 1977. The claim will be totally denied as beyond the five-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 1977, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of their audit liability if the decision in Y's case was also applicable to X.

12.15(1) *Personal liability—how determined.* There are various criteria which can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

a. The duties of officers as outlined in the corporate bylaws,

b. The duties which various officers have assumed in practice,

c. Which officers are empowered to sign checks for the corporation,

d. Which officers hire and fire employees, and

e. Which officers control the financial affairs of the corporation. An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills which had been selected for payment will be paid. "Final control" means a significant control over which bills should or should not be paid rather than exclusive control. The observations in this paragraph are applicable to partnerships as well as corporations.

12.15(2) *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An open account is one which is neither finally settled or finally closed, but is still running and "open" to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an "account receivable." The amount due has been finally settled and is not open to future adjustment. The usual consumer installment contract is a "note receivable" rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

12.15(3) *Beginning date of personal liability.* Officers and partners are not personally liable for state sales tax due and unpaid prior to March 13, 1986. They are liable for state sales taxes which are both due and unpaid on and after that date. See department rule 701—107.12(422B) for an explanation of officer and partner liability for unpaid local option sales tax.

701—12.16(422) Show sponsor liability. Persons sponsoring flea markets or craft, antique, coin, stamp shows, or similar events are, under certain circumstances, liable for payment of sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Included within the meaning of the term "similar event" is any show at which guns or collectibles, e.g., depression glassware or comic books, are sold or traded. To avoid liability, sponsors of these events must obtain from retailers appearing at the events proof that a retailer possesses a valid Iowa sales tax permit or a statement from the retailer, taken in good faith, that the property or service which the retailer offers for sale is not subject to sales tax. "Good faith" may demand that the sponsor inquire into the nature of the property or service sold or why the retailer believes the property or services for sale to be exempt from tax. A sponsor who fails to take these measures assumes all of the liabilities of a retailer. This includes not only the obligation to pay tax, penalty, and interest, but also to keep the records required of a retailer and to file returns.

Excluded from the requirements of this rule and from sponsor liability are organizations which sponsor events fewer than three times a year and state, county, or district agricultural fairs.

This rule is intended to implement the requirements of Iowa Code section 422.52.

701—12.17(422) Purchaser liability for unpaid sales tax. For sales occurring on and after March 13, 1986, if a purchaser fails to pay sales tax to a retailer required to collect the tax, the tax is payable by the purchaser directly to the department. The general rule is that the department may proceed against either the retailer or the purchaser for the entire amount of tax which the purchaser is, initially, obligated to pay the retailer. However, see 701—subrule 15.3(2) for a situation in which the obligation to pay the tax is imposed upon the purchaser alone.

This rule is intended to implement Iowa Code section 422.52.

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c. If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the periods of limitations so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. In addition to the periods of limitation set forth in paragraph *"a," "b," "c," "d,"* or *"e,"* the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination, and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer. *Van Dyke v. Iowa Department of Revenue and Finance,* 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached to the notification shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa individual income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

g. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitation for the taxable year of the net operating loss or net capital loss which results in such carryback.

38.2(2) *Waiver of statute of limitations.* If the taxpayer files with the department a request to waive the period of limitation, the limit of time for audit of the taxpayer's return may thereby be extended for a designated period. If the request for extending the period of limitation is approved, the additional tax or refund carries a limitation of 36 months' interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement.

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of payment.

The limitation of 36 months of interest described above does not apply to waiver of statute of limitations agreements where the extended periods start on or after July 1, 1989. In the case of these agreements, interest accrues through the extended periods.

38.2(3) *Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.* If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code section 422.25.

701—38.3(422) Retention of records.

38.3(1) Every individual subject to the tax imposed by Iowa Code section 422.5 (whether or not the individual incurs liability for the tax) and every withholding agent subject to the provisions of Iowa Code section 422.16 shall retain those books and records as required by Section 6001 of the Internal Revenue Code and federal income tax regulation 1.6001-1(e) including the federal income tax return and all supporting federal schedules. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

38.3(2) In addition, records relating to other deductions or additions to federal adjusted income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitations for audit specified in section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

701—38.4(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such deduction.

This rule is intended to implement Iowa Code sections 422.7 and 422.9.

701—38.5(422) Jeopardy assessments.

38.5(1) A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

38.5(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code section 422.30.

701—38.6(422) Information deemed confidential. Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue and finance personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.16, 422.20, and 422.72.

701—38.7(422) Power of attorney. For information regarding power of attorney, see rule 701—7.34(421) and 7.38(421,17A).

38.10(10) The cumulative inflation factor for tax years beginning in the 1989 calendar year is 101.6 percent. Therefore, the income tax brackets in the income tax rate schedule were increased by 1.6 percent for 1989. The civil service annuity exclusion described in rule 701—40.4(422) was repealed as of January 1, 1989, for tax years beginning on or after that date.

38.10(11) The cumulative inflation factor for tax years beginning in the 1990 calendar year is 103.8 percent. Therefore, the income tax brackets in the income tax rate schedule were increased by 2.2 percent from the bracket amounts in effect for 1989. The standard deduction amounts were also indexed for inflation by 2.2 percent, so the amounts in effect for 1990 were $1,260 for taxpayers filing as single individuals and for married taxpayers filing separate returns and filing separately on the combined return forms and $3,100 for taxpayers filing jointly, filing as heads of household, and filing as qualifying widow(er).

38.10(12) The cumulative inflation factor for tax years beginning in the 1991 calendar year is 105.9 percent. Therefore, the income tax brackets in the tax rate schedule and the standard deduction amounts were increased by 2.1 percent from tax bracket amounts and standard deduction amounts in effect for 1990. Thus, the standard deduction amounts for 1991 were $1,280 for taxpayers using filing status 1, 3 or 4 and $3,160 for taxpayers using filing status 2, 5 or 6.

38.10(13) The cumulative inflation factor for tax years beginning in the 1992 calendar year is 105.9 percent, which is the same factor as was in effect for tax years beginning in 1991. There was no indexation of the brackets in the tax rate schedule for 1992 because the unobligated state general fund balance on June 30, 1991, was less than $60 million. However, the standard deduction amounts for 1992 were increased by approximately 2.1 percent from the amounts in effect for 1991. Thus, the standard deduction amounts for 1992 were $1,310 for taxpayers using filing status 1, 3 or 4 and $3,220 for taxpayers using filing status 2, 5 or 6.

38.10(14) The cumulative inflation factor for tax years beginning in the 1993 calendar year was 105.9 percent, which is the same factor as was in effect for 1992. There was no indexation of the brackets in the tax rate schedule for 1993 because the unobligated state general fund balance on June 30, 1992, was less than $60 million. However, the standard deduction amounts for 1993 are increased by approximately 1.6 percent from the amounts in effect for 1992. Thus, the standard deduction amounts for 1993 were $1,330 for taxpayers using filing status 1, 3 or 4 and $3,270 for taxpayers using filing status 2, 5 or 6.

38.10(15) The cumulative inflation factor for tax years beginning in the 1994 calendar year was 105.9 percent, which is the same factor as was in effect for 1993. There was no indexation of the brackets in the tax rate schedule for 1994 because the unobligated state general fund balance on June 30, 1993, was less than $60 million. However, the standard deduction amounts for 1994 were increased to $1,340 for taxpayers using filing status 1, 3 or 4 and to $3,310 for taxpayers using filing status 2, 5 or 6. The increases are approximately 1.13 percent from the amounts in 1993, but the increases are affected by rounding of the increased amounts to the nearest ten-dollar amount.

38.10(16) The cumulative inflation factor for tax years beginning in the 1995 calendar year was 107 percent, which is an increase of 1.01 percent from the factor in effect for 1994. There was indexation of the brackets in the tax rate schedule for 1995 because the unobligated state general fund balance on June 30, 1994, was at least $60 million. The standard deduction amounts for 1995 were increased to $1,360 for taxpayers using filing status 1, 3, or 4 and to $3,350 for taxpayers using filing status 2, 5, or 6. The increases are approximately 1.1 percent greater than the amounts for 1994, but the increases are affected by rounding of the increased amounts to the nearest ten-dollar amount.

38.10(17) The cumulative inflation factor for tax years beginning in the 1996 calendar year was 108.7 percent. There was indexation of the brackets in the tax rate schedule for 1996 because the unobligated state general fund balance on June 30, 1995, was at least $60 million. Note that the increase in the cumulative inflation factor represents indexing for 100 percent of inflation computed from the gross domestic product price deflator for the second quarter of the prior calendar year. The indexation for the prior tax years was for 50 percent of the inflation change in the implicit price deflator for the gross national product computed for the second quarter of the prior calendar year. The standard deduction amounts for 1996 will be increased to $1,380 for taxpayers using filing status 1, 3, or 4 and to $3,400 for taxpayers using filing status 2, 5, or 6. The increases are approximately 1.7 percent from the amounts for 1995, but the increases are affected by rounding of the increased amounts to the nearest ten-dollar amount.

This rule is intended to implement Iowa Code sections 422.4 and 422.21 as amended by 1996 Iowa Acts, Senate File 2449.

701—38.11(422) Appeals of notices of assessment and notices of denial of taxpayer's refund claims. A taxpayer may appeal to the director at any time within 60 days from the date of the notice of assessment of tax, additional tax, interest, or penalties. For assessments issued on or after January 1, 1995, if a taxpayer fails to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims. See rule 701—7.41(17A) for information on filing appeals or protests.

This rule is intended to implement Iowa Code sections 421.10 and 422.28.

701—38.12(422) Indexation of the optional standard deduction for inflation. Effective for tax years beginning on or after January 1, 1990, the optional standard deduction is indexed or increased by the cumulative standard deduction factor computed by the department of revenue and finance. The cumulative standard deduction factor is the product of the annual standard deduction factor for the 1989 calendar year and all standard deduction factors for subsequent annual calendar years. The annual standard deduction factor is an index, to be determined by the department of revenue and finance by October 15 of the calendar year, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in that calendar year preceding the calendar year for which the annual standard deduction factor is to apply. In determining the annual standard deduction factor for tax years beginning on or after January 1, 1990, but prior to January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the implicit price deflator for the gross national product computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the U.S. Department of Commerce and shall add one-half of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. For tax years beginning on or after January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the United States Department of Commerce and shall add all of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. The annual standard deduction factor shall not be less than 100 percent.

This rule is intended to implement Iowa Code section 422.4 as amended by 1996 Iowa Acts, Senate File 2449.

c. John is an over-the-road truck driver and his job takes him out of Iowa for approximately 240 days a year. He is married and his wife, Mary, lives in Marshalltown, Iowa. His two school-age children attend school in that community and Mary also has a part-time job as a nurse for the neighborhood clinic. John gets home for most weekends and for the holidays. He is registered to vote in Iowa and utilizes the Iowa homestead and military tax exemptions. He does not own any other real property except a lakeside cabin in Minnesota, where the family vacations during the summer.

John would be considered an Iowa resident even though he is not present in the state for more than 183 days because John intends to return to Iowa whenever he is absent and has not taken any steps to establish residency in any other state.

d. Wilber, who is a resident of Idaho, has a heart attack while vacationing in Iowa. He is hospitalized in the University Hospitals in Iowa City. While there, the doctors also discover that he has a rare blood disorder and Wilber is confined to the hospital for nearly nine months, during which time he receives treatment.

Wilber's presence in Iowa is for a medical emergency. When an individual suffers a medical emergency while present in this state for other purposes and cannot be realistically moved from the state or in situations where an individual is confined to an institution as a result of seeking treatment, the time spent in Iowa would not count toward the 183-day rule. Also, Wilber's hospital room would not be considered a permanent place of abode.

e. Chuck and Linda both worked for a major manufacturing company in Iowa and both of them decided to take advantage of an early retirement package offered by their employer. They do not have any children, but Chuck has a brother who lives in Davenport, Iowa, and Linda has a sister who lives in Phoenix, Arizona. After retirement, Chuck and Linda sell their house and purchase a motor home. They spend their time traveling the United States and Canada. They do not have a place of abode in any state as they live in their new vehicle. They do not spend more than 183 days in any state during the year. They retained their Iowa driver's licenses and their motor home is registered in Iowa. They also have bank accounts in both Iowa and Arizona, and they have their mail sent to Chuck's brother as well as Linda's sister. They show Iowa as their state of residence for federal income tax purposes. They are not registered to vote in any state.

Chuck and Linda would be considered residents of Iowa. They have not shown an intention to change domicile and remain in another state permanently or indefinitely.

This rule is effective for tax years beginning on or after January 1, 1995.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

701—38.18(422) Tax treatment of income repaid in current tax year which had been reported on prior Iowa individual income tax return. For tax years beginning on or after January 1, 1992, if a taxpayer repays in the current tax year an amount of income that had been reported on the taxpayer's Iowa individual income tax return for a prior year that had been filed with the department and the taxpayer would have been eligible for a tax benefit under similar circumstances under Section 1341 of the Internal Revenue Code, the taxpayer will be eligible for a tax benefit on the Iowa return for the current tax year. The tax benefit will be either the reduced tax on the Iowa return for the current tax year due to the deduction of the repaid income or the reduction in tax on the Iowa return or returns for the prior year(s) due to the exclusion of the repaid income. The reduction in tax from the return for the prior year may be claimed as a refundable credit on the return for the current tax year.

EXAMPLE A: A taxpayer reported $7,000 in unemployment benefits on the taxpayer's 1994 Iowa return that the taxpayer had received in 1994. In early 1995 the taxpayer was notified that $4,000 of the unemployment benefits had to be repaid. The benefits were repaid by the end of 1995. The taxpayer claimed a deduction on the 1995 Iowa return for the amount of unemployment benefits repaid during 1995 which had been reported on the taxpayer's 1994 Iowa return as that action gave the taxpayer a greater reduction in Iowa income tax liability than the taxpayer would have received from a reduction in tax on the 1994 return by recomputing the liability by excluding the repaid income.

EXAMPLE B: A taxpayer had received a $5,000 bonus in 1994 which was reported on the taxpayer's 1994 Iowa return. In 1995 the taxpayer's employer advised the employee that the bonus was awarded in error and to be repaid. The $5,000 bonus was repaid to the employer by the end of 1995. The taxpayer claimed a credit of $440 on the 1995 Iowa return for repayment of the bonus in 1995. This represented the reduction in tax for 1994 from recomputing the tax liability for that year without the $5,000 bonus. This provided the taxpayer a greater tax benefit than the taxpayer would have received from claiming a deduction on the 1995 Iowa return from repayment of the bonus.

This rule is intended to implement Iowa Code section 422.5 as amended by 1996 Iowa Acts, Senate File 2168.

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The request for an alternative method should be filed with the Policy Section, Compliance Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

If the department determines that the alternative method is more reasonable for allocation of the taxable portion of the team member's compensation than the method provided in this rule, the team member can use the alternative method on the current return and on subsequent returns.

If the department rejects the team member's use of the alternative method, the team member may file a protest within 60 days of the date of the department's letter of rejection. The nonresident team member's protest of the department's rejection of the alternate formula must be made in accordance with rule 701—7.41(17A) and must state, in detail, why the method provided in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method set forth in this rule.

This rule is intended to implement Iowa Code sections 422.3, 422.7, and 422.8.

701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors. For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year is increased to up to $5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of $10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to $10,000. The $10,000 exclusion may be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses.

EXAMPLE 1. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The wife received $95,000 in retirement benefits and the husband received $5,000 in retirement benefits. Since the wife received 95 percent of the retirement benefits, she would be entitled to 95 percent of the $10,000 retirement income exclusion or a retirement income exclusion of $9,500. The husband would be entitled to 5 percent of the $10,000 retirement income exclusion or an exclusion of $500.

EXAMPLE 2. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The husband had $15,000 in retirement benefits from a pension. The wife received no retirement benefits. In this situation, the husband can use the entire $10,000 retirement income exclusion to exclude $10,000 of his pension benefits since the spouse did not use any of the $10,000 retirement income exclusion for the tax year.

For tax years beginning on or after January 1, 1995, but prior to January 1, 1998, the retirement income exclusion was up to $3,000 for single individuals, up to $3,000 for each married person filing a separate Iowa return, up to $3,000 for each married person filing separately on the combined return form, and up to $6,000 for married taxpayers filing joint Iowa returns. For example, a married couple elected to file separately on the combined return form and both spouses were 55 years of age or older. One spouse had $2,000 in pension income that could be excluded, since the pension income was $3,000 or less. The other spouse had $6,000 in pension income and could exclude $3,000 of that income due to the retirement income exclusion. This second spouse could not exclude an additional $1,000 of the up to $3,000 retirement income exclusion that was not used by the other spouse.

"Insurable interest" is a term used in life insurance which also applies to this rule and is defined to be "such an interest in the life of the person insured, arising from the relations of the party obtaining the insurance, either as credit of or surety for the assured, or from the ties of blood or marriage to him, as would justify a reasonable expectation of advantage or benefit from the continuance of his life." *Warnock v. Davis,* 104 U.S. 775, 779, 26 L.Ed. 924; *Connecticut Mut. Life Ins. Co. v. Luchs,* 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Adams' Adm'r v. Reed,* Ky., 36 S.W. 568, 570; *Trinity College v. Travelers' Co.,* 18 S.E. 175, 176, 113 N.C. 244, 22 L.R.A. 291; *Opitz v. Karel,* 95 N.W. 948, 951, 118 Wis. 527, 62 L.R.A. 982. It is not necessary that the expectation of advantage or profit should always be capable of pecuniary estimation, for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful, as operating the more efficaciously, to protect the life of the insured than any other consideration, but in all cases there must be a reasonable ground, founded on relations to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Warnock v. Davis,* 104 U.S. 775, 26 L.Ed. 924; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Connecticut Mut. Life Ins. Co. v. Luchs,* 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800.

For purposes of this rule, the term "insurable interest" will be considered to apply to a beneficiary receiving retirement benefits due to the death of a pensioner or annuitant under the same circumstances as if the beneficiary were receiving life insurance benefits as a result of the death of the pensioner or annuitant.

For purposes of this rule, the term "survivor" is a person other than the surviving spouse of an annuitant or pensioner who is receiving the annuity or pension benefits because the person was a beneficiary of the pensioner or annuitant at the time of death of the pensioner or annuitant. In addition, in order for this person to qualify for the partial exclusion of pensions or retirement benefits, this survivor must have had an insurable interest in the pensioner or annuitant at the time of death of the annuitant or pensioner.

A survivor other than the surviving spouse will be considered to have an insurable interest in the pensioner or annuitant if the survivor is a son, daughter, mother, or father of the annuitant or pensioner. The relationship of these individuals to the pensioner or annuitant is considered to be so close that no separate pecuniary or monetary interest between the pensioner or annuitant and any of these relatives must be established.

A survivor may include relatives of the pensioner or annuitant other than those relatives that were mentioned above. However, before any of these relatives can be considered to be a survivor for purposes of this rule, the relative must have had some pecuniary interest in the continuation of the life of the pensioner or annuitant. That is, the relative must establish a relationship with the pensioner or annuitant that shows there was a reasonable expectation of an advantage or benefit which the person would have received with the continuance of the life of the pensioner or annuitant.

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CHAPTER 43
ASSESSMENTS AND REFUNDS
[Prior to 12/17/86, Revenue Department[730]]

701—43.1(422) Notice of discrepancies.

43.1(1) *Notice of adjustments.* An agent, auditor, clerk or employee of the audit and compliance division, designated by the director of the division to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of this discovery by ordinary mail. Such notice shall not be termed an assessment. It may inform the taxpayer what amount would be due if the information discovered is correct.

43.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file a claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the agent, auditor, clerk or employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

43.1(3) Rescinded, effective 7/24/85.

This rule is intended to implement Iowa Code sections 422.25 and 422.30.

701—43.2(422) Notice of assessment, supplemental assessments and refund adjustments. If after following the procedure outlined in 43.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment without compliance with 43.1(2) or a jeopardy assessment may be issued. All notices of assessment shall bear the signature of the director.

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—7.41(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 the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

This rule is intended to implement Iowa Code sections 422.25 and 422.30.

701—43.3(422) Overpayments of tax. The following are provisions for refunding or crediting to the taxpayer's deposits or payments for tax in excess of amounts legally due.

43.3(1) *Claims for refund.* When an overpayment of tax is not indicated on the face of the return, a claim for refund of individual income tax may be made on a form obtainable from the income tax division. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

43.3(2) *Offsetting refunds.* A taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department, may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

43.3(3) *Setoffs administered by the department of human services, including the child support setoff.* Before any refund or rebate from a taxpayer's individual income tax return is considered for purposes of setoff, the refund or rebate must be applied first to any outstanding tax liability of that taxpayer with the department of revenue. After all outstanding tax liabilities are satisfied, any remaining balance of refund or rebate will be set off by the department against any debts of the taxpayer which are assigned to the department of human services for collection. Examples of debts assigned to the department of human services for collection are: (a) delinquent child support payments which the child support recovery unit of the department of human services is attempting to collect, (b) debts relating to foster care provided by the department of human services which the foster care recovery unit of that department is trying to collect, and (c) other amounts owed to the state for public assistance overpayments which the office of investigations of the department of human services is attempting to collect. For purposes of this rule, "public assistance" means aid to dependent children, medical assistance, food stamps, foster care, and state supplementary assistance.

The child support recovery unit, the foster care recovery unit, and the office of investigations of the department of human services will submit, at least on an annual basis, a listing which includes the full name and social security number of each individual that has a debt of $50 or more which is to be collected by the department of human services. Upon receipt of this listing, the department of revenue and finance will notify the department of human services of the persons on the listing that have refunds, the addresses of those individuals, and the refund amounts.

After the department of human services has been notified of a taxpayer's entitlement to a refund or a rebate, the department is to send written notification to the taxpayer and a copy of the notification to the department of revenue and finance. The written notification advises the taxpayers of the human services department's assertion of its right to setoff of the refund, the taxpayer's right to contest the setoff action, and the taxpayer's opportunity to request that a joint income tax refund be divided between spouses.

If the department of revenue and finance has been advised by the department of human services that the taxpayer has requested that a joint income tax refund is to be divided before setoff, the refund will be divided between the debtor and the debtor's spouse in proportion to each spouse's net income. The portion of the refund which is determined to be attributable to the debtor will be set off and the portion of the refund which is determined to be attributable to the debtor's spouse will be refunded.

In instances where the debtor gives timely notice to contest the setoff of the refund by the department of revenue and finance, the department will hold the refund in abeyance until final disposition of the contested claim.

In cases where either the taxpayer has failed to contest the setoff or the contested claim for the setoff was resolved in favor of the department of human services, the department of revenue and finance shall set off the refund against the department of human services' liability and refund any balance to the taxpayer. The department of human services shall notify the debtor in writing when the setoff is completed. The department of revenue and finance shall periodically transfer the amounts set off to the department of human services.

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f. In addition to the periods of limitation set forth in paragraph *"a," "b," "c," "d,"* or *"e,"* the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination, and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer. *Van Dyke v. Iowa Department of Revenue and Finance,* 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached to the notification shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, Iowa Department of Revenue and Finance, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa corporation income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer's income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer's income, a copy of the revenue agent's tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

g. In lieu of the above periods of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitations for the taxable year of the net operating loss or net capital loss which results in such carryback.

h. 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—7.41(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. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

51.2(2) *Waiver of statute of limitations.* Waivers entered into before July 1, 1989. If the taxpayer files with the department a request to waive the period of limitations, the limit of time for audit of the taxpayer's return will thereby be extended for a designated period. An approved request carries a limitation of 36 months' interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement.

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of payment. *Northern Natural Gas Company v. Forst,* 205 N.W.2d 692 (Iowa 1973); *Phillips Petroleum Company v. Bair,* State Board of Tax Review, Case No. 64, May 15, 1975.

51.2(3) *Waiver of statute of limitations.* Waivers entered into on or after July 1, 1989. When the department and the taxpayer enter into an agreement to extend the period of limitation, interest continues to accrue on an assessed deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

51.2(4) *Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.* If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code sections 422.25, 422.30, and 422.35.

701—51.3(422) Retention of records.

51.3(1) Every corporation subject to the tax imposed by Iowa Code section 422.33 (whether or not the corporation incurs liability for the tax) shall retain its books and records as required by Section 6001 of the Internal Revenue Code and Treasury Regulation Section 1.6001-1(e) including the federal schedules required by 701—subrule 52.3(3). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

51.3(2) In addition, records relating to the computation of the Iowa apportionment factor, allocable income and other deductions or additions to federal taxable income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitation for audit specified in section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

701—51.4(422) Cancellation of authority to do business. If a corporation required by Iowa Code section 422.40 to file any report or return (including returns of information at source) or to pay any tax or fee, fails to do so within 90 days after the time prescribed for making such returns or payment, the director may certify such fact to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights to such corporation to carry on business in the state of Iowa as a corporation shall thereupon cease. The statute provides for a penalty of not less than $100 nor more than $1,000 for any person or persons who continue to exercise or attempt to exercise any powers, privileges, or franchises granted under articles of incorporation or certificate of authority after cancellation of the same.

This rule is intended to implement Iowa Code section 422.40.

701—51.5(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish to the satisfaction of the department the validity and correctness of such deduction. 71 Am. Jur. 2d State and Local Taxation, Subsection 518 (1973).

This rule is intended to implement Iowa Code section 422.35.

701—51.6(422) Jeopardy assessments.

51.6(1) A jeopardy assessment may be made where a return has been filed and the director believes for any reason that collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. The department is authorized to estimate the income of the taxpayer upon the basis of available information, add penalty and interest, and demand immediate payment.

51.6(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code section 422.30.

701—51.7(422) Information confidential. Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, examiners, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue and finance personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.20, 422.38, and 422.72.

701—51.8(422) Power of attorney. For information regarding power of attorney, see rule 701—7.34(421) and 7.38(421,17A).

701—51.9(422) Delegation of authority to audit and examine. Pursuant to statutory authority the director delegates to the authorized assistants and employees the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code section 422.71.

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CHAPTER 53
DETERMINATION OF NET INCOME
[Prior to 12/17/86, Revenue Department[730]]

701—53.1(422) Computation of net income for corporations. Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in 53.2(422) to 53.13(422) and 53.17(422) to 53.20(422). The remaining provisions of this rule and 53.14(422) to 53.16(422) shall also be applicable in determining net income.

In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if the corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all those years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. The tax liability for a short period is computed by multiplying the taxable income for the short period by 12 and dividing the result by the number of months in the short period. The tax is determined on the resulting total as if it were the taxable income, and the tax computed is divided by 12 and multiplied by the number of months in the short period. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

This rule is intended to implement Iowa Code section 422.35.

701—53.2(422) Net operating loss carrybacks and carryovers. In years beginning after December 31, 1954, net operating losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes for the same period, provided the following adjustments are made:

53.2(1) *Additions to income.*

a. Refunds of federal income taxes due to net operating loss and investment credit carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs. (See Revenue Ruling 69-372 for similar federal treatment of state income tax.)

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

b. Iowa income tax deducted on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

c. Interest and dividends received in the year of the loss on federally tax-exempt securities shall be reflected as additions to income in the year of the loss.

53.2(2) *Reductions of income.*

a. Federal income tax paid or accrued during the year of the net operating loss shall be reflected to the extent allowed by law as an additional deduction in the year of the loss.

b. Iowa income tax refunds reported as income for federal return purposes in the loss year shall be reflected as reductions of income in the year of the loss.

c. Interest and dividends received from federal securities during the loss year shall be reflected in the year of the loss as a reduction of income.

53.2(3) If a corporation does business both within and without Iowa, it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 53.2(1) and 53.2(2).

a. After making the adjustments to federal taxable income as provided in 53.2(1) and 53.2(2), the total net allocable income or loss shall be added to or deducted from, as the case may be, the net federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 701—54.5(422), 54.6(422) and 54.7(422). The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

b. The net operating loss attributable to Iowa, as determined in rule 53.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 15 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

c. For tax years beginning after August 5, 1997, a net operating loss attributable to Iowa, as determined in rule 701—53.2(422), incurred in a presidentially declared disaster area by a corporation engaged in a small business or in the trade or business of farming must be carried back 3 taxable years and carried forward 20 taxable years. All other net operating losses attributable to Iowa must be carried back 2 taxable years and carried forward 20 taxable years. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

53.2(4) No part of a net operating loss for a year which the corporation was not subject to the imposition of Iowa corporation income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss. To be deductible, a net operating loss must be sustained from that portion of the corporation's trade or business carried on in Iowa.

53.2(5) No part of a net operating loss may be carried back or carried forward if the carryback or carryforward would be disallowed for federal income tax purposes under Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code. This provision is effective for tax years beginning on or after January 1, 1989.

53.2(6) The carryover of Iowa net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of Sections 381 through 386 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a part of a consolidated income tax return for federal income tax purposes, but a separate return for Iowa income tax purposes, the limitation on an Iowa net operating loss carryover must be determined as though a separate income tax return was filed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 1998 Iowa Acts, Senate File 2357.

c. A corporation from State A contracts with a computer software company from State D to develop and install a custom software application in a business office in Iowa of the company from State A. The software firm does consulting work on the project in State A and in Iowa. The software development is done in State D and in Iowa. The software package is delivered to the corporation from State A in Iowa. The gross receipts from the software development are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Iowa.

d. A corporation located in Iowa performs direct mail activities for a customer located in State X. The direct mail activities include the preparation and mailing of materials to households located throughout the United States. The corporation located in Iowa performed some activities related to the direct mail contract in State X. One percent of the direct mailings went to addresses within Iowa. One percent of the gross receipts related to this direct mail contract are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received the 1 percent of the benefit of the service in Iowa.

e. A corporation located in State A performs direct mail activities for a customer located in State X. The corporation has nexus with Iowa due to other activities of the unitary business. The direct mail activities include the preparation and mailing of materials to households throughout the United States. The corporation located in State A printed and mailed the direct mail materials to households on a mailing list prepared by the direct mailing company in State A. Five percent of the direct mailings went to addresses within Iowa. Five percent of the gross receipts related to this direct mail contract are attributable to Iowa and included in the numerator of the apportionment factor.

f. A company which owns apartments in Iowa and State A contracts with a pest control corporation for pest control activities. One contract is entered into which covers 100 apartment units in Iowa and 400 apartment units in State A. Twenty percent (100/500) of the gross receipts from the pest control contract are attributable to Iowa and are included in the numerator of the apportionment factor as 20 percent of the apartment units are located in Iowa and in the absence of more accurate records, it is presumed that the number of apartment units is the best measure of the extent the recipient of the service received benefit of the service in Iowa.

If a taxpayer does not believe that the method of apportionment set forth in this subrule reasonably attributes income to business activities within Iowa, the taxpayer may request the use of an alternative method of apportionment. The request must be filed at least 60 days before the due date of the return, considering any extensions of time to file, in which the taxpayer wishes to use an alternative method of apportionment. The request should be filed with Policy Section, Technical Service Division, P.O. Box 10457, Des Moines, Iowa 50306. The taxpayer must set forth in detail the extent of the taxpayer's business operations within and without the state, along with the reasons why the apportionment method set forth in this subrule is inappropriate. In addition, the taxpayer must set forth a proposed method of apportionment and the reasons why the proposed method of apportionment more reasonably attributes income to business activities in Iowa.

If the department agrees that the proposed method of apportionment more reasonably attributes income to business activities in Iowa, the taxpayer may continue to use the proposed method of apportionment until the taxpayer's factual situation changes or the department prospectively informs the taxpayer that the method of apportionment may no longer be used.

If the taxpayer's factual situation changes and under the new factual situation the taxpayer still believes that the method of apportionment set forth in this subrule still is not appropriate, then the taxpayer must submit a new request for the use of an alternative method of apportionment.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

54.6(2) If the business activity consists of providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commission, and similar items.

In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, gross receipts include the entire reimbursed cost, plus the fee.

54.6(3) Business income of a financial organization, excepting a financial institution exempted from the corporation income tax under Iowa Code section 422.34(1) attributable to Iowa shall be:

a. In the case of taxable income of a taxpayer whose income-producing activities are confined solely to this state, the entire net income of such taxpayer.

b. In the case of taxable income of a taxpayer who conducts income-producing activities as a financial organization partially within and partially without this state, that portion of its net income as its gross business in this state is to its gross business everywhere during the period covered by its return, which portion shall be determined as the sum of:

(1) Fees, commission or other compensation for financial services rendered for a customer located in this state or an account maintained within this state;

(2) Gross profits from trading in stocks, bonds or other securities managed within this state;

(3) Interest income from a loan on real property located in this state. Interest and other receipts from assets in the nature of loans and installment obligations if the borrower is located within this state. Other fees and other miscellaneous earnings if connected with loans to borrowers within this state;

(4) Interest charged to customers within this state or to accounts maintained within this state for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts;

(5) Interest, lease payments, or other receipts from financing leases, installment sales contracts, leases or other financing instruments received from customers within this state; and

(6) Any other gross income resulting from the operation as a financial organization within this state.

A "financial organization" means an association, joint stock company or corporation a substantial part of whose assets consists of intangible personal property and a substantial part of whose gross income consists of dividends or interest or other charges resulting from the use of money or credit.

54.6(4) Net business income of construction contractors shall be attributed to Iowa in the proportion which Iowa gross receipts bear to total gross receipts. Iowa gross receipts are those gross receipts from contracts performed in Iowa.

54.6(5) A corporation's distributive share of net income or loss from a joint venture, limited liability company, or partnership is subject to apportionment within and without the state. If the income of the partnership, limited liability company, or joint venture is received in connection with the taxpayer's regular trade or business operations, the partnership, limited liability company, or joint venture income shall be apportioned within and without Iowa on the basis of the taxpayer's business activity ratio. The corporation's distributive share of the gross receipts of the partnership, limited liability company, or joint venture shall be included in the computation of the business activity ratio in accordance with the provisions of this chapter.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair,* supra.

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue,* 414 N.W.2d 113 (Iowa 1987).

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule "statutory method of apportionment" means the Iowa single sales factor formula set forth in Iowa Code section 422.33, subsection 2, paragraph *"b,"* and the apportionment methods set forth in 701—Chapter 54.

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the audit division if the request is the result of an audit or by the policy section of the technical services division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing its return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.33.

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◊Two ARCs

55.3(6) Refunds—special statute of limitations. Notwithstanding the above periods of limitation, a claim for credit or refund is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the Taxpayer Relief Act of 1997, Public Law 105-34, which affected the corporation's federal taxable income and the claim is based on the change in federal taxable income caused by the provisions of Public Law 105-34.

This rule is intended to implement Iowa Code section 422.73 as amended by 1998 Iowa Acts, Senate File 2357.

701—55.4(422) Abatement of tax. Iowa Code section 422.28 provides that a taxpayer may appeal to the director within 60 days from the date of the assessment any portion of tax, penalties or interest assessed against the taxpayer. If a taxpayer fails to appeal the assessment within the statutory period, the assessment becomes fixed as a matter of law. *Iowa Department of Revenue v. Ingwersen*, Des Moines County District Court, Case No. 17623, February 22, 1973; *Commonwealth v. Kettenacker*, 335 S.W. 2d 339 (Ky.); *Heasley v. Engen*, 124 N.W. 2d 398 (N.D.). If, however, the statutory period for appeal has expired, the director may abate any portion of tax, penalties or interest assessed which the director determines is excessive in amount or erroneously or illegally assessed. However, for notices of assessment issued on or after January 1, 1995, see rule 701—7.31(421) and 7.38(421,17A).

55.4(1) *Assessments qualifying for abatement.* To be subject to an abatement, an assessment must have been issued that exceeded the amount due as provided by the Iowa Code and the rules issued by the department interpreting the Code. If a taxpayer fails to appeal an assessment that is based upon the Iowa Code or the department's rules interpreting the Code within the statutory period, then the taxpayer cannot request an abatement of the assessment, or a portion thereof, beyond the statutory time for appeal.

Examples of assessment where abatements may be requested include, but are not limited to, the following:

1. Inclusion of income not required to be reported by Iowa Code or department rule.
2. Estimated or jeopardy assessments.
3. Disallowance of a deduction.
4. Disallowance of a credit.
5. Interest erroneously assessed.
6. Disallowance of separate accounting or an alternative method of allocation or apportionment where the taxpayer can prove by clear and cogent evidence that the statutory method of allocation and apportionment taxed income out of all reasonable proportion to the business activities within Iowa.

Abatement may not be requested where the taxpayer wishes to change an election made on a return as filed.

55.4(2) *Procedures for requesting abatement.* If it is determined that an assessment, or portion thereof, is excessive or has been erroneously or illegally assessed, the taxpayer shall make a written request to the director for abatement of that portion of the assessment that is excessive. All documents to verify the correct amount of tax liability must be attached to that written request. A request for abatement which is filed shall contain:

1. The taxpayer's name and address;
2. A statement on the type of proceeding, e.g., individual income tax, request for abatement; and
3. The following information:

a. The nature of the tax, the taxable period or periods involved and the amount thereof that was excessive or erroneously or illegally assessed;

b. Clear and concise statements of each and every error which the taxpayer alleges to have been committed by the director in the notice of the deficiency. Each assignment of error shall be separately numbered;

c. Clear and concise statements of all relevant facts upon which the taxpayer relies (documents verifying the correct amount of tax liability must be attached to this request);

d. Refer to any particular statute or statutes and any rule or rules involved;

e. The signature of the taxpayer or that of the taxpayer's representative;

f. Description of records or documents which were not available or were not presented to department personnel prior to the filing of this request, if any;

g. Any other matters deemed relevant and not covered in the above paragraphs.

This rule is intended to implement Iowa Code section 422.28.

701—55.5(422) Protests. A taxpayer may appeal to the director at any time within 60 days from the date of the notice of the assessment of tax, additional tax, interest or penalties. For assessments issued on or after January 1, 1995, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims.

This rule is intended to implement Iowa Code sections 421.10, 421.60 and 422.28.

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TITLE VII
FRANCHISE

CHAPTER 57
ADMINISTRATION
[Prior to 12/17/86, Revenue Department[730]]

701—57.1(422) Definitions.

57.1(1) When the word *"department"* appears herein, it refers to and is synonymous with the "Iowa Department of Revenue and Finance"; the word *"director"* is the "Director of Revenue and Finance" or the director's authorized assistants and employees; the word *"tax"* is the "franchise tax on financial institutions"; and the word *"return"* is the "franchise tax return."

The administration of the franchise tax is a responsibility of the department. The department is charged with the administration of the franchise tax, subject always to the rules, regulations and direction of the director.

57.1(2) The term *"financial institution"* as used in division V of Iowa Code chapter 422 and in 701—Chapters 57 to 61 includes an Iowa chartered bank, a nationally chartered bank having its principal office in Iowa, a trust company, a federally chartered savings and loan association, a financial institution chartered by the federal home loan bank board, an association incorporated or authorized to do business under Iowa Code chapter 534 or a production credit association.

Effective June 1, 1989, the term "financial institutions" as used in division V of Iowa Code chapter 422 and in 701—Chapters 57 to 61 includes an Iowa chartered bank, a state bank chartered under the laws of any other state, a nationally chartered bank, a trust company, a federally chartered savings and loan association, a non-Iowa chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under Iowa Code chapter 534 or a production credit association.

Unincorporated privately held financial institutions are exempt from the franchise tax filing requirements.

57.1(3) The term *"Internal Revenue Code"* means the Internal Revenue Code of 1954 prior to the date of its redesignation as the Internal Revenue Code of 1986 or the Internal Revenue Code of 1986, whichever is applicable.

This rule is intended to implement Iowa Code section 422.61.

701—57.2(422) Statutes of limitation.

57.2(1) *Periods of audit.*

a. The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitation does not apply in the instances specified below in paragraphs *"b," "c," "d," "e," "f,"* and *"g."*

b. If a taxpayer fails to include in the taxpayer's return such items of gross income as defined in the Internal Revenue Code, as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extension of time for filing, whichever time is the later.

c. If the taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the statutes of limitation so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. In addition to the periods of limitation set forth in paragraph *"a," "b," "c," "d," or "e,"* the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer, *Van Dyke v. Iowa Department of Revenue and Finance,* 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached thereto shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, Iowa Department of Revenue and Finance, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa franchise tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer's income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer's income, a copy of the revenue agent's tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

g. In lieu of the above periods of limitation for any prior year for which an overpayment of tax or an elimination or reduction of any underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitations for the taxable year of the net operating loss or net capital loss which results in such carryback.

h. 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—7.41(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. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

57.2(2) *Waiver of statute of limitations.* Waivers entered into before July 1, 1989. If the taxpayer files with the department a request to waive the period of limitation, the limit of time for audit of the taxpayer's return may thereby be extended for a designated period. If the request for extending the period of limitation is approved, the additional tax or refund carries a limitation of 36 months' interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement.

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of the payment. *Northern Natural Gas Company v. Forst,* 205 N.W.2d 692 (Iowa 1973); *Phillips Petroleum Co. v. Bair,* State Board of Tax Review, Case No. 64, May 15, 1975.

57.2(3) *Waiver of statute of limitations.* Waivers entered into on or after July 1, 1989. When the department and the taxpayer enter into an agreement to extend the period of limitation, interest continues to accrue on an assessed deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

57.2(4) *Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.* If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code sections 422.25 and 422.66.

701—57.3(422) Retention of records.

57.3(1) Every financial institution subject to the tax imposed by Iowa Code section 422.60 (whether or not the financial institution incurs liability for the tax) shall retain its books and records as required by Section 6001 of the Internal Revenue Code and federal income tax regulation 1.6001-1(e) including the federal schedules required by 701—subrule 58.3(2). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

57.3(2) In addition, records relating to computation of the Iowa apportionment factor, allocable income and other deductions or additions to federal taxable income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitation for audit specified in Iowa Code section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

701—57.4(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative Acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such a deduction. *71 Am. Jur. 2d State and Local Taxation, subsection 518 (1973).*

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—57.5(422) Jeopardy assessments.

57.5(1) A jeopardy assessment may be made where a return has been filed and the director believes for any reason that collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. The department is authorized to estimate the income of the taxpayer upon the basis of available information, add penalty and interest, and demand immediate payment.

57.5(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code sections 422.30 and 422.66.

701—57.6(422) Information deemed confidential. Iowa Code section 422.72 applies generally to the director, deputies, auditors, examiners, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under Iowa Code section 422.72. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.66 and 422.72.

701—57.7(422) Power of attorney. For information regarding power of attorney, see rule 701—7.34(421).

701—57.8(422) Delegation to audit and examine. Pursuant to statutory authority the director delegates to the authorized assistants and employees the power to examine returns and make audits, and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code sections 422.66 and 422.70.

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l. Receipts (fees or charges) from the issuance of traveler's checks and money orders shall be attributed to the state where the taxpayer's office is located that issued the traveler's checks. If the traveler's checks are issued by an independent representative or agent of the taxpayer, the fees or charges shall be attributed to the state where the independent representative or agent issued the traveler's checks.

m. Fees, commissions, or other compensation for financial services rendered within this state.

n. Any other gross receipts resulting from the operation as a financial organization within the state to the extent the items do not represent a recapture of an expense.

o. Receipts from management services if the recipient of the management services is located in this state.

This rule is intended to implement Iowa Code section 422.63.

701—59.29(422) Allocation and apportionment of income in special cases. If a taxpayer feels that the allocation and apportionment method as prescribed by rule 701—59.28(422) in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by rule 701—59.28(422) and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing the alternative method shall be submitted to the department. The department shall require detail and proof within the time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. The petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair,* 437 U.S. 267, 57 L.Ed.2d 197 (1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair,* supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair,* supra.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue,* 414 N.W.2d 113 (Iowa 1987).

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule, "statutory method of apportionment" means the apportionment factor set forth in rule 701—59.28(422).

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the audit and compliance division if the request is the result of an audit or by the policy section of the technical services division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory, or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing the taxpayer's return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.63.

Rules 701—59.25(422) to 701—59.29(422) are effective for tax years beginning on or after June 1, 1989.

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TITLE VIII
MOTOR FUEL

CHAPTER 63*
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

701—63.1(452A) Definitions. For purposes of this chapter, the following definitions shall govern:

"Department" shall mean the Iowa department of revenue and finance or the director of the Iowa department of revenue and finance and the director's representative.

"Fuel(s)" shall mean and include both motor fuel and special fuel as defined in Iowa Code chapter 452A.

"Licensee" shall mean anyone who holds an uncanceled distributor's license or special fuel user's or dealer's license.

"Taxpayer" shall mean anyone responsible for paying motor vehicle fuel taxes directly to the department of revenue and finance under Iowa Code chapter 452A.

In addition to the preceding definitions, all of the definitions contained in chapter 452A shall govern the rules of this chapter.

This rule is intended to implement Iowa Code chapter 452A.

701—63.2(452A) Statute of limitations, supplemental assessments and refund adjustments. Within three years after a return is filed, the department shall examine it, determine fuel taxes due, and give notice of assessment to the taxpayer. If no return is filed, the department may determine the tax due and give notice thereof. See rule 63.5(452A). The period for the examination and determination of the current amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

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 the assessment or refund adjustment is appealed (protested under rule 701—7.41(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.

This rule is intended to implement Iowa Code section 452A.67.

701—63.3(452A) Taxpayers required to keep records. The records required to be kept by this rule shall be preserved for a period of three years unless otherwise stated (see subrule 63.3(4)) and shall be open for examination by the department during this period of time. The department, after an audit and examination of the records, may authorize the disposal of the records required to be kept under subrules 63.3(1) and 63.3(2) upon request of the distributor or dealer. The authorization must be in written form.

63.3(1) *Motor fuel distributor.* Every distributor required to file a monthly report under Iowa Code section 452A.8 or 452A.9 (motor fuel) shall keep and preserve the following records relating to the purchase or sale of motor fuel: Also see rule 701—64.6(452A).

a. Copies of bills of lading or manifests.
b. Purchase invoices.
c. Copies of sales invoices.
d. Exemption certificates.

*This chapter effective through 12/31/95; see 701—Ch 67, effective 1/1/96.

e. Purchase records.
f. Sales records.
g. Copies of filed distributor reports.
h. Iowa export schedules.
i. Rescinded IAB 10/12/94, effective 11/16/94.
j. Canceled checks and check register.

63.3(2) *Special fuel dealer-user-distributor.* Every special fuel dealer or special fuel user required to file a monthly report and every special fuel distributor required to file a quarterly report under Iowa Code section 452A.38 shall keep and preserve the following records relating to the purchase or sale of fuel: Also see rule 701—64.6(452A).

a. Copies of bills of lading or manifests.
b. Purchase invoices.
c. Copies of sales invoices.
d. Exemption certificates.
e. Purchase records.
f. Sales records.
g. Copies of filed distributor, dealer or user reports.
h. Iowa export schedules.
i. Rescinded IAB 10/12/94, effective 11/16/94.
j. Canceled checks and check register.

63.3(3) *Terminal operator.* Every person required to report under Iowa Code subsection 452A.15(2) as an operator of a terminal shall keep and preserve the following records:

a. Records to evidence the acquisition of fuel.
b. Bills of lading or manifests covering the withdrawal of motor fuel.

63.3(4) *Motor fuel dealer.* Every dealer handling motor fuel shall keep and preserve for a period of two years the following relating to the purchase or sale of motor fuel:

a. Copies of bills of lading.
b. Purchase invoices.
c. Copies of sales invoices (if issued).
d. Copies of delivery tickets (if issued).
e. Canceled checks and check register.

63.3(5) *Ethanol blended gasoline—records requirements.* These requirements apply to motor fuel distributors and blenders (includes motor fuel dealers and any other acting as blenders in blending ethanol blended gasoline).

a. Maintain records of how much motor fuel and alcohol is used in each blend with blending date and blender's signature.
b. Maintain supporting invoices related to all alcohol and blends.
c. Keep monthly inventories in gallons to agree with reporting periods for alcohol and motor fuel. See rule 701—64.4(452A) and rule 701—64.8(452A).

63.3(6) *Microfilm and related record systems.* Microfilm, microfiche, COM (computer on machine), and other related reduction in storage systems will be referred to as "microfilm" in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 3.02. However, microfilm reproductions of supporting records of detail, such as sales invoices, purchase invoices, etc., may be allowed providing there is no administrative rule or Iowa Code section requiring the original and all the following conditions are met and accepted by the taxpayer.

a. Appropriate facilities are provided to ensure the preservation and readability of the films.
b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.

d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.

e. Any audit of "detail" on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director's designated representative.

f. A posting reference must be on each invoice.

g. Rescinded IAB 10/12/94, effective 11/16/94.

h. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

63.3(7) *Automatic data processing records.* Automatic data processing is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forwarded to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director's designated representative upon request. The system should be so designed that the supporting documents, such as sales invoices, purchase invoices, etc., are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source (invoice, check, etc.) to a financial statement or tax return; or the reverse; that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

(1) The application being performed;

(2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

63.3(8) *General requirements.* If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and rule 63.5(452A), estimate gallonage, applies.

This rule is intended to implement Iowa Code sections 452A.2, 452A.6, 452A.8 to 452A.10, 452A.15, 452A.17, 452A.36 to 452A.38, 452A.59, 452A.60, 452A.62, 452A.64, and 452A.69.

701—63.4(452A) Audit—costs. The department shall have the right and duty to examine or cause to be examined the books, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return filed or determining the tax liability of any taxpayer.

The costs incurred in examining the records of a taxpayer shall be at the taxpayer's expense in the following situations:

a. When the records of a distributor, required to be licensed under Iowa Code section 452A.4 (motor fuel) or licensed under Iowa Code section 452A.36 (special fuel), are kept at an out-of-state location.

b. Special fuel dealers and users when records are kept out of state. (See rule 701—65.19(452A).)

Cost shall include meals, lodging and travel expenses, but shall not include salaries of department personnel. (See 1976 O.A.G. 611.)

This rule is intended to implement Iowa Code sections 452A.10, 452A.36, 452A.37, 452A.55, 452A.62 and 452A.69.

701—63.5(452A) Estimate gallonage. It is the duty of the department to collect all taxes on fuel due the state of Iowa. In the event the taxpayer's records are lacking or inadequate to support any report filed by the taxpayer, or to determine the taxpayer's liability, the department shall have the power to estimate the gallonage upon which tax is due. This estimation shall be based upon such factors as, but not limited to, the following: (1) prior experience of the taxpayer, (2) taxpayers in similar situations, (3) industry averages, (4) records of suppliers or customers, and (5) other pertinent information the department may possess, obtain or examine.

This rule is intended to implement Iowa Code section 452A.64.

701—63.6(452A) Timely filing of reports—remittances—application requests. The reports, remittances, applications or requests required under Iowa Code chapter 452A shall be deemed filed within the required time if (1) postpaid, (2) properly addressed, and (3) postmarked on or before midnight of the day on which due and payable. Any report that is not signed and any report which does not contain substantially all of the pertinent information shall not be considered "filed" until such time as the taxpayer so signs or supplies the information to the department. *Miller Oil Company v. Abrahamson,* 252 Iowa 1058, 109 N.W.2d 610 (1961), *Severs v. Abrahamson,* 255 Iowa 979, 124 N.W.2d 150 (1963). If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date.

All reports, remittances, applications or requests should be addressed to: Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

In the event a dispute arises as to the time of filing, or a return, report or remittance is not received by the department, the provisions of Iowa Code section 622.105 are controlling. This section applies only where the document is not received or the postmark on the envelope is illegible, erroneous or omitted.

This rule is intended to implement Iowa Code section 452A.61.

701—63.7(452A) Extension of time to file. The department may grant an extension for the filing of any required report or tax payment or both. The department shall consider the following documents to be subject to a filing time extension under Iowa Code section 452A.61: the reports and remittances required under Iowa Code section 452A.8 (motor fuel distributors); the reports required under Iowa Code section 452A.15(2) (terminal inventory); the reports and remittances required under Iowa Code section 452A.38 (special fuel dealers, users and distributors).

In order for an extension to be granted, the application requesting such extension must be filed, in writing, with the department prior to the due date of the report or remittance. In determining whether an application for extension is timely filed, the provisions of rule 63.6(452A) shall apply. The application for extension must be accompanied by an explanation of the circumstances justifying such extension, and in no event shall the extension period exceed 30 days.

In the event an extension is granted, the penalties under Iowa Code section 452A.65 applicable to late-filed report or remittance shall not accrue until the expiration of the extension period, but the interest on tax due under the same section shall accrue as of the original filing date.

This rule is intended to implement Iowa Code section 452A.61.

701—63.8(324) Penalty. Renumbered as 701—10.71(324), IAB 1/23/91.

701—63.9(324) Waiver of penalty. Rescinded IAB 1/23/91.

701—63.10(324) Interest. Renumbered as 701—10.72(324), IAB 1/23/91.

701—63.11(452A) Application of remittance. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due. If a taxpayer remits a payment on or before the due date, but the payment is insufficient to discharge the tax liability, the entire amount of the payment shall apply to the tax, and the penalty and interest shall be based on the unpaid portion of the tax. If the department determines there is additional tax due from a taxpayer, interest and penalty shall accrue on that amount from the date it should have been reported and paid.

This rule is intended to implement Iowa Code sections 452A.59, 452A.65 and 452A.66.

701—63.12(452A) Reports—records—variations. The department shall prescribe and furnish all forms upon which reports and applications shall be made and claims for refund presented to the department under Iowa Code chapter 452A.

If the information required in these documents is presented to the department on forms or in a manner other than the prescribed form, the report, application, or claim for refund or credit shall not be deemed "filed." The forms will be furnished by the department (except those pertaining to the division III interstate operations which are available from the department of transportation) and therefore, the fact that the reporting party does not have the prescribed form shall not be an excuse for failure to file. The reports required under Iowa Code section 452A.15(2) (terminal reports) are discretionary with the department, and therefore, the form of these reports may vary upon agreement between the department and the reporting person.

The department may also prescribe the form of the records which the reporting parties are required to keep in support of the reports they file. The department may approve the form of the records which are being kept by any reporting party and must approve the form of record being kept if that form (1) contains all of the information on the prescribed form, (2) the information is compiled in such a manner as to make it easily ascertainable by department personnel, and (3) substantially complies with the prescribed form.

This rule is intended to implement Iowa Code section 452A.60.

701—63.13(452A) Form of invoice. Whenever an invoice is required to be kept or prepared by Iowa Code chapter 452A, the following shall be the minimal requirements which must be complied with:

1. It must include the seller's name and address or identification number.
2. It must include the purchaser's name and address.
3. It must contain a serial number of three or more digits.
4. It must include the calendar date of purchase.

5. It must indicate the type of fuel purchased.
6. It must indicate the quantity of fuel purchased in gross gallons.
7. It must indicate the total purchase price.
8. If the purchase is of special fuel, the fact that the fuel tax is included must be indicated.
9. It must be prepared on paper which will prevent erasure or alteration.

This rule is intended to implement Iowa Code sections 452A.17 and 452A.60.

701—63.14(452A) Credit card invoices. Credit card invoices are acceptable if they meet substantially all the requirements of rule 63.13(452A). (1968 O.A.G. 592.)

For refund purposes, presentation of a credit card invoice or billing statement is prima facie evidence that the fuel tax has been paid.

This rule is intended to implement Iowa Code section 452A.60.

701—63.15(452A) Original invoice retained by purchaser—certified copy if lost. Whenever an invoice is required to be kept under Iowa Code chapter 452A, it must be the original copy which is kept. If the original copy is either lost or destroyed, a copy, certified by the seller as being a true copy of the original, will be acceptable. A copy of any invoice, which is required to be kept by the purchaser, must be kept by the seller for the same period of time.

This rule is intended to implement Iowa Code sections 452A.10, 452A.37 and 452A.60.

701—63.16(452A) Notice of meter seal breakage. Whenever a meter is required under Iowa Code chapter 452A, pursuant to the director's power granted under Iowa Code section 452A.59, and said meter is required to be sealed by Iowa Code chapter 452A, (special fuel dealer and user meters and terminal meters) the department must be notified within 24 hours of the breaking of the seal for any reason. The notice shall contain, but not be limited to, the following information:

1. The name, address and license number of the person who controls the meter.
2. The meter number.
3. The type of fuel pumped through the meter.
4. The date of seal breakage.
5. The name and address of the person(s) responsible for the seal breakage.
6. The reason for seal breakage.
7. The meter reading before seal breakage.
8. The meter reading after the meter is resealed.
9. The signature of the person who controls the meter.

For reporting purposes, the meter shall be considered two meters, one before the seal breakage, and one after, and should be reported on that basis, noting the seal breakage on the report. The meter readings of the meter before the seal breakage shall be reported by meter number as usual. The meter readings after the meter was resealed shall be reported by using the meter number plus the letter "A." The two readings must appear on the same report form.

This rule is intended to implement Iowa Code sections 452A.2(5), 452A.3, 452A.15(2), 452A.34, 452A.59 and 452A.62.

701—63.17(452A) Taxes erroneously or illegally collected. Any licensee, including licensed motor fuel distributors, licensed special fuel distributors, and licensed special fuel dealers, and licensed special fuel users, is entitled to a return of taxes, penalty, and interest erroneously or illegally collected by the department. The request for the return of the taxes must be (1) in writing, (2) filed with the department within one year of the time the tax was paid, (3) filed by the licensee who remitted the tax to the department, and (4) must be accompanied by the proof required in this rule. If the erroneous collection was the result of a computational error on the part of the taxpayer and that error is discovered by the department, during an examination of the taxpayer's records within three years of the overpayment, the taxes will be credited or refunded and a written request will not be necessary. If the request for credit includes the return of erroneously or illegally collected (assessed) penalty or interest, the interest or penalty shall be refunded in the same proportion as the tax. A refund or credit requested under Iowa Code section 452A.72 shall be reduced by sales tax if applicable. There is no minimum credit or refund amount for credits and refund claimed under the provisions of Iowa Code section 452A.72. See sales tax rule 701—18.37(422,423).

63.17(1) *Motor fuel distributors.* Motor fuel distributors must inform the department upon which bill(s) of lading, by number, and upon which monthly report(s) the tax was erroneously paid.

For periods prior to September 1, 1981. The gallonage upon which a credit is requested by a motor fuel distributor shall be reduced by either 3 or 1¼ percent or a combination of the two, whichever is applicable. If the gross gallonage total for the month for which the credit is claimed remains above 300,000 gallons after being reduced by the gallonage upon which the credit is claimed, the credit will be reduced by 1¼ percent. If the gross gallonage total for the month for which the credit is claimed was below 300,000 gallons, the credit will be reduced by 3 percent. If the gross gallonage total for the month for which the credit is claimed exceeded 300,000 gallons, when the tax was originally paid, the credit request will reduce the gallonage below 300,000 gallons, the gallonage which was originally in excess of 300,000 gallons will be reduced by 1¼ percent, and the remainder of the gallonage upon which the credit is based will be reduced by 3 percent.

For periods after August 31, 1981. The gallonage upon which a credit is requested by a motor fuel distributor shall be reduced by either 2 or 1 percent or a combination of the two, whichever is applicable. If the gross gallonage total for the month for which the credit is claimed remains above 300,000 gallons after being reduced by the gallonage upon which the credit is claimed, the credit will be reduced by 1 percent. If the gross gallonage total for the month for which the credit is claimed was below 300,000 gallons, the credit will be reduced by 2 percent. If the gross gallonage total for the month for which the credit is claimed exceeded 300,000 gallons when the tax was originally paid, the credit request will reduce the gallonage below 300,000 gallons, the gallonage which was originally in excess of 300,000 gallons will be reduced by 1 percent, and the remainder of the gallonage upon which the credit is based will be reduced by 2 percent.

If the error was the result of two persons paying the tax on the same motor fuel, the person requesting the credit must also inform the department which other party paid the tax. If the department determines that the person requesting the credit is the person responsible for the tax, the other person who paid the tax will be entitled to the credit. Motor fuel distributors are entitled to a credit which may be applied against future tax liabilities. (See 701—subrule 64.7(1).) If the request for the return of taxes erroneously paid is in excess of the average monthly tax liability of the taxpayer, computed on the previous 12 tax periods, the taxpayer may request a refund warrant in lieu of a credit.

63.17(2) *Special fuel distributors.* Special fuel distributors must inform the department upon which invoices, by invoice number, and upon which monthly or quarterly report(s) the tax was erroneously paid. If the erroneous payment was due to the fact that the distributor sold the fuel tax-paid instead of tax-free, the request for credit must also include the name of the person to whom the fuel was sold and either the (1) purchaser's license number, (2) a statement signed by the purchaser setting forth the reason(s) for nontaxability, or (3) a copy of an exemption certificate signed by the purchaser, whichever is applicable. If the request for return of taxes erroneously paid is in excess of the average quarterly tax liability of the taxpayer, computed on the previous four tax periods, the taxpayer may request a refund warrant; otherwise, the distributor will be allowed a credit.

63.17(3) *Licensed special fuel dealers and users.* If a licensed special fuel user or dealer is requesting a return of taxes because of noninclusion of an exemption certificate(s), a copy of the certificate(s) must accompany the request. (The original must be retained by the user or dealer.) If a licensed special fuel user or dealer is requesting a return of taxes because of inaccurate meter readings due to meter repair, an affidavit signed by the persons responsible for the meter repair setting out the affected meter readings must accompany the request. If the request for return of taxes erroneously paid is in excess of the average monthly tax liability of the user or dealer, computed on the previous 12 tax periods, the user or dealer may request a refund warrant; otherwise, the dealer or user will be allowed a credit.

This rule is intended to implement Iowa Code sections 452A.8(7) as amended by 1994 Iowa Acts, Senate File 2057, and 452A.72.

701—63.18(452A) Credentials and receipts. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee of the department, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address, and permit or license number; the purpose of the payment; and the amount of the payment. The taxpayer should retain all receipts, and the only receipts which the department will accept as evidence of a cash payment are the official receipts.

This rule is intended to implement Iowa Code section 452A.59.

701—63.19(452A) Information confidential. Iowa Code section 452A.63, which makes all information obtained from reports or records required to be filed or kept under Iowa Code chapter 452A confidential, applies generally to the director, deputies, auditors, agents, officers, or other employees of the department. The information may be divulged to the appropriate public officials enumerated in Iowa Code section 452A.63. These public officials shall include (1) member(s) of the Iowa General Assembly, (2) committees of either house of the Iowa Legislature, (3) state officers, (4) persons who have responsibility for the enforcement of Iowa Code chapter 452A, (5) officials of the federal government entrusted with enforcement of federal motor vehicle fuel tax laws, and (6) officials of other states who have responsibility to enforce motor vehicle fuel tax laws and who will furnish like information to the department. See rule 701—6.3(17A) for procedures for requesting information. The department shall also make the following information public as to each distributor: (1) name, (2) total gallons received, (3) gallons exported or sold for export, (4) gallons sold tax-free to exempt entities, and (5) gallons sold to persons responsible to report and account for the tax. The department shall also make public as to each special fuel user or dealer gallons used and taxes paid.

This rule is intended to implement Iowa Code section 452A.63.

701—63.20(452A) Delegation to audit and examine. Pursuant to statutory authority, the director of revenue and finance delegates to the directors of the audit division and the field services division, the power to examine returns and records, make audits, and determine the correct amount of tax due, subject to review by or appeal to the director of revenue and finance. The power so delegated may further be delegated by the directors of the divisions to auditors, clerks, and employees of the divisions.

This rule is intended to implement Iowa Code sections 452A.62 and 452A.76.

701—63.21(452A) Practice and procedure before the department of revenue and finance. The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.

701—63.22(452A) Time for filing protest. Any person wishing to contest an assessment, denial of all or any portion of a refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file a protest with the clerk of the hearings section for the department pursuant to rule 701—7.41(17A) within 30 days of the issuance of the assessment, denial, or other department action contested. For notices of assessment or refund denial 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 the assessment notice or refund denial, or if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing such claims.

This rule is intended to implement Iowa Code section 452A.64.

701—63.23(452A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections 422.52(3) and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

63.23(1) *When required.*

a. Classes of business. When the director determines, based on departmental records, other state or federal agency statistics or current economic conditions, that certain segments of the petroleum business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every licensee operating a business within this class unless it is shown to the director's satisfaction that a particular licensee within a designated class is solvent and that the licensee previously timely remitted the tax. If the director selects certain classes of licensees for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

b. New applications for fuel tax permits. Notwithstanding the provisions of paragraph *"a"* above, an applicant for a new fuel tax permit will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a prior fuel tax license and the remittance record of the tax under the prior license falls within one of the conditions in paragraph *"c"* below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior license, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in *"c"* or such person had a previous fuel tax permit which has been revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous license holder. For example, X, a corporation, had a previous fuel tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a fuel tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

c. Existing license holders. Existing license holders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or filing timely returns during the last 18 months if filing returns on a quarterly basis or have had two or more delinquencies during the last 12 months if filing returns on a monthly basis. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 63.27(452A). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27.

d. Waiver of bond. If a license holder has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the license holder maintains a good filing record for a period of two years, the license holder may request that the department waive the continued bond or security requirement.

63.23(2) *Type of security or bond.* When it is determined that a license holder or applicant for a fuel tax permit is required to post collateral to secure the collection of the motor fuel tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, the following: (1) cashier's check, (2) money order or (3) certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An assignment from the bank must accompany the original certificate of deposit filed with the department for the bank to be released from liability. When a license holder elects to post cash rather than a certificate of deposit as a bond, conversion to a certificate of deposit will not be allowed. When the license holder is a corporation, an officer of the corporation may assume personal responsibility, as security for the payment of the fuel tax will be evaluated as provided in (1) above as if the officer applied for a fuel tax permit as an individual.

63.23(3) *Amount of bond or security.* When it is determined that a license holder or applicant for a fuel tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the license holder or applicant will be or is a monthly filer, a bond or securities in an amount sufficient to cover five months' fuel tax liability will be required. If the applicant or license holder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

This rule is intended to implement Iowa Code sections 422.52(3) and 452A.66.

701—63.24(452A) Crediting gas tax refunds. The department may apply any fuel tax refund payable to a nonlicensee against any other tax liability outstanding on its books which the nonlicensee claimant has not paid.

This rule is intended to implement Iowa Code section 452A.17.

701—63.25(452A) Time limitations on filing for credits or refunds.

63.25(1) *Time limits for licensees.*

a. Credits for nonhighway use or loss due to casualty or like cause: See 701—subrule 64.7(5).

b. Credit for illegal or erroneous collection: See rule 63.17(452A).

c. Credits or refund for ethanol blended gasoline blending error: See 701—subrule 64.4(4).

63.25(2) *Time limits for nonlicensees.*

a. Refund for nonhighway use: See rule 701—64.8(452A).

b. Income tax credit for nonhighway use: See rules 701—42.6(422) and 701—52.6(422).

c. Refund for casualty loss: See rule 701—64.12(452A).

63.25(3) Refund to the state and political subdivisions and contract carriers who contract with public schools to transport students. See rules 701—64.15(452A) and 701—64.22(452A).

This rule is intended to implement Iowa Code sections 452A.16 and 452A.17.

701—63.26(452A) Distributor licenses. There shall be two types of fuel distributor licenses which will be issued. The motor fuel distributor's license will apply to motor fuel-gasoline and motor fuel-aviation. The special fuel distributor's license will apply to special fuel-diesel, and special fuel-LPG. Each license issued will be separate and distinct and must be applied for and issued separately.

63.26(1) *Requirements for license.* In order to become licensed as a fuel distributor, the person must file a written application with the department. The license must be conspicuously displayed, is valid until revoked or canceled, and is nonassignable. The application shall include, but not be limited to, the following information:

a. The name under which the distributor will transact business in the state.

b. The location of the principal place of business of the distributor.

c. The name and address of the owner(s) of the business, or if a corporation or association, the names and addresses of the principal officers.

d. The type of fuel(s) to be handled.

e. The approximate volume of fuel(s) to be handled.

f. The source of the fuel(s).

g. The type of customers to be served.

h. Whether the applicant has a license for a different type of fuel, and if so, the license number.

63.26(2) *Assignment of a license.* The following are nonexclusive situations that are considered assignments, and the acquiring distributor must apply for a new license.

a. A sale of the taxpayer's business, even if the new owner operates under the same name.

b. A change of the name under which the distributor conducts business.

c. A merger or other business combination which results in a new or different entity.

63.26(3) *Denial of a license.* The department may deny a license to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a license may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a license is a corporation, the department may deny the applicant a license if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 701—13.16(422) for a characterization of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

For information concerning records to be kept, see rule 63.3(452A).

63.26(4) *Revocation of a license.* The department may revoke the license of any licensee who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If a licensee is a corporation, the department may revoke the license if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the licensee is a partnership, the license may not be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department may also revoke the license of any licensee who abuses the privileges for which the license was issued, files a false report, or fails to file a report (including supporting schedules), pay the full amount of tax due, produce records requested, or extend cooperation to the department.

This rule is intended to implement Iowa Code sections 452A.4, 452A.5 and 452A.36.

701—63.27(452A) Reinstatement of license canceled for cause. A license holder making application to the department for reinstatement of a license canceled for cause shall be charged the fee required by law.

A license canceled for cause shall be reinstated only on such terms and conditions as the cause may warrant. Terms and conditions will include payments of any applicable fuel tax liability including interest and penalty which is due the department.

Pursuant to the director's statutory authority in Iowa Code section 452A.68 to restore licenses after being canceled for cause, the director has determined that upon the cancellation of a motor vehicle fuel tax license the initial time, the license holder will be required to pay all delinquent fuel tax liabilities including interest and penalty, to file reports, and to post a bond and refrain from activities requiring a license under Iowa Code sections 452A.4, 452A.6, 452A.18 and 452A.36 as required by the director prior to the reinstatement or issuance of a new motor vehicle fuel tax license.

As set forth above, the director may impose a waiting period during which the license holder must refrain from activities requiring a license pursuant to the penalties provided in Iowa Code section 452A.74, for a period not to exceed 90 days to restore a license or issue a new license after canceled for cause. The department may require a statement stating that the license holder has fulfilled all requirements of said order canceling the license for cause, and stating the dates on which the license holder refrained from restricted activities.

Each of the following situations will be considered one offense for the purpose of determining the waiting period to reinstate a license canceled for cause or issuing a new license after being canceled for cause unless otherwise noted.

Failure to post a bond as required.

Failure to file a monthly or quarterly report timely.

Failure to pay tax timely (including unhonored checks, failure to pay and late payments).

Failure to file a monthly or quarterly report and pay tax as shown on the report (counts as two offenses).

The administrative law judge or director of revenue and finance may order a waiting period after the cancellation for cause not to exceed:

Five days for one through five offenses.

Seven days for six through seven offenses.

Ten days for eight through nine offenses.

Thirty days for ten offenses or more.

The administrative law judge or director of revenue and finance may order a waiting period not to exceed:

Forty-five days if the second cancellation for cause occurs within 24 months of the first cancellation for cause.

Sixty days if the second cancellation for cause occurs within 18 months of the first cancellation for cause.

Ninety days if the second cancellation for cause occurs within 12 months of the first cancellation for cause.

Ninety days if the third cancellation for cause occurs within 36 months of the second cancellation for cause.

This rule is intended to implement Iowa Code section 452A.68.

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CHAPTER 64*
MOTOR FUEL
[Prior to 12/17/86, Revenue Department[730]]

701—64.1(452A) Definitions. For the purposes of this chapter, the following definitions shall govern:

"Aviation gasoline" means any gasoline capable of being used for propelling aircraft which is invoiced as aviation gasoline or is received, sold, stored or withdrawn from storage for purposes of propelling aircraft. It does not include motor fuel capable of being used for propelling motor vehicles.

"Ethanol blended gasoline" means motor fuel which has been blended with alcohol distilled from cereal grains, the end product containing at least 10 percent alcohol. When motor fuel is used in these rules, it includes ethanol blended gasoline.

"Fuel(s)" shall mean and include both motor fuel and special fuel as defined in Iowa Code chapter 452A.

"Invoiced gallons" shall, for purposes of determining a distributor's tax liability, mean gross gallons as shown on the covering bill of lading or manifest. A temperature-adjusted or other method shall not be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners.

"L.P.G." shall mean liquefied petroleum gas.

"Month" shall mean calendar month.

"Quarter" shall mean calendar quarter.

"Taxpayer" shall mean any person responsible for remitting the motor fuel tax to the department of revenue and finance and any person responsible for reporting to the department of revenue and finance under division I and pertinent parts of division IV of Iowa Code chapter 452A.

"Terminal storage" shall mean either (1) storage facilities which are supplied motor fuel by marine barges, (2) storage facilities which are supplied motor fuel by a pipeline, or (3) storage facilities which are permanently affixed to and supplied motor fuel from storage facilities supplied by a pipeline.

"Transport," "transport carrier," or *"carrier"* shall mean vehicles required to be registered under Iowa Code section 452A.11 or vehicles which are operated by licensed distributors and used to transport their own motor fuel.

In addition to the preceding definitions, all of the definitions contained in Iowa Code chapter 452A shall govern the rules in this chapter.

This rule is intended to implement Iowa Code chapter 452A.

701—64.2(452A) Time tax attaches—responsible party. The tax on motor fuel attaches when first "received" in this state, within the meaning of "received" as defined in Iowa Code section 452A.2. The tax is due from and payable to the department by the distributor who "received" the motor fuel. The tax is remitted to the department on a monthly basis and the tax is to be added to the price of the motor fuel at each subsequent sale so that the ultimate consumer bears the burden of the tax.

64.2(1) *Imported to storage.* When motor fuel is imported into the state, for sale or use in this state, and unloaded at storage facilities other than refinery or terminal storage facilities, the tax attaches at the time it is unloaded. The owner of the motor fuel immediately after it is unloaded is responsible for the tax unless (1) the owner is a nonlicensee and (2) the shipper or supplier is a licensee and sells and delivers the motor fuel directly to the nonlicensee in this state, in which case, the shipper or supplier is responsible for the tax at the time of unloading.

*This chapter effective through 12/31/95; see 701—Ch 68, effective 1/1/96.

The following examples demonstrate the application of this subrule:

1. XYZ Oil Company owns motor fuel in storage out of state. XYZ Oil Company is licensed as a distributor in Iowa. XYZ Oil Company sells the motor fuel stored out of state to A, who is an Iowa-licensed distributor, and ships it to A's nonterminal storage in Iowa. A is responsible for the tax when the motor fuel is unloaded in Iowa.

2. XYZ Oil Company owns motor fuel in storage out of state. XYZ Oil Company is licensed as a distributor in Iowa. XYZ Oil Company sells and ships the motor fuel in its own transport and delivers the fuel directly to A, a nonlicensee in Iowa. When the motor fuel is unloaded at A's nonterminal storage, XYZ Oil Company is responsible for the tax at that time.

3. XYZ Oil Company owns motor fuel in storage out of state. XYZ Oil Company is licensed as a distributor in Iowa. XYZ Oil Company sells motor fuel to A and delivers it to A at XYZ's out-of-state storage. A ships the motor fuel to its nonterminal storage. A is responsible for the tax when it is unloaded in Iowa whether or not A is licensed.

4. XYZ Oil Company owns motor fuel in storage out of state. XYZ Oil Company is not licensed as a distributor in Iowa. XYZ Oil Company sells and ships the motor fuel to A, a nonlicensee in Iowa. When the motor fuel is unloaded at A's nonterminal storage, A is in violation of Iowa Code sections 452A.4 and 452A.53 because A is deemed to have received the fuel, and to receive fuel, one must hold an uncanceled distributor's license. A is still responsible for the tax at the time it is unloaded, and must still report and pay the tax pursuant to Iowa Code section 452A.9.

5. XYZ Oil Company owns motor fuel in storage out of state and is a licensed distributor in Iowa. XYZ Oil Company ships the motor fuel to nonterminal storage it owns in Iowa. XYZ Oil Company is responsible for the tax when the motor fuel is unloaded in Iowa.

64.2(2) *Imported for use.* When the motor fuel is imported into the state and used directly from the transport vehicle, the person using the motor fuel in this state is responsible for the tax and the tax attaches at the time it is brought into the state. The shipper or supplier is responsible for the tax in lieu of the user when (1) the shipper or supplier is a licensed Iowa distributor and sells and delivers the motor fuel directly to the user in this state, and (2) the user is not so licensed. The examples for subrule 64.2(1) above would apply to demonstrate the application of this rule as to the person responsible for the tax.

64.2(3) *Produced at other than refinery.* When motor fuel is produced, compounded, or blended in this state, other than at a refinery, or at a marine or pipeline terminal, the tax attaches when it is so produced, compounded, or blended and the owner of the motor fuel at the time the processing is completed is responsible for the tax.

64.2(4) *Any other method.* When motor fuel is acquired in this state in any manner not set out in Iowa Code section 452A.2 or in this rule, which fuel is neither exempt from tax nor had been previously subject to the Iowa excise tax on motor fuel, the person so acquiring the motor fuel is responsible for the tax at the time so acquired.

64.2(5) *Received when withdrawn from terminal storage.* When motor fuel is withdrawn from terminal storage for sale or use in this state or for transportation to nonterminal storage within this state, the tax attaches at the time of withdrawal. The person responsible for the tax is determined by Iowa Code section 452A.2. The motor fuel is received by the person who was the owner of the motor fuel immediately prior to withdrawal, unless (1) the motor fuel is withdrawn for shipment or delivery to a licensee, in which case, the motor fuel shall be deemed received by the licensee to whom shipped or delivered or (2) the motor fuel is withdrawn for shipment or delivery to a nonlicensee for the account of a licensee, in which case, the motor fuel shall be deemed received by the licensee for whose account the shipment or delivery to the nonlicensee is made. For purposes of determining to whom the motor fuel is "delivered," the delivery may be either actual or constructive depending on the circumstances. (*Van Drimmelen v. Converse,* 190 Iowa 1350, 181 N.W.2d 699 (1921); *Cowie v. Local Board of Review of City of Des Moines,* 235 Iowa 318, 16 N.W.2d 592 (1944); *Lakeview Gardens v. State Ex Rel. Schneider,* 557 P.2d 1256 (Kan. 1976).) The department shall look at the entire transaction, both in form and substance, to determine to whom "delivery" was made. In situations where actual delivery to one licensee occurs simultaneously with constructive delivery to another licensee, both licensees have "received" the motor fuel and, therefore, either licensee could be responsible for the tax. In the event the tax is not paid, the department may look to either licensee for payment of the tax.

In addition to the phrase "withdrawal for delivery," the statute also refers to the concept of "withdrawal for shipment." Thus, it is also possible to have situations where there is delivery to one licensee and shipment to another licensee where it is known at the time of withdrawal to whom the motor fuel is to be shipped. Again, either licensee could be responsible for the tax.

The provisions of Iowa Code section 452A.2 will not operate to postpone the time when the tax attaches, nor will it operate to create an interdistributor chain of distribution to shift the responsibility for the tax to a licensee not intended by the statute. The tax shall always attach at the time of withdrawal, and the party responsible for the tax will be determined at that time.

The following examples will illustrate the application of this subrule. For purposes of these examples, the following is assumed unless otherwise stated: (1) The motor fuel stored in the terminal is owned by XYZ Oil Company, (2) the motor fuel is withdrawn for sale or use in Iowa, and (3) the points of delivery are within Iowa:

(1) XYZ Oil Company sells motor fuel to A, a licensed distributor. The motor fuel is to be delivered to A's place of business. Regardless of the transportation arrangements (i.e., transported by XYZ, A, or a common carrier), A is the receiver and is responsible for the tax.

Explanation: If A transports the fuel, A has taken physical delivery (possession) of the fuel at the time of withdrawal. The same would be true if a common carrier under the control of A took delivery at the terminal. Where XYZ or a common carrier under the control of XYZ transports the fuel under an F.O.B. destination contract, the department has determined that this situation is contemplated by the "shipment" element of Iowa Code section 452A.2.

(2) XYZ Oil Company sells (allots) motor fuel to A, a licensed distributor. A, in return, sells the motor fuel to B, a nonlicensee. Regardless of the method of transportation, A is responsible for the tax.

Explanation: The licensee is always responsible for the tax. See Iowa Code section 452A.2.

(3) XYZ Oil Company sells (allots) motor fuel to A, a licensed distributor who simultaneously sells the fuel to B, also a licensed distributor. If B or a common carrier under B's control transports the fuel from the terminal, A and B are both "receivers" and either could be responsible for the tax.

Explanation: At the time of withdrawal, there is a simultaneous delivery to A and B, constructive delivery to A by virtue of title passing through A at the time of withdrawal and actual delivery to B by virtue of title and constructive possession passing from A to B. The department has determined not to break the "tie," and therefore, either could pay the tax, and the department could pursue either in the event the tax was not paid.

(4) An "exchange" would have the same result as Example 3, with A being the exchangee-seller.

(5) XYZ Oil Company sells (allots) motor fuel to A, a licensed distributor. A, at the same time, sells the fuel to B, a licensed distributor. If A or a common carrier under A's control transports the fuel from the terminal, A and B again are "receivers" and either could be responsible for the tax.

Explanation: At the time of a withdrawal, there is a simultaneous "withdrawal for delivery" to A and a "withdrawal for shipment" to B. The motor fuel is withdrawn by A for shipment to B, a licensee. As in Example 3, the department has determined not to break the "tie," and therefore, either could pay the tax, and the department could pursue either in the event the tax was not paid. As explained in Example 1, transportation arrangements should not affect the determination of the person responsible for the tax. Examples 3 and 5 reach the same results regardless of the mode of transportation.

(6) XYZ Oil Company sells (allots) motor fuel to A, a licensed distributor. Subsequent to the sale, withdrawal and delivery of fuel to A, B, a licensed distributor, then agrees to purchase the fuel from A. Under this situation, A is the receiver and is responsible for tax.

Explanation: At the time of withdrawal from the terminal, A is the only person who could have first received the fuel since the sales contract with B did not exist until after the sale and delivery of the fuel to A. Under these facts, there is no simultaneous "withdrawal for delivery" and there is no simultaneous "withdrawal for shipment."

(7) XYZ Oil Company sells motor fuel to A, a licensed distributor. At withdrawal, the fuel is placed in A's transport and the bill of lading indicates an out-of-state destination. XYZ reports the sale as a tax-free sale to a licensed distributor and A is responsible to report the export.

(8) XYZ Oil Company sells motor fuel to A, a nonlicensee. The bill of lading indicates an out-of-state destination. The fuel is to be sold tax-free (see Iowa Code sections 452A.2 and 452A.3). XYZ is responsible for reporting a sale for export.

This rule is intended to implement Iowa Code sections 452A.2 and 452A.3.

701—64.3(452A) Exemptions. The following deductions are allowed on the distributor's monthly report as motor fuel exempt from tax:

1. Motor fuel sold for export or exported from this state is exempt from the excise tax. Motor fuel shall be deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the motor fuel withdrawn from storage or motor fuel which would otherwise be received, as defined in Iowa Code section 452A.2, is outside the state of Iowa. The mode of transportation is not of consequence. In the event motor fuel is taxed, and then subsequently exported, an amount equal to the tax previously paid shall be allowed as a credit, upon receipt by the department of the appropriate documents, to the party who originally paid the tax. If the sale of exported motor fuel is completed in Iowa, then the sale is subject to Iowa sales tax if it is not exported for resale or otherwise exempt from sales tax. The sale is completed in Iowa if the foreign purchaser takes physical possession of the motor fuel in this state. *Dodgen Industries, Inc. v. Iowa State Tax Commission,* 160 N.W.2d 289 (Iowa 1968). See sales tax rule 701—18.37(422,423).

2. Motor fuel sold to the United States or any agency or instrumentality thereof is exempt from the excise tax. The following factors, among others, will be considered in determining if any organization is an instrumentality of the United States government: (1) whether it was created by the federal government, (2) whether it is wholly owned by the federal government, (3) whether it is operated for profit, (4) whether it is "primarily" engaged in the performance of some "essential" government function, and (5) whether the tax will impose an economic burden upon the federal government or serve to materially impair the usefulness and efficiency of the organization or to materially restrict it in the performance of its duties if it were imposed. *Unemployment Compensation Commission v. Wachovia Bank & Trust Company,* 215 N.C. 491, 2 S.E.2d 592 (1939); 1976 O.A.G. 823, 827. The American Red Cross, Project Head Start, Federal Land Banks and Federal Land Bank Associations, among others, have been determined to be instrumentalities of the federal government. Receivers or trustees appointed in the federal bankruptcy proceedings are subject to the excise tax. *Wood Brothers Construction Co. v. Bagley,* 232 Iowa 902, 6 N.W.2d 397 (1942).

In order for this exemption to be allowed, the seller of the fuel must retain a copy of the invoice or an exemption certificate, provided by either the federal government or the department, which is signed by the purchaser.

3. Motor fuel sold at any post exchange or other concessionaire on any federal reservation within this state is to be sold tax-free. To the extent permitted by federal law, it is the responsibility of the post exchange or concessionaire to collect, report, and pay the appropriate fuel tax to the department.

4. Motor fuel sold to a regional transit system, the state, any of its agencies, or to any political subdivision of the state, which is used for a purpose specified in Iowa Code section 452A.57(11) or for public purposes and delivered into any size of storage tank owned or used exclusively by a regional transit system, the state, any of its agencies, or a political subdivision of the state is exempt from the excise tax.

When purchasing motor fuel tax-free, a regional transit system, the state, its agencies, and political subdivisions of the state shall furnish the distributor or dealer with an exemption certificate, issued by the department, stating that all of the motor fuel will be used for a purpose specified in Iowa Code section 452A.57(11) or for public purposes. A regional transit system, the state, its agencies and political subdivisions or a licensed motor fuel distributor may provide its own certificate of exemption, in a form prescribed by the director, to substantiate tax-exempt sales under this rule. See rule 701—65.13(452A) for information to be included on the certificate of exemption.

A regional transit system is defined in Iowa Code subsection 452A.57(11) to mean a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system must be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared-ride basis will not be construed to be a regional transit system.

5. Motor fuel sold to an Iowa urban transit system is to be sold tax-free. An Iowa urban transit system is a system whereby motor buses are (1) operated primarily upon the streets of the cities, (2) for the transportation of passengers, (3) without discrimination, (4) up to the capacity of each motor bus. The following are not considered activities which are functions of an Iowa urban transit system:

(a) Privately chartered bus services subject to the jurisdiction of the Iowa department of transportation.

(b) Privately chartered motor carriers subject to the jurisdiction of the Iowa department of transportation.

(c) Privately chartered interurban carriers subject to the jurisdiction of the Iowa department of transportation (the term "interurban" shall include contiguous urban areas).

(d) School bus services. Iowa urban transit systems which have a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school may receive a refund for the fuel used to transport students. See rule 64.22(452A) and 701—subrule 65.15(2).

(e) Taxicabs.

If an entity qualifies as an Iowa urban transit system ("1," "2," "3," and "4" above) or a regional transit system, but performs activities which are specifically excluded from the functions of an Iowa urban transit system, (a), (b), (c), (d), and (e) above, or a regional transit system, only that portion of the fuel used during the excluded functions is subject to the fuel tax. In order to purchase motor fuel tax-free, the transit system must first obtain a license from the department, which license shall be without cost, and fix licensed meters to all fuel storage as per Iowa Code section 452A.34 and rule 701—65.8(452A). The transit system must provide the supplying distributor with a signed affidavit or invoice showing the total tax-free purchases for a given month, which affidavit or invoice is then attached to the distributor's monthly tax report as proof of the tax-free sales.

In order to determine their tax liability, if any, transit systems must file quarterly reports with the department. The reports must include, but not be limited to, the following information: (1) the name, address, and license number of the transit system; (2) the total use of motor fuel and special fuel by meter readings; (3) the taxable use of motor fuel and special fuel; (4) a calculation of the motor fuel and special fuel tax due; (5) a calculation of sales tax due; and (6) the signature of the person responsible for filing the report. (See rule 64.13(452A) and Iowa Code sections 422.42 and 422.45 for sales tax applicability.) A remittance in the amount of taxes due must accompany the report.

If a transit system is wholly owned and operated by a political subdivision of the state or is organized and operated pursuant to Iowa Code section 28E.17, the system must still be operated in accordance with the Iowa urban transit system or regional transit system provisions in order for the exemption to apply. However, since the transit system is part of the political subdivision, the fuel taxes paid on fuel not covered by the transit system exemption, but used for "public purposes" would be subject to refund pursuant to Iowa Code sections 28E.17(2), 452A.3 and 452A.35. (See rule 64.15(452A).) These refunds will not be reduced by sales tax. (Iowa Code section 422.45(5).) 1968 O.A.G. 28, *Wicomico County Commissioners et al v. Bancroft,* 135 F. 977 (4th Cir. 1905). However, sales tax would be due from private carriers which contract bus services with political subdivisions.

All other motor fuel not exempted by categories "1," "2," "3," "4," or "5" above or subrule 64.4(1) below is subject to the tax in the first instance by the person who receives it. If the motor fuel is later used for some other exempt purpose or otherwise not to be subject to the tax, the tax previously paid will be subject to credit or refund. (See rules 701—63.25(452A), 64.4(452A), 64.7(452A), 64.8(452A) and 64.15(452A).)

This rule is intended to implement Iowa Code sections 452A.3, 452A.35, and 452A.57.

701—64.4(452A) Ethanol blended gasoline exemption.

64.4(1) *For periods prior to July 1, 1980.* Under Iowa Code section 452A.3 a mixture of motor fuel and alcohol distilled from agricultural products which contains at least 10 percent alcohol is exempt from the tax imposed by Iowa Code section 452A.3 until June 30, 1983. The following procedure will be followed to claim this exemption:

a. Ethanol blended gasoline imported. The distributor importing motor fuel which has already been blended with alcohol to produce ethanol blended gasoline will report the ethanol blended gasoline as "motor fuel received" and deduct the same as an exempt sale. The deduction must be supported by a signed statement.

b. Motor fuel imported or withdrawn from a terminal. When motor fuel is imported or withdrawn from terminal storage to be later blended with alcohol, the tax attaches when withdrawn and the deduction taken at the time of blending. The deduction must be supported by a statement signed by the person responsible for the blending. If the person responsible for the blending is not a licensed distributor, that person should get a refund or credit from the distributor from whom the motor fuel was obtained for the fuel taxes paid, and the distributor should take the deduction from the monthly distributor's report.

c. The distributor shall be allowed a deduction against subsequent fuel tax liabilities.

d. This procedure allows a deduction from "motor fuel received" to reach "taxable motor fuel," and the evaporation and shrinkage allowance provided in Iowa Code section 452A.8 is a percentage of "taxable motor fuel." Therefore, evaporation and shrinkage allowance does not apply to fuel which is blended into ethanol blended gasoline.

e. All sales of ethanol blended gasoline to the final consumer are subject to the Iowa retail sales tax, unless otherwise exempt.

64.4(2) *Blender's license and refunds of tax paid.* For periods after June 30, 1980, and to July 1, 1983.

a. If the person responsible for the blending of ethanol blended gasoline is not a licensed distributor, that person must obtain a blender's license from the department of revenue and finance in accordance with Iowa Code section 452A.6.

b. For the person licensed as a blender to secure a refund of the tax previously paid to a licensed distributor the blender must obtain a refund permit in accordance with subrule 64.8(4) and rule 64.9(452A).

A licensed distributor would follow the procedures for reporting the gallons blended into ethanol blended gasoline as stated in 64.4(1) above except where the blender is other than a licensed distributor.

64.4(3) *Ethanol blended gasoline taxation.*

a. Licensed distributors. The distributor will report the total gallons of ethanol blended gasoline and pay the tax on the total gallons of ethanol blended gasoline. The ethanol blended gasoline gallons will be reported separately from the motor fuel gallons which are first received. For periods after August 31, 1981, the evaporation and shrinkage allowance is applicable to ethanol blended gasoline or motor fuel blended into ethanol blended gasoline.

b. Ethanol blended gasoline blenders. Ethanol blended gasoline blenders must purchase their motor fuel tax-paid. The ethanol blended gasoline blenders will report the total gallons of motor fuel purchased tax-paid and the total gallons of alcohol which are blended into ethanol blended gasoline. A refund will be allowed on the difference between the tax paid on motor fuel and the tax due on the blended ethanol blended gasoline.

c. Signed statement. A statement signed by the person responsible for the blending is required for all persons showing ethanol blended gasoline on their distributor report or ethanol blended gasoline blenders refund form. The statement must show the total gallons of motor fuel and alcohol blended into ethanol blended gasoline.

64.4(4) *Ethanol blended gasoline—blending errors.* For periods beginning July 1, 1978, to June 30, 2000.

Where blending errors occur and an insufficient amount of alcohol has been blended with motor fuel so that the mixture fails to qualify as ethanol blended gasoline (as defined in Iowa Code section 452A.2), the tax shall be determined as follows:

a. If the amount of the alcohol blended with motor fuel is short by five gallons or less per blend, the alcohol and motor fuel blended shall be considered ethanol blended gasoline and there shall be no penalty or assessment of additional tax.

b. If the alcohol and motor fuel mixture is short of alcohol by more than five gallons but the alcohol blended with the motor fuels is short by 1.01 percent or less of such mixture, the motor fuel shall be divided for tax purposes into ethanol blended gasoline and motor fuel containing no alcohol as follows.

1. That portion of alcohol shall be added to motor fuel on the basis of one part alcohol to nine parts motor fuel to determine the portion which is considered ethanol blended gasoline and have a tax status as such. The portions of motor fuel remaining shall be considered taxable motor fuel subject to tax at the prevailing rate.

2. In addition to the tax, penalty and interest imposed on the portion considered motor fuel, there is a $20 fine imposed for each blending error.

c. If the amount of alcohol blended with motor fuel is short by more than 1.01 percent of the total blend, the total blend of motor fuel and alcohol is subject to tax as motor fuel at the prevailing rate of tax.

The following formula will be used to compute blending errors:

Motor fuel ÷ 9 = required alcohol
Misblended ethanol blended gasoline × .0101 = gallons of alcohol short
Required alcohol - actual alcohol is less than or equal to gallons of alcohol short
Actual alcohol × 9 = motor fuel portion of ethanol blended gasoline
Motor fuel portion of ethanol blended gasoline + actual alcohol = ethanol blended gasoline
Actual motor fuel - motor fuel portion of ethanol blended gasoline = motor fuel

The following factors are assumed for all examples:

Figures are rounded to the nearest whole gallons; ethanol blended gasoline taxed at $.05 per gallon; motor fuel tax at $.10 per gallon; and evaporation and shrinkage at 3 percent for motor fuel only. There is no evaporation for misblended ethanol blended gasoline prior to September 1, 1981. Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

Motor fuel	=	8,000 gal.
Alcohol	=	800 gal.
8,000 + 9	=	889 gal. required alcohol
8,800 × .0101	=	89 gal. short of alcohol
889 – 800	=	89 gal. short of alcohol

89 is equal to 89 which means that the tax is applied according to paragraph *"b"* above as follows:

800 × 9	=	7,200 gal. motor fuel portion of ethanol blended gasoline
7,200 + 800	=	8,000 gal. of ethanol blended gasoline
8,000 – 7,200	=	800 gal. of motor fuel subject to tax

8,000 gals. of alcohol × $.05 = $400 tax on ethanol blended gasoline
800 gal. of motor fuel × 3% = 24 gals. evaporation

800 gal. – 24 gal.	=	776 gal.
776 gal. × $.10	=	$ 77.60
Fine	=	$ 20.00
TOTAL		$497.60 ($400 + $77.60 + $20)

EXAMPLE 2.

Motor fuel	=	8,000 gal.
Alcohol	=	795 gal.
8,000 + 9	=	889 gal. required alcohol
8,795 × .0101	=	89 gal. short of alcohol
888 – 795	=	94 gal. short of alcohol

94 is greater than 89 which means that the entire blend is considered motor fuel and the tax is applied according to paragraph *"c"* above as follows:

8,795 gals. × 3%	=	264 gals. evaporation
8,795 gals. – 264 gals.	=	8,531 gals. of motor fuel
8,531 × $.10	=	$853.10

EXAMPLE 3.

Motor fuel	=	8,000 gal.
Alcohol	=	885 gal.
8,000 + 9	=	889 gal. required alcohol

889 gal. – 885 gal.	=	4 gal.

This total blend is considered ethanol blended gasoline because the blend is short by less than 5 gallons. The tax would be as follows:

8,885 gals. × $.05	=	$444.25

This rule is intended to implement Iowa Code section 452A.3.

701—64.5(452A) Tax reports—computations. Any person who receives motor fuel in the state of Iowa and any person licensed as a motor fuel distributor must file a monthly report showing the invoiced gallons of motor fuel received and the invoiced gallons subject to tax, and include therewith a remittance in the amount of tax due, if any. The report must be filed by anyone holding an uncanceled motor fuel distributor's license or any person who had "received" motor fuel during the reporting period. The report must be filed by the last day of the month following the month covered by the report. If a licensed distributor received no fuel for any month, the monthly report must still be filed when due, or the distributor will be subject to a $10 penalty. (See Iowa Code section 452A.65.) The amount of tax due is computed as follows:

1. ADD: The total number of invoiced gallons received (include all fuel received and subsequently sold for export or exported out of state, sold to a licensed Iowa urban transit system, sold to the federal government, and sold for producing ethanol blended gasoline).
2. DEDUCT: The number of invoiced gallons sold for export or exported out of state, sold to a licensed Iowa urban transit system, sold to the state, any of its agencies, or to any political subdivision of the state (see subrule 64.3(4)), sold to the federal government and used by the distributor for producing ethanol blended gasoline (these deductions will not be allowed without the appropriate supporting documents, i.e., export schedules, exemption certificates, or statements). (See rule 64.4(452A) for the procedure for deducting motor fuel used to produce ethanol blended gasoline.)
3. DEDUCT: For periods prior to September 1, 1981. Three percent of the first 300,000 invoiced gallons remaining after the deduction in 64.5"2" and 1¼ percent of the invoiced gallons in excess of 300,000 after the deduction in 64.5"2."
4. DEDUCT: For periods after August 31, 1981, 2 percent of the first 300,000 invoiced gallons remaining after the deduction in 64.5"2" and 1 percent of the invoiced gallons in excess of 300,000 after the deduction in 64.5"2."
5. MULTIPLY: The net taxable gallons by the appropriate tax rate. This results in the tax liability.
6. DEDUCT: Any outstanding credit. This results in the tax due.

A remittance in the amount of the tax due should accompany the monthly report. The appropriate penalty, interest, and application of penalty, interest, and tax are discussed in rules 701—63.8(452A), 63.10(452A), and 63.11(452A).

These are only the computational factors in determining the taxpayer's liability, and should not be considered an enumeration or limitation of the information required in the report to be filed.

This rule is intended to implement Iowa Code sections 452A.3, 452A.8 and 452A.9.

701—64.6(452A) Distributors licensed. The following persons are required to be licensed as a distributor: (1) any person who first receives motor fuel within this state or (2) any person who acts as a distributor (selling motor fuel to dealers). The following persons may be licensed as a distributor: (1) any person having bulk storage for rail tank cars in the state for use or distribution in this state, and (2) any person having bulk storage for transport loads of 4,000 gallons or more for use or distribution in bulk by tank car or tank truck in this state. If a person neither receives motor fuel nor sells motor fuel to dealers for resale, that person need not be licensed as a motor fuel distributor. See rule 701—63.26(452A).

This rule is intended to implement Iowa Code sections 452A.4 and 452A.5.

701—64.7(452A) Credit to licensee—adjustments—limitations.

64.7(1) *Credit to licensee—nonhighway—casualty loss.* Any distributor, dealer or user licensed under Iowa Code chapter 452A who, after having received or paid the tax on motor fuel or special fuel, uses the fuel for purposes other than to propel motor vehicles, aircraft or watercraft, or loses the fuel, while owned, through accountable leakage or casualty, will be entitled to a credit. In order to obtain a credit, the distributor must hold an uncanceled distributor's license. A credit will not be allowed with respect to any motor fuel or special fuel purchased more than three calendar months prior to the date the claim is filed with the department or three calendar months from the time tax accrues, whichever is longer. No credit will be allowed if less than $10 in amount. If the fuel was in storage where several fuel purchases were commingled, it is a rebuttable presumption that the fuel lost through casualty or used for nonhighway purposes was a part of the last delivery into the storage just prior to the withdrawal from storage or the loss. If a motor fuel distributor has not yet paid the tax, the distributor must pay the tax as if the loss or nonhighway use had not occurred and then request a credit. (See 701—subrules 63.17(1) and 64.7(4).)

64.7(2) *Pumping credits.* A credit will be allowed for taxes paid on fuel, once that fuel has been placed in the fuel supply tank of a motor vehicle, when the motor of that vehicle is used as a power source for off-loading procedures. Meter readings from the pump used in the off-loading procedure or the invoice, manifest or bill of lading number covering the product off-loaded must accompany the application for credit and the cost of the fuel must be indicated. The application for credit must be in writing, and the credit will be allowed as follows, unless a different amount of credit can be proven:

a. When using motor fuel (gasoline) or special fuel (diesel) to power the motor: (1) one-half gallon credit for each 1,000 gallons of liquid products pumped, and (2) three-tenths of a gallon credit for each ton of dry products pumped.

b. When using special fuel (LPG) to power the motor: (1) one gallon credit for each 1,000 gallons of liquid products pumped, and (2) three-tenths of a gallon credit for each ton of dry products pumped.

64.7(3) *Adjustments to credit—shrinkage allowance—sales tax.* The following adjustments will be made to a claim for credit of taxes paid on motor fuel or special fuel filed by a licensed distributor, dealer or user:

a. For periods prior to September 1, 1981. To compensate for the deduction allowed for shrinkage and administration in Iowa Code section 452A.8 the gallonage of motor fuel upon which a credit is requested by a motor fuel distributor shall be reduced by either 3 or 1¼ percent or a combination of the two, whichever is applicable. If the gross gallonage total for the month for which the credit is claimed remains above 300,000 gallons after being reduced by the gallonage upon which the credit is claimed, the credit will be reduced by 1¼ percent. If the gross gallonage total for the month for which the credit is claimed was below 300,000 gallons, the credit will be reduced by 3 percent. If the gross gallonage total for the month for which the credit is claimed exceeded 300,000 gallons when the tax was originally paid, and the credit request will reduce the gallonage below 300,000 gallons, the gallonage which was originally in excess of 300,000 gallons will be reduced by 1¼ percent, and the remainder of the gallonage upon which the credit is based will be reduced by 3 percent.

b. For periods after August 31, 1981. To compensate for the deduction allowed for shrinkage and administration in Iowa Code section 452A.8 the gallonage of motor fuel upon which a credit is requested by a motor fuel distributor shall be reduced by either 2 or 1 percent or a combination of the two, whichever is applicable. If the gross gallonage total for the month for which the credit is claimed remains above 300,000 gallons after being reduced by the gallonage upon which the credit is claimed, the credit will be reduced by 1 percent. If the gross gallonage total for the month for which the credit is claimed was below 300,000 gallons, the credit will be reduced by 2 percent. If the gross gallonage total for the month for which the credit is claimed exceeded 300,000 gallons when the tax was originally paid, and the credit request will reduce the gallonage below 300,000 gallons, the gallonage which was originally in excess of 300,000 gallons will be reduced by 1 percent, and the remainder of the gallonage upon which the credit is based will be reduced by 2 percent.

c. The claim for a credit of taxes on motor fuel or special fuel shall be reduced by the applicable Iowa sales tax, unless the motor fuel or special fuel has not been subject to "sale" as defined in section 422.42(2) or is used or purchased for a purpose exempt from Iowa sales tax under Iowa Code section 422.42(3) or 422.45 (e.g., farming, processing, governmental units, nonprofit educational institution). The sales tax shall be computed on the net cost of the motor fuel including any federal excise tax and excluding the state excise tax. *W. M. Gurley v. Arny Rhoden,* 421 U.S. 200, 44 L.Ed 110, 95 S.Ct. 1605.

The following will demonstrate the applicability of this rule using figures for shrinkage applicable for the period prior to September 1, 1981. The following facts are enumerated for each of the examples: (1) net per gallon cost $0.46; (2) nonrefundable federal excise tax $0.04* per gallon; (3) state excise tax, $0.10* per gallon; (4) the distributor "received" less than 300,000 gallons of motor fuel.

(*These rates are for illustrative purposes only and may not indicate the current statutory rate.)

1. The taxpayer requests the credit for a casualty loss of 1,000 gallons of motor fuel.

Credit requested on	1,000	gallons	
LESS: 3% (64.7(3)"*a*")	30	gallons	
Gallons subject to refund	970	gallons	
MULTIPLIED BY: Rate of state excise tax paid	$ .10	/gallon	
Amount subject to refund	$ 97.00		$97.00
LESS: Sales tax (64.7(3)"*c*")			
Gallons subject to refund	970	gallons	
× (.46 + .04) cost basis	$ .50	/gallon	
Net Cost	$485.00		
× sales tax rate*	.03		
Total Sales Tax	$ 14.55		14.55
Credit			$82.45

2. Taxpayer, a licensed distributor, requests a credit for taxes paid on 1,000 gallons of motor fuel the distributor "uses" for sales tax exempt farming purposes:

Credit requested on	1,000	gallons
LESS: 3% (64.7(3)"*a*")	30	gallons
Gallonage subject to refund	970	gallons
MULTIPLIED BY: Rate of state excise tax paid	$ .10	/gallon
Amount subject to refund	$97.00	
LESS: Sales tax (exempt)	0	
Credit	$ 97.00	

(*These rates are for illustrative purposes only and may not indicate the current statutory rate.)

64.7(4) *Credit memo.* Rescinded IAB 10/12/94, effective 11/16/94.

64.7(5) *Time for filing request for credit.*

a. Casualty loss. In the event fuel is lost through accident or leakage, the taxpayer must inform the department of such loss within 30 days of the loss. The notification must contain (1) the amount of gallonage lost or destroyed, and (2) a notarized affidavit sworn to by the person having immediate custody of the fuel at the time of the loss or destruction setting forth, in full detail, the circumstances of the loss or destruction. An application for credit must be submitted to the department within three calendar months of the loss.

b. Nonhighway use. An application for credit concerning fuel used for nonhighway purposes (including pumping credits) must accompany a periodic report once the $10 amount has been accumulated. If the credit will become barred by the three-month statute of limitation, an application for credit may be filed separate from the current monthly or quarterly report.

A credit will not be allowed for less than $10; therefore, these credits may be accumulated for a period of time not exceeding the statute of limitations for filing credits. The statute of limitations is either three calendar months from the date of purchase or three calendar months from the time the tax accrues, whichever time is longer. (See Iowa Code section 452A.16.)

Any application for credit must be filed within the time frame set out in this rule, or the credit will not be allowed.

The following example illustrates the application of this subrule:

Black Gold Oil Company received 10,000 gallons of motor fuel on April 2. On April 3, the storage tank in which this fuel was stored ruptured and 5,000 gallons were lost. Black Gold Oil Company must report the loss to the department by May 3, 30 days, and must file the application for credit by July 3, three calendar months. The motor fuel received on April 2 is received, and therefore, taxable as of that date. On the report for April, which the distributor must file by May 31, the distributor must include the entire 10,000 gallons received on April 2, as taxable and pay the tax thereon.

64.7(6) *Ready mix concrete and solid waste refuse vehicles.* For the periods beginning July 1, 1979, and April 1, 1987, respectively, tax on fuel used in the off-loading or mixing of cement and the loading and off-loading of solid waste will be refunded or credited on the basis of 30 percent of the fuel placed in the fuel supply tank of the vehicle provided proper records are maintained. Proper records shall consist of records of fills for each vehicle from bulk storage tanks or sales tickets where fuel is purchased directly from a service station. Each vehicle must be identifiable by a unit number so the department can trace fuel usage to specific vehicles. An additional allowance will be granted where it can be substantiated through (1) the use of separate meters which operate to measure the fuel when the vehicle is stationary or (2) the use of separate tanks which fuel the vehicle only when the vehicle is stationary, that the actual nonhighway fuel usage exceeds 30 percent.

This rule is intended to implement Iowa Code section 452A.16.

701—64.8(452A) Refund to nonlicensee—nonhighway use of ethanol blended gasoline. Any person not licensed as a distributor, dealer or user under Iowa Code section 452A.4 or 452A.36 is entitled to a refund of all taxes paid on motor fuel and special fuel which is used for any purpose other than in aircraft, watercraft or for propelling motor vehicles. A refund for the taxes paid on fuel used in the following manner shall also be allowed: (1) motor fuel or special fuel used in the operation of or pro pelling farm tractors, corn shellers, roller mills, feed grinders mounted on trucks, stationary gas engines or for cleaning or dyeing; (2) fuel used in motor vehicles, not operated on public highways, which is used in the extraction and processing of natural deposits; (3) fuel used in the watercraft of a commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to Iowa Code section 483A.2; (4) fuel used to produce ethanol blended gasoline less the tax due on ethanol blended gasoline (see subrule 64.4(3)); or (5) fuel used for producing denatured alcohol. In order to receive this refund, the claimant must (1) hold a refund permit, (2) submit the claim on a form provided by the department complete with the permit number, within four calendar months of the time the fuel was purchased, (3) the claim must be accompanied by the original invoice, credit card invoice, billing statement or a signed statement from the seller showing the purchase of the motor fuel or special fuel on which the refund is claimed, and (4) the claim must be signed under penalty of false certificate. The invoice must meet the following specifications: (1) original copy, (2) prepared by the seller, (3) department-approved paper which prevents erasure or alteration, (4) legibly written, (5) no corrections or erasures, and (6) serially numbered. The invoice must contain the following information: (1) name and address of seller, (2) name and address of purchaser, (3) the kind of fuel (i.e., gasoline (grade), diesel), (4) the gallonage in figures, (5) the gross price per gallon, (6) any and all taxes included in the sales price (including Iowa excise tax) separately as a price per gallon, (7) the total purchase price, and (8) that the total purchase price including taxes has been paid. See rule 701—63.14(452A) pertaining to credit card invoices. The claim must state the manner in which the fuel was or will be used and the equipment in which it was or will be used as well as the receptacles in which the fuel was stored. See Iowa Code section 452A.17.

A refund will not be paid with respect to any fuel taken out of this state in a fuel supply tank of a motor vehicle.

A refund will not be paid with respect to fuel used in the performance of a contract which is paid out of state funds unless the contract work contains a certificate made under penalty for false certificate that the estimate, bid or price included no amount representing fuel tax subject to refund.

The refund is available for fuel used in a motor vehicle, when the motor of that vehicle is used as a power source for off-loading procedures. The amount of the refund shall be determined the same as under subrule 64.7(2). See subrule 64.7(6), relating to fuel used in ready mixed concrete trucks, the provision of which shall also apply to this rule.

This rule is intended to implement Iowa Code section 452A.17.

701—64.9(452A) Refund permit. To obtain the refund provided for in Iowa Code chapter 452A and rule 64.8(452A) for nonhighway use, the claimant must have an uncanceled refund permit. The application for a refund is provided by the department and shall contain, but not be limited to, the following information: (1) the name and address of the applicant, (2) the occupation of the applicant, (3) the nature of the applicant's business, and (4) the number of and a description of the machines or equipment in which the motor fuel will be or has been used. The refund permit is issued without cost and shall remain in effect until revoked, canceled or until the permit becomes invalid.

This rule is intended to implement Iowa Code section 452A.18.

701—64.10(452A) Revocation of refund permit. The following violations will result in the revocation of the permit: (1) using a false or altered invoice in support of a claim, (2) making a false statement in a claim for refund or in response to an investigation by the department of a claim for refund, (3) refusal to submit the claimant's books and records for examination by the department, (4) moving from the county with which the claimant's refund permit is identified, and (5) nonuse for a period of one year. If the permit is revoked for reasons 1, 2, or 3 above, the permit shall not be reissued for a period of at least one year. If the permit is revoked for reasons 4 or 5 above, the permit will be reissued upon proper application. (See rule 701—7.24(17A) for revocation procedure.)

This rule is intended to implement Iowa Code sections 452A.18 and 452A.19.

701—64.11(452A) Income tax credit in lieu of refund. A refund which is allowed to a nonlicensee for nonhighway use under Iowa Code section 452A.17 may instead be taken as an income tax credit. This credit is not available for fuel used in motor vehicles which is subject to refund for off-loading procedures or for fuel used in watercraft. However, a commercial fisher may use the income tax credit. (See Iowa Code section 422.110(4).)

This rule is intended to implement Iowa Code section 452A.17(14).

701—64.12(452A) Refund to nonlicensee—casualty loss. When any person, not licensed under Iowa Code chapter 452A, loses in excess of 100 gallons of fuel, on which the fuel tax has been paid, through leakage or casualty, except evaporation, shrinkage or unknown causes, the person is entitled to refund of the fuel taxes paid on the fuel. A refund permit, as provided for in Iowa Code section 452A.18 and rule 64.9(452A), is not required. To qualify for the refund, the claimant must (1) notify the department in writing of the loss and the gallonage lost within ten days of the discovery of the loss and (2) file an affidavit with the department sworn to by the person having custody of the fuel, setting out the circumstances of the loss. This affidavit must be filed within 60 days of the filing of the original notice of the loss.

This rule is intended to implement Iowa Code section 452A.17.

701—64.13(452A) Reduction of refund or credit—sales tax. Under Iowa Code section 422.45(11) the gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed are exempt from Iowa sales tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section 422.42(3) or 422.45 (e.g., used for processing, used for agricultural purpose, used by an exempt government entity, used by a private nonprofit educational institution), the refund or credit of taxes on motor fuel or special fuel will be reduced by the applicable sales tax. See sales tax rule 701—18.37(422,423). The sale base upon which the sales tax will be applied shall include all federal excise taxes, but will not include the Iowa motor vehicle fuel tax. *W.M. Gurley v. Arny Rhoden,* 421 U.S. 200, 44 L.Ed. 110, 95 S.Ct. 1605.

This rule is intended to implement Iowa Code section 452A.17.

701—64.14(452A) Audit of farming operations. When, upon audit, a person claiming fuel tax credits or refunds for farming operations is unable to justify such credits or refunds with detailed records of the actual use of the motor fuel, the department will use the tables listed below to estimate the motor fuel used for farming operations.

Table I will be used to estimate the amount of fuel used in field operations if the farmer possesses adequate records to indicate actual field operations or procedures. This table reduces each field operation to the amount of fuel per acre it generally requires to complete the operation.

Table II will be used to estimate the amount of motor fuel needed to produce one acre of each crop if the farmer does not possess adequate records to indicate actual field operations.

Table III will be used to estimate the fuel needed for livestock feeding operations.

Table IV will be used to estimate the fuel needed for cleaning operations used in livestock feeding operations.

Table I. Fuel Required for Various Field Operations Under Typical Iowa Conditions

	Gallons/Crop Acre	
Field Operation	Gasoline	Diesel
FERTILIZATION		
Spreading dry fertilizer, bulk cart	0.22	0.14
Anhydrous ammonia (30-inch spacing)	1.17	0.75
TILLAGE		
Shredding cornstalks	1.01	0.64
Moldboard plow	3.06	1.95
Chisel plow	1.87	1.20
Offset disk	1.51	0.96
Powered rotary tiller	2.60	1.60
Tandem disk, plowed field	1.05	0.67
Tandem disk, tilled field	0.89	0.58
Tandem disk, cornstalks	0.68	0.44
Field cultivate, plowed field	1.30	0.83
Field cultivate, tilled field	1.19	0.76
Spring-tooth harrow, plowed field	0.79	0.50
Spring-tooth harrow, tilled field	0.71	0.46
Peg-tooth harrow, tilled field	0.20	0.13

PLANTING (30-inch rows)*		
Planter only, tilled seedbed	0.54	0.35
Planter w/fert. and pesticide attach., tilled seedbed	1.00	0.65
Till-planter (sweep)	0.85	0.55
No-till planter (fluted coulter)	0.73	0.48
Harrow-plant combination	1.74	1.11
Rotary strip-till-plant	2.36	1.51
Grain drill	0.67	0.44

*Reduce fuel used by 10% for 40-inch row spacings, with plantings and cultivating operations

	Gallons/Crop Acre	
Field Operation	Gasoline	Diesel
WEED CONTROL (30-inch rows)*		
Sprayer, trailer type	0.22	0.13
Rotary hoe	0.27	0.17
Sweep cultivator	0.74	0.47
Rolling cultivator	0.62	0.40
Sweep cultivator, w/disk hillers	0.79	0.51
Powered rotary cultivator	1.14	0.73
HARVESTING		
Cutterbar mower	0.57	0.35
Hay conditioner, trailed	0.60	0.37
Mower-conditioner, PTO	0.88	0.57
SP windrower	1.00	0.65
Rake	0.40	0.25
Baler	0.77	0.50
Stack-forming wagon	0.87	0.55
Forage harvester		
Green forage	1.70	1.09
Haylage	2.30	1.46
Corn silage	7.06	4.51
High-moisture ground ear corn	3.43	2.20
Forage blower		
Green forage	0.57	0.37
Haylage	0.40	0.26
Corn silage	2.25	1.44
High-moisture ground ear corn	0.71	0.46
Combine, soybeans	2.29	2.41
Combine, corn	3.15	2.05
Corn picker	1.54	1.00
Hauling, field + ½ mile on graveled road		
Green forage	0.61	0.39
Haylage	0.33	0.22

*Reduce fuel used by 10% for 40-inch row spacings, with plantings and cultivating operations

Corn silage	2.22	1.55
Corn grain	0.33	0.22
Soybeans	0.13	0.09
Hauling, add following values to those above for each additional mile on gravel		
Green forage	0.22	0.16
Haylage	0.33	0.22
Corn silage	1.44	1.00
Corn grain	0.33	0.17
Soybeans	0.08	0.06

Table II. Estimates of Fuel Burned for Crop Production Under Average Soil and Weather Conditions in Iowa

	Fuel Used Gallons/Crop Acre	
Crop Production	Gasoline	Diesel
CROPPING SYSTEM		
Corn—conventional methods	10.50	7.60
Corn—plowing with minimum tillage planting	8.35	5.95
Corn—no plowing minimum	6.65	4.75
Corn harvested and stored as whole-plant silage		
Conventional methods	13.30	9.60
Plowing with minimum tillage	11.10	8.00
No plowing minimum tillage	9.45	6.75
Small grains—oats, barley, rye, wheat, etc.	4.70	3.35
Soybeans—conventional methods	10.00	7.20
Small grains—with plowing	7.20	5.20
Hay—dry cured, 3 cuttings, baled	13.30	9.60
Haylage—3 cuttings or dry chopped	20.00	14.43
Using combined type cutting with self-propelled cut, crush, window implement		
Hay—3 cuttings	8.00	5.75
Haylage—3 cuttings	14.65	10.55
Corn drying—		
with favorable drying conditions	1 gallon propane will dry 7 bushel	
with good drying conditions	1 gallon propane will dry 6 bushel	
with unfavorable drying conditions	1 gallon propane will dry 5 bushel	

Table III. Estimates of Fuel Burned for Livestock Feeding Operations Under Typical Iowa Conditions

Livestock Production (includes all fuel used to remove feed from storage, process and deliver to feeders)		Fuel Used Gallons/Animal or 100 birds produced	
Animal	Feeding Period	Gasoline	Diesel
Swine	Raise 1 pig to market including feeding sow and boar	0.45	0.33
Dairy	Cow milking 9,000 lbs. milk/year	1.11	0.83
	Cow milking 12,000 lbs. milk/year	1.50	1.11
	Heifer—1 year	0.45	0.33
Beef	Steers—grown from 400 to 1200 lbs.	2.00	1.44
	Heavy steers—grown from 700 to 1200 lbs.	1.11	0.83
	Heifers—grown from 400 to 850 lbs.	1.50	1.11
	Yearlings—grown from 650 to 1200 lbs.	1.95	1.39
	Cows—winter and raise calf to 400 lbs.	1.00	0.72
Sheep	Lambs—native, from birth to market	0.67	0.50
	Feeder lambs—50 lbs. to market	0.14	0.11
Livestock Production (includes all fuel used to remove feed from storage, process and deliver to feeders)		Fuel Used Gallons/Animal or 100 birds produced	
Animal	Feeding Period	Gasoline	Diesel
Poultry*	Raise 100 broilers from birth to market	0.83	0.61
	Raise 100 pullets from birth to laying	3.00	2.16
	Layers for 1 year—100 birds	8.30	6.00
	Raise 100 turkeys from birth to market	8.30	6.00

*Does not include fuels used for brooding of pigs, chicks, or poults.

Table IV. Estimates of Fuel Burned for Cleaning Lots and Barns and Hauling for Field Spreading under Typical Iowa Conditions

Type of Livestock Operations	Fuel Used Gallons/Animal Produced	
	Gasoline	Diesel
Cleaning beef feedlots with bedding used in housing		
Per animal marketed	2.50	1.78
Cleaning beef feedlots, no bedding used in housing; for feedlots holding up to 1,000 cattle at one time		
Per animal marketed	1.39	1.00
Cleaning beef feedlots without housing, 1,000 to 4,999 cattle on feed at one time		
Per animal marketed	0.56	0.39
Cleaning beef feedlots, without housing, over 5,000 cattle on feed at one time		
Per animal marketed	0.45	0.33
Cleaning dairy buildings and lots with bedding used in housing (includes scraping lots) per year		
For each milk cow in herd	7.50	5.40
Cleaning dairy buildings with liquid manure* collection, storage and hauling, per year		
For each milk cow in herd	10.00	7.20
Cleaning swine confinement finishing barns with liquid manure* system, haul and spread		
Per pig raised to market	0.45	0.33
Cleaning swine finishing barns and lots; may be bedded		
Per pig raised to market	0.33	0.25
Cleaning sow housing, per year		
For one sow (includes cleaning farrowing house)	2.90	2.10

*If liquid manure is field injected into the soil to meet EPA or Iowa standards to control pollution, add 20% to the amount of fuel required.

This rule is intended to implement Iowa Code section 452A.17.

701—64.15(452A) State of Iowa, political subdivisions, or regional transit systems.

64.15(1) For periods prior to July 1, 1983. When motor fuel is sold directly to the state of Iowa, its agencies, or a political subdivision of the state, it shall be sold tax-paid. This tax will then be refundable to the exempt body purchasing such fuel.

64.15(2) For periods after June 30, 1983. When motor fuel is sold directly to the state of Iowa, its agencies, a political subdivision of the state, or a regional transit system, is used for public purposes or a purpose specified in Iowa Code section 452A.57(11), and is placed into a storage tank, of any size, owned or used exclusively by the state, its agencies, a political subdivision of the state or a regional transit system, the motor fuel may be sold tax-free. (See subrule 64.3(4).) Any motor fuel sold to the state of Iowa, its agencies, a political subdivision of the state or a regional transit system, which is not placed into storage, as defined above, shall be sold tax-paid and the refund provisions apply.

64.15(3) The refund is not available to agencies or instrumentalities of a political subdivision, but rather, only to the state of Iowa, agencies of the state of Iowa, and political subdivisions of the state of Iowa. The general attributes and factors in determining if an entity is a political subdivision of the state of Iowa are: (1) the entity has a specific geographic area, (2) the entity has public officials elected at public elections, (3) the entity has taxing power, (4) the entity has a general public purpose or benefit, and (5) the foregoing attributes, factors or powers were delegated to the entity by the state of Iowa. (1976 O.A.G. 823.) The refund is also not available to employees of an exempt governmental unit who purchase fuel individually and are later reimbursed by the exempt unit. The name of the exempt governmental unit must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Bozer,* 314 U.S. 1 (1941). These refunds may be obtained by filing a quarterly report (calendar quarter) with the department setting out (1) the name of the exempt body, (2) the amount of fuel purchased tax-paid, (3) the amount of tax subject to refund, and (4) the registration number of the exempt body. The claim for refund must be filed with the department, as determined by rule 701—63.6(452A), within one year of the time the tax was due; therefore, if in any one quarter, the exempt body has no refund coming, or a very small refund coming, the exempt body need not file. The exempt body so filing must retain the invoice, or other evidence of purchase meeting the same requirements, for a period of three years. (See rule 701—63.13(452A) for requirements as to form.) And such documents shall be available for inspection by the department upon request. The request of all taxes paid on special fuel shall be reported at the same time, in the same manner, and subject to the same requirements.

This rule is intended to implement Iowa Code sections 452A.3 and 452A.35.

701—64.16(452A) Terminal withdrawals—meters. Any refinery or terminal within this state must be fixed with meters which totalize the gross gallons withdrawn. All bills of lading or manifests must show the gross gallons withdrawn. A temperature-adjusted or other method shall not be used except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All fuel withdrawn from a refinery or terminal within this state must pass through these meters. The meters and accompanying accessories must first be approved and sealed by the department.

This rule is intended to implement Iowa Code sections 452A.2, 452A.8, 452A.15(2), 452A.59 and 452A.63.

701—64.17(452A) Terminal reports—records. Each terminal operating within this state must file monthly, with the same time limitations as apply to distributor's monthly reports, an inventory report with the department. The report shall include, but not be limited to, the following information:

1. The name of the company who owns and operates the terminal.
2. The location of the terminal.
3. The month covered by the report.
4. The opening inventory.
5. The total receipts for the month and the dates thereof.

6. The total withdrawals for the month, including as to each withdrawal: (a) the amount withdrawn, (b) the bill of lading number, (c) the date of withdrawal, (d) the consignor, (e) the consignee, (f) the person for whose account the motor fuel was withdrawn.
7. The closing inventory.
8. The signature of the person responsible for preparing the report.

This rule is intended to implement Iowa Code section 452A.15(2).

701—64.18(452A) Method of reporting taxable gallonage. For periods beginning September 1, 1981. The exclusive method of determining gallonage of any purchase or sale of motor fuel or special fuel and distillate fuel shall be on gross-volume basis. A temperature-adjusted or other method shall not be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refineries.

This rule is intended to implement Iowa Code section 452A.8 and Acts of the Sixty-ninth General Assembly, Second Extraordinary Session 1981, chapter 2.

701—64.19(452A) Transportation reports. The reports required under Iowa Code section 452A.15(1) are to be filed by (1) railroad carriers, (2) common motor carriers, contract motor carriers, (3) distributors and dealers transporting fuel for others, and (4) anyone else transporting fuel from without the state and unloading it at other than terminal storage within the state. The report shall include (1) all fuel which was imported into Iowa and unloaded at other than terminal storage, (2) all fuel withdrawn from Iowa terminal storage and delivered in Iowa, and (3) all fuel withdrawn from Iowa terminal storage and exported from Iowa. These reports must be filed monthly and shall show as to each delivery:

1. The name and address of the person to whom actually delivered.
2. The name and address of the originally named consignee, if delivered to any other than the originally named consignee.
3. The point of origin, the point of delivery, and the date of delivery.
4. The number and initials of each tank car and the number of gallons contained therein, if shipped by water.
5. The name of the boat, barge or vessel, and the number of gallons contained therein, if shipped by water.
6. The registration number of each tank truck and the number of gallons contained therein, if transported by motor truck.
7. The manner, if delivered by other means in which the delivery is made.
8. Such additional information relative to shipment of motor fuel as the department of revenue may require.

This rule is intended to implement Iowa Code section 452A.15(1).

701—64.20(452A) Bill of lading or manifest requirements. Whenever a bill of lading or manifest is required to be issued, carried, retained or submitted by these rules, it shall meet the following minimum requirements:

1. Contain the name and address of the refinery, terminal or point of origin.
2. Contain the date of withdrawal or import.
3. Contain the name of the shipper-seller-consignor.
4. Contain the name of the purchaser-consignee.
5. Contain the place of actual destination.
6. Contain the name of the transporter.

7. Have indicated thereon: (a) the gross gallons by fuel type, and (b) the gross gallons adjusted to 60 degrees Fahrenheit for liquefied petroleum gas.

8. Have machine printed thereon a serial number of not less than four digits.

This rule is intended to implement Iowa Code sections 452A.3, 452A.8, 452A.10, 452A.12, 452A.13, and 452A.60.

701—64.21(452A) Price posting.

64.21(1) *Persons who must post the price.* Every distributor or other persons selling motor fuel in this state to a person who will resell the fuel to dealers in this state must post the price and any discounts of such motor fuel. This provision does not apply to persons not selling motor fuel, nor does it apply to distributors who do not sell the motor fuel for resale to dealers in this state. If a person only sells directly to dealers or to users, then that person need not post the price or the discounts of the motor fuel under Iowa Code section 452A.20 and this rule.

The following examples will demonstrate the application of this rule:

1. The XYZ Oil Company owns motor fuel stored in terminal T and sells the fuel to A, a motor fuel dealer. The XYZ Oil Company would not have to post its prices, assuming A is its only customer, because it does not "sell motor fuel for resale to dealers," but rather sells directly to the dealer.

2. The XYZ Oil Company owns motor fuel stored in terminal T and sells the fuel to A, an Iowa licensed motor fuel distributor. A sells the motor fuel only to ultimate consumers. Assuming A is XYZ Oil Company's only customer, the XYZ Oil Company would not have to post its prices because it is not "selling the motor fuel for resale to dealers."

3. The XYZ Oil Company owns motor fuel stored in terminal T and sells the fuel to A, an Iowa licensed distributor. A sells the fuel to B, a motor fuel dealer, and also sells to C, an ultimate consumer of motor fuel. The XYZ Oil Company would have to post its prices because it is selling to a distributor who is reselling the fuel to a dealer, and, therefore, XYZ Oil Company would have to conform to the posted prices. However, A would not have to post prices because A is selling directly to dealers and consumers and is not "selling motor fuel for resale to dealers."

4. The XYZ Oil Company owns motor fuel stored in terminal T, which fuel it sells to A, an Iowa licensed distributor. A sells the fuel to B, a dealer of motor fuel, and to C, an Iowa licensed distributor, who in turn sells the fuel to D, a dealer of motor fuel. Both the XYZ Oil Company and A would have to post their prices because both are "selling motor fuel for resale to dealers." C would not have to post prices because C is selling the motor fuel directly to dealers and is not "selling motor fuel for resale to dealers."

64.21(2) *Information required to be posted.* When a person is required to post the prices of motor fuel, the posting must include: (1) the net price per gallon of each grade of motor fuel, (2) the amount of any state excise tax per gallon, (3) the amount of any federal excise tax per gallon and (4) the total price per gallon. If any rebate, discount, commission or other concession is granted by the person posting the prices of such a nature as will reduce the cost or price to any purchaser, the conditions, quantity and amount of such rebate, discount, commission or other concession must be posted as a part of the posted price.

64.21(3) *Place of posting.* The placards required to be posted by Iowa Code section 452A.20 and this rule must be posted at each and every place of business, including bulk plants, which the person required to post prices operates in this state. This includes locations where the motor fuel is sold for resale to dealers and locations where the motor fuel is available for sale for resale to dealers. The placard must be posted in a conspicuous place most accessible to the public.

64.21(4) *Department approval.* Prior to posting prices, the person so posting must obtain approval from the department as to the form of the placard to be posted. The department is concerned only with the form of the placard posted and is not concerned with the price charged or any rebates given. Once the form of the placard has been approved, the person posting the prices may alter the price or other information posted at will so long as the form of the placard remains the same. (See 1968 O.A.G. 1011.)

This rule is intended to implement Iowa Code section 452A.20.

701—64.22(452A) Contract carriers. When motor fuel is sold directly to a contract carrier who has a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school, it shall be sold tax-paid. This tax will then be refundable to the contract carrier. A refund requested by contract carriers will be reduced by the applicable sales tax unless otherwise exempt. To obtain a refund the contract carrier must apply to the department for a refund registration.

The name of the contract carrier must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Bozer,* 314 U.S. 1 (1941). These refunds may be obtained by filing a quarterly report (calendar quarter) with the department setting out (1) the name of the contract carrier, (2) the amount of fuel purchased tax-paid, (3) the amount of tax subject to refund, and (4) the registration number of the contract carrier. The claim for refund must be filed with the department, as determined by rule 701—63.6(452A), within one year of the time the tax was due, therefore, if in any one quarter, the contract carrier has no refund coming, or a very small refund coming, they need not file. The contract carrier so filing must retain the invoice, or other evidence of purchase meeting the same requirements, for a period of three years. (See rule 701—63.13(452A) for requirements as to form.) The documents shall be available for inspection by the department upon request. The request for refund of taxes paid on special fuel shall be reported at the same time, in the same manner, and subject to the same requirements. See 701—subrule 65.15(2).

This rule is intended to implement Iowa Code sections 452A.3 and 452A.35.

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"Motor fuel" means both of the following:

1. All products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classifications or uses.

2. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles, which when subjected to distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials designation D-86), shows not less than 10 percent distilled (recovered) below 347° F (175° C) and not less than 95 percent distilled (recovered) below 464° F (240° C).

"Motor fuel" does not include special fuel and does not include liquefied gases which would not exist as liquids at a temperature of 60° F and a pressure of 14 7/10 pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph "2," in which event the resulting product shall be deemed to be motor fuel.

"Motor vehicle" means and includes all vehicles (except those operated on rails) which are propelled by internal combustion engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment, or produce shall not be deemed to be a motor vehicle. "Motor vehicle" shall not include "mobile machinery and equipment."

"Naphthas and solvents" means and includes those liquids which come within the distillation specifications for motor fuel, but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

"Person" means and includes natural persons, partnerships, firms, associations, corporations, representatives appointed by any court, and political subdivisions of this state or any other group or combination acting as a unit and the plural as well as the singular number applies.

"Public highways" means and includes any way or place available to the public for purposes of vehicular travel notwithstanding temporarily closed.

"Regional transit system" means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared-ride basis shall not be construed to be a regional transit system.

"Restrictive supplier" means a person not otherwise licensed as an importer who imports motor fuel or undyed special fuel into this state in amounts of less than 4,000 gallons in tank wagons or in small tanks.

"Special fuel" means fuel oils, kerosene and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any substance used for that purpose, except that it does not include motor fuel. Kerosene shall not be considered to be a special fuel, unless the kerosene is blended with other special fuels for use in a motor vehicle with a diesel engine.

"Supplier" means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline; a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, alcohol or alcohol derivative substances; or a person who produces, manufactures, or refines motor fuel or special fuel in this state. "Supplier" includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. "Supplier" does not include a retail dealer or wholesaler who merely blends alcohol with gasoline before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

"Taxpayer" means anyone responsible for paying fuel taxes directly to the department of revenue and finance under Iowa Code chapter 452A.

"Terminal" means a motor fuel, alcohol, or special fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which the fuel may be removed at a rack. "Terminal" does not include a facility at which motor fuel or special fuel blend stocks and additives are used in the manufacture of products other than motor fuel or special fuel and from which no motor fuel or special fuel is removed.

"Terminal operator" means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If coventurers own a terminal, "terminal operator" means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

"Withdrawn from terminal" means physical movement from a supplier to a distributor or eligible end user or from an alcohol manufacturer to a nonterminal location and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal. Exchange of product by suppliers while in the distribution channel and the physical movement of alcohol from an alcohol manufacturer to an Iowa licensed supplier's alcohol storage at a terminal are not to be considered "withdrawn from terminal."

This rule is intended to implement Iowa Code section 452A.2 as amended by 1996 Iowa Acts, House File 2140.

701—67.2(452A) Statute of limitations, supplemental assessments and refund adjustments. After a return is filed, the department must examine it, determine fuel taxes due, and give notice of assessment to the taxpayer. If no return is filed, the department may determine the tax due and give notice thereof. See rule 67.5(452A). The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

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 the assessment or refund adjustment is appealed (protested under rule 701—7.41(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.

This rule is intended to implement Iowa Code section 452A.67.

701—67.16(452A) Credentials and receipts. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges are to be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee of the department, the taxpayer should require the employee to issue an official receipt. Such receipt must show the taxpayer's name, address, and permit or license number; the purpose of the payment; and the amount of the payment. The taxpayer should retain all receipts, and the only receipts which the department will accept as evidence of a cash payment are the official receipts.

This rule is intended to implement Iowa Code section 452A.59 as amended by 1995 Iowa Acts, chapter 155.

701—67.17(452A) Information confidential. Iowa Code section 452A.63, which makes all information obtained from reports or records required to be filed or kept under Iowa Code chapter 452A confidential, applies generally to the director, deputies, auditors, agents, officers, or other employees of the department. The information may be divulged to the appropriate public officials enumerated in Iowa Code section 452A.63. These public officials include (1) member(s) of the Iowa General Assembly, (2) committees of either house of the Iowa legislature, (3) state officers, (4) persons who have responsibility for the enforcement of Iowa Code chapter 452A, (5) officials of the federal government entrusted with enforcement of federal motor vehicle fuel tax laws, and (6) officials of other states who have responsibility to enforce motor vehicle fuel tax laws and who will furnish like information to the department. An exception to this rule is that the appropriate state agency may make available to the public the total gallons of motor fuel, undyed special fuel, and ethanol-blended gasoline withdrawn from terminals or imported into the state by suppliers, restrictive suppliers, and importers. The public request must be made within 45 days following the last day of the month in which the tax is required to be paid. See rule 701—6.3(17A) for procedures for requesting information.

This rule is intended to implement Iowa Code section 452A.63 as amended by 1996 Iowa Acts, House File 2140.

701—67.18(452A) Delegation to audit and examine. Pursuant to statutory authority, the director of revenue and finance delegates to the coadministrators of the compliance division the power to examine returns and records, make audits, and determine the correct amount of tax, interest, penalties, and fines due, and to take all actions authorized to collect the same, subject to review by or appeal to the director of revenue and finance. The power so delegated may further be delegated by the coadministrators of the division to auditors, clerks, examiners, and employees of the division.

This rule is intended to implement Iowa Code sections 452A.62 and 452A.76 as amended by 1995 Iowa Acts, chapter 155.

701—67.19(452A) Practice and procedure before the department of revenue and finance. The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.

701—67.20(452A) Time for filing protest. Any person wishing to contest an assessment, denial of all or any portion of a refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, must file a protest with the clerk of the hearings section for the department pursuant to rule 701—7.41(17A) within 60 days of the issuance of the assessment, denial, or other department action contested. If a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payments pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing claims.

This rule is intended to implement Iowa Code section 452A.64.

701—67.21(452A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections 422.52(3) and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

67.21(1) *When required.*

a. Classes of business. When the director determines, based on departmental records, other state or federal agency statistics, or current economic conditions, that certain segments of the petroleum business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every licensee operating a business within this class unless it is shown to the director's satisfaction that a particular licensee within a designated class is solvent and that the licensee previously timely remitted the tax. If the director selects certain classes of licensees for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

b. New applications for fuel tax permits. Notwithstanding the provisions of paragraph *"a"* above, the director has determined that importers will be required to post a bond in the amount of $25,000 and other applicants for a new fuel tax permit will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would likely not be able to timely remit the tax, or (2) the new applicant held a prior fuel tax license and the remittance record of the tax under the prior license falls within one of the conditions in paragraph *"c"* below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior license, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in *"c"* or such person had a previous fuel tax permit revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous licensee. For example, X, a corporation, had a previous fuel tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a fuel tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

c. Existing licensees—amount of bond or security. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 701—67.24(452A). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27, penalty waiver.

(1) Suppliers will be requested to post a bond or security when they have had one or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months.

The bond or security will be an amount sufficient to cover six months' fuel tax liability.

(2) Restrictive suppliers will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability.

(3) Blenders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability.

d. Eligible purchasers and end users will be required to post a bond or security when they have failed to pay the tax to a supplier. They will not be allowed to register as an eligible purchaser or end user again until the bond or security requirement has been complied with.

The bond or security will be an amount sufficient to cover six months' fuel tax based on previous purchases.

e. Waiver of bond. If a licensee has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the licensee maintains a good filing record for a period of two years, the licensee may request that the department waive the continued bond or security requirement. Importer bonds will not be waived.

67.21(2) *Type of security or bond.* When it is determined that a licensee or applicant for a fuel tax permit is required to post collateral to secure the collection of the fuel tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities, or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, cashier's check, money order, or certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An assignment from the bank must accompany the original certificate of deposit filed with the department for the bank to be released from liability. When a licensee elects to post cash rather than a certificate of deposit as a bond, conversion to a certificate of deposit will not be allowed. When the licensee is a corporation, an officer of the corporation may assume personal responsibility for the payment of fuel tax. Security requirements for the officer will be evaluated as provided in 67.21(1) above as if the officer applied for a fuel tax license as an individual.

This rule is intended to implement Iowa Code sections 422.52(3) and 452A.66.

701—67.22(452A) Tax refund offset. The department may apply any fuel tax refund against any other liability outstanding. See 701—Chapter 150, "Offset of Debts Owed State Agencies."

This rule is intended to implement Iowa Code section 452A.17 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code section 421.17.

701—67.23(452A) Supplier, restrictive supplier, importer, exporter, blender, dealer, or user licenses.

67.23(1) *Requirements for license.* In order to become licensed as a fuel supplier, restrictive supplier, importer, exporter, blender, dealer, or user, the person must file a written application with the department. The license is valid until revoked or canceled, and is nonassignable. The application is to include, but not be limited to, the following information:

a. The name under which the licensee will transact business in the state.

b. The location of the principal place of business of the licensee and the mailing address if different.

c. The social security number or federal identification number of the licensee.

d. The type of ownership.

e. The name and complete residency address of the owner(s) of the business or, if a corporation or association, the names and addresses of the principal officers.

f. The type of license being requested.

g. Exporters only — the state and license number for that state in which the fuel is being exported.

67.23(2) *Assignment of a license.* The following are nonexclusive situations that are considered assignments, and the acquiring person must apply for a new license.

a. A sale of the taxpayer's business, even if the new owner operates under the same name.

b. A change of the name under which the licensee conducts business.

c. A merger or other business combination which results in a new or different entity.

67.23(3) *Denial of a license.* The department may deny a license to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax and will deny a permit of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If the applicant is a partnership, a license may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a license is a corporation, the department may deny the applicant a license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. See rule 701—13.16(422) for a characterization of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. If the application for a license is denied, see rule 701—7.55(17A) for rights to appeal.

67.23(4) *Revocation of a license.* The department may revoke the license of any licensee who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax and will revoke a permit of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If a licensee is a corporation, the department may revoke the license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. If the licensee is a partnership, the license may not be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. The department may also revoke the license of any licensee who abuses the privileges for which the license was issued, who files a false report, or who fails to file a report (including supporting schedules), pay the full amount of tax due, produce records requested, or extend cooperation to the department. See rule 701—7.55(17A) for rights to appeal.

This rule is intended to implement Iowa Code sections 452A.4 and 452A.6.

701—67.24(452A) Reinstatement of license canceled for cause. A license canceled for cause will be reinstated only on such terms and conditions as the cause may warrant. Terms and conditions will include payments of any applicable fuel tax liability including interest and penalty which is due the department.

Pursuant to the director's statutory authority in Iowa Code section 452A.68 to restore licenses after being canceled for cause, the director has determined that upon the cancellation of a motor vehicle fuel tax license the initial time, the licensee will be required to pay all delinquent fuel tax liabilities including interest and penalty, to file reports, and to post a bond and have refrained from activities requiring a license under sections 452A.4 and 452A.6 during the waiting period as required by the director prior to the reinstatement or issuance of a new motor vehicle fuel tax license.

As set forth above, the director may impose a waiting period during which the licensee must refrain from activities requiring a license pursuant to the penalties provided in Iowa Code section 452A.74 for a period not to exceed 90 days as a condition for the restoration of a license or the issuance of a new license after cancellation for cause. The department may require a statement that the licensee has fulfilled all requirements of said order canceling the license for cause and the dates on which the license holder refrained from restricted activities.

Each of the following situations will be considered one offense for the purpose of determining the waiting period to reinstate a license canceled for cause or issuing a new license after being canceled for cause unless otherwise noted.

Failure to post a bond as required.

Failure to file a return timely.

Failure to pay tax timely (including unhonored checks, failure to pay and late payments).

Failure to file a return and pay tax as shown on the report (counts as one offense).

The hearing officer or director of revenue and finance may order a waiting period after the cancellation for cause not to exceed:

Five days for one through five offenses.

Seven days for six or seven offenses.

Ten days for eight or nine offenses.

Thirty days for ten offenses or more.

The hearing officer or director of revenue and finance may order a waiting period not to exceed:

Forty-five days if the second cancellation for cause occurs within 24 months of the first cancellation for cause.

Sixty days if the second cancellation for cause occurs within 18 months of the first cancellation for cause.

Ninety days if the second cancellation for cause occurs within 12 months of the first cancellation for cause.

Ninety days if the third cancellation for cause occurs within 36 months of the second cancellation for cause. See 701—subrule 7.24(1) for rights to appeal.

This rule is intended to implement Iowa Code section 452A.68.

701—67.25(452A) Fuel used in implements of husbandry. Dyed special fuel is exempt from tax. Motor fuel or undyed special fuel is subject to refund when used in implements of husbandry as defined in Iowa Code section 321.1(32). A vehicle as defined in Iowa Code section 321.1(90) is not an implement of husbandry. The department of revenue and finance, the state department of transportation, the department of public safety, and any other peace officer as requested by such department is empowered to enforce the use of special fuel or motor fuel in any illegal manner, including the inspection and testing of fuel in the fuel supply tank of an implement of husbandry.

This rule is intended to implement Iowa Code section 452A.76 as amended by 1995 Iowa Acts, chapter 155.

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68.9(6) A refund will not be paid with respect to motor fuel or special fuel used in the performance of a contract which is paid from state funds unless the contract for the work contains a certificate made under penalty for false certificate that the estimate, bid, or price to be paid for the work does not include any amount representing motor fuel or special fuel tax subject to refund.

This rule is intended to implement Iowa Code section 452A.17 as amended by 1997 Iowa Acts, House File 266, and Iowa Code section 452A.21.

701—68.10(452A) Refund permit. To obtain the refund provided for in Iowa Code chapter 452A and rule 68.8(452A), the claimant must have an uncanceled refund permit. The application for a refund permit is provided by the department and will contain, but not be limited to, the following information: (1) the name and location of the business and the mailing address if different, (2) the type of ownership, (3) the social security number or federal identification number of the applicant, and (4) the type of refund requested. The refund permit is issued without cost and remains in effect until revoked, canceled or until the permit becomes invalid. All refund permit holders are required to keep invoices and copies of returns if filed, supporting schedules and studies for documentation to support the refund.

This rule is intended to implement Iowa Code section 452A.18 as amended by 1995 Iowa Acts, chapter 155.

701—68.11(452A) Revocation of refund permit. The following violations will result in the revocation of the permit: (1) using a false or altered invoice in support of a claim, (2) making a false statement in a claim for refund or in response to an investigation by the department of a claim for refund, (3) refusal to submit the claimant's books and records for examination by the department, and (4) nonuse for a period of one year. If the permit is revoked for reasons (1), (2), or (3) above, the permit will not be reissued for a period of at least one year. If the permit is revoked for reason (4) above, the permit will be reissued upon proper application. (See rule 701—7.55(17A) for revocation procedure.)

This rule is intended to implement Iowa Code section 452A.19.

701—68.12(452A) Income tax credit in lieu of refund. In lieu of applying for a refund permit, a person or corporation may claim the refund allowable under Iowa Code section 452A.17 as an income tax credit. If a person or corporation holds a refund permit and elects to receive an income tax credit, the person or corporation must cancel the refund permit within 30 days after the first day of its year or the permit becomes invalid and application must be made for a new permit. Once the election to receive an income tax credit has been made, it remains in effect until the election is changed. The income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, and blending errors.

This rule is intended to implement Iowa Code sections 422.110, 452A.17(4), and 452A.21 as amended by 1995 Iowa Acts, chapter 155.

701—68.13(452A) Reduction of refund—sales tax. Under Iowa Code section 422.45(11), the gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed are exempt from Iowa sales tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section 422.42(3) or 422.45 (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales tax. See sales tax rule 701—18.37(422,423). The sale base upon which the sales tax will be applied shall include all federal excise taxes, but will not include the Iowa motor vehicle fuel tax. *W. M. Gurley v. Arny Rhoden*, 421 U.S. 200, 44 L.Ed. 110, 95 S.Ct. 1605.

This rule is intended to implement Iowa Code section 452A.17 as amended by 1995 Iowa Acts, chapter 155.

701—68.14(452A) Terminal withdrawals—meters. Any refinery or terminal within this state must be fixed with meters which totalize the gross gallons withdrawn. All bills of lading or manifests must show the gross gallons withdrawn. A temperature-adjusted or other method shall not be used except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All fuel withdrawn from a refinery or terminal within this state must pass through these meters.

This rule is intended to implement Iowa Code sections 452A.2, 452A.8, 452A.15(2), and 452A.59 as amended by 1995 Iowa Acts, chapter 155.

701—68.15(452A) Terminal reports—records. Each terminal operating within this state must file a monthly inventory report with the department. The report shall include, but not be limited to, the following information:

1. The name of the company that owns and operates the terminal.
2. The location of the terminal.
3. The month and year covered by the report.
4. The terminal code as assigned by the Internal Revenue Service.
5. The beginning inventory.
6. The total receipts for the month and the dates thereof.
7. The total withdrawals for the month, including as to each withdrawal: (a) the gross gallons withdrawn by fuel type and, if diesel, whether dyed or undyed, (b) the bill of lading number, (c) the date of withdrawal, (d) the consignor, (e) the consignee, and (f) the mode of transportation.
8. The actual ending inventory.
9. The signature of the person responsible for preparing the report.

This rule is intended to implement Iowa Code section 452A.15(2) as amended by 1995 Iowa Acts, chapter 155.

701—68.16(452A) Method of reporting taxable gallonage. The exclusive method of determining gallonage of any purchase or sale of motor fuel or special fuel and distillate fuel is to be on gross-volume basis. A temperature-adjusted or other method cannot be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refineries.

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.17(452A) Transportation reports. The reports required under Iowa Code section 452A.15(1) are to be filed by railroad carriers, common carriers, contract carriers, distributors transporting fuel for others, and anyone else transporting fuel from without the state and unloading it at other than terminal storage within the state. The report must include all fuel which was imported into Iowa and unloaded at other than terminal storage, all fuel withdrawn from Iowa terminal storage and delivered in Iowa, and all fuel withdrawn from Iowa terminal storage and exported from Iowa. These reports must be filed monthly and show as to each delivery:

1. The name, address, and federal identification number or social security number of the person to whom actually delivered.
2. The name, address, and federal identification number or social security number of the originally named consignee, if delivered to anyone other than the originally named consignee.
3. The point of origin, the point of delivery, and the date of delivery.
4. The number and initials of each tank car and the number of gallons contained therein, if shipped by rail.
5. The name of the boat, barge, or vessel, and the number of gallons contained therein, if shipped by water.
6. The registration number of each tank truck and the number of gallons contained therein, if transported by motor truck.
7. The manner, if delivered by other means, in which the delivery is made.
8. Such additional information relative to shipments of motor fuel or special fuel as the department may require.

This rule is intended to implement Iowa Code section 452A.15(1) as amended by 1995 Iowa Acts, chapter 155.

701—68.18(452A) Bill of lading or manifest requirements. Whenever a bill of lading or manifest is required to be issued, carried, retained, or submitted by these rules, it shall meet the following minimum requirements:

1. Contain the name and address of the refinery, terminal, or point of origin.
2. Contain the date of withdrawal or import.
3. Contain the name of the shipper-supplier-consignor.
4. Contain the name of the purchaser-consignee.
5. Contain the place of actual destination.
6. Contain the name of the transporter.
7. The gross gallons by fuel type.
8. Have machine printed thereon a serial number of not less than four digits.

This rule is intended to implement Iowa Code sections 452A.10, 452A.12, 452A.60, and 452A.76 as amended by 1995 Iowa Acts, chapter 155.

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701—81.6(453A) Audit of records—cost, supplemental assessments and refund adjustments. The department shall have the right and duty to examine or cause to be examined the books, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return filed or determining the tax liability of any taxpayer under Iowa Code chapter 453A.

When it is determined, upon audit, that any person dealing in cigarettes owes additional tax, the costs of the audit are assessed against such person as additional penalty.

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—7.41(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.

This rule is intended to implement Iowa Code section 453A.30.

701—81.7(453A) Bonds. When bonds are required by Iowa Code chapter 453A or these rules, said bonds shall be in the form of cash, a certificate of deposit or a bond issued by a surety company licensed to do business in the state of Iowa, payable to the state of Iowa and in a form approved by the director. Bonds required by tobacco distributors must be issued by a surety company licensed to do business in Iowa. However, upon approval by the director, a cash bond or a certificate of deposit will be accepted by the department as a substitute for the surety bond. (See Iowa Code section 453A.44(4).)

This rule is intended to implement Iowa Code sections 453A.14 and 453A.44.

701—81.8(98) Penalties. Renumbered as 701—10.76(98), IAB 1/23/91.

701—81.9(98) Interest. Renumbered as 701—10.77(98), IAB 1/23/91.

701—81.10(98) Waiver of penalty or interest. Renumbered as 701—10.78(98), IAB 1/23/91.

701—81.11(453A) Appeal—practice and procedure before the department.

81.11(1) *Procedure.* The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7 of the department's rules.

81.11(2) *Appeals—time limitations.* For assessments or denials of refund claims made on or after July 1, 1987. An assessment or denial of all or any portion of a refund claim issued pursuant to Iowa Code section 453A.28 or 453A.46 may be appealed pursuant to rule 701—7.41(17A) and the protest must be filed within 30 days of the issuance of the assessment or denial of the refund claim. For notices of assessment or refund denial 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 the assessment notice or refund denial, or if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing such claims.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 453A.25, 453A.28, 453A.29, 453A.46, 453A.48, and 453A.49.

701—81.12(453A) Permit—license revocation.

81.12(1) *Cigarette permits.* Cigarette permits issued by the department must be revoked if the permittee willfully violates the provisions of Iowa Code section 453A.2 (sale or gift to minors). The department may revoke permits issued by the department for violation of any other provision of division I of Iowa Code chapter 453A or the rules promulgated thereunder. (Also see Iowa Code chapter 421B and rule 701—84.7(421B).) The revocation shall be subject to the provisions of rule 701—7.55(17A). The notice of revocation shall be given to the permittee at least ten days prior to the hearing provided therein. The department will revoke a permit of a permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support unit in regard to the permit holder, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

The board of supervisors or the city council that issued a retail permit is required by Iowa Code section 453A.22 to revoke the permit of any retailer violating Iowa Code section 453A.2 (sale or gift to minors). The board or council may revoke a retail permit for any other violation of division I of Iowa Code chapter 453A. The revocation procedures are governed by Iowa Code section 453A.22(2) and the individual council's or board's procedures. Iowa Code chapter 17A does not apply to boards of supervisors or city councils. (See rule 701—84.7(421B).) The board of supervisors or the city council that issued a retail permit is required by Iowa Code chapter 252J to revoke the permit of any retailer, who is an individual, if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the retailer, unless the unit furnishes the board of supervisors or the city council with a withdrawal of the certificate of noncompliance.

If a permit is revoked under this subrule, except for the receipt of a certificate of noncompliance from the child support recovery unit, the permit holder cannot obtain a new cigarette permit of any kind nor may any other person obtain a permit for the location covered by the revoked permit for a period of one year unless good cause to the contrary is shown to the issuing authority.

81.12(2) *Tobacco licenses.* The director may revoke, cancel or suspend the license of any tobacco distributor or tobacco subjobber for violation of any provision in division II of Iowa Code chapter 453A, the rules promulgated thereunder, or any other statute applicable to the sale of tobacco products. The licensee shall be given ten days' notice of a revocation hearing under Iowa Code section 453A.48(2) and rule 701—7.55(17A). No license may be issued to any person whose license has been revoked under Iowa Code section 453A.44(11) for a period of one year. The department will revoke a license of a licensee, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 453A.22, 453A.44(11) and 453A.48(2) and Iowa Code chapter 252J.

701—81.13(453A) Permit applications and denials.

81.13(1) *Applications for permits.* The application forms for all permits issued under Iowa Code chapter 453A are available from the department upon request. The applications shall include, but not be limited to:

a. The nature of the applicant's business;
b. The type of permit requested;
c. The address of the principal office of the applicant;
d. The place of business for which the permit is to apply;

This rule is intended to implement Iowa Code sections 453A.6, 453A.40, and 453A.43.

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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—7.41(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).

86.14(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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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—7.41(17A) to 7.54(17A) governing taxpayer protests.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 421.60 and 422.28.

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TITLE XIV
HOTEL AND MOTEL TAX

CHAPTER 102
Reserved

CHAPTER 103
HOTEL AND MOTEL—ADMINISTRATION
[Prior to 12/17/86, Revenue Department[730]]

701—103.1(422A) Definitions.

103.1(1) *Department.* The word "department" means the "Iowa Department of Revenue and Finance"; the word "director" means the "director of revenue and finance"; the word "tax" means the "hotel and motel tax."

The administration of the hotel and motel tax is the responsibility of the department. The department is charged with the administration of the hotel and motel tax, subject to the rules, regulations, and direction of the director.

The department is required to administer the hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax. Therefore, the term "retailer" will be used interchangeably between the two taxes.

103.1(2) *Rooms.* The gross receipts from the renting of any and all sleeping rooms in any hotel, motel, inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals, except the gross receipts from the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in Iowa, are subject to tax. On and after July 1, 1987, the rental of a mobile home which is tangible personal property rather than real property is subject to tax under this chapter in the same fashion as a sleeping room. The renting of all sleeping rooms would be exempt from the tax if rented by the same person for a period of more than 31 consecutive days.

This rule is intended to implement Iowa Code section 422A.1.

701—103.2(422A) Statute of limitations, supplemental assessments and refund adjustments. Within five years after a return is filed, the department shall examine it, determine the tax due, and give notice of assessment to the taxpayer. If no return has been filed, the department may determine the tax due and give notice thereof. If such determination is based upon an examination of books, papers, records, or memoranda, such an examination will not include any transactions completed five years or more prior to such examination.

Whenever books and records are examined by an employee designated by the director of revenue and finance, whether to verify a return or claim for refund or in making an audit, an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the five-year period of limitation.

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—7.41(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.

This rule is intended to implement Iowa Code sections 422.54, 422.70 and 422A.1.

701—103.3(422A) Credentials and receipts. Employees of the department have official credentials, and the retailer should require proof of the identity of persons claiming to represent the department. No charges shall be made or gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the retailer should require the employee to issue an official receipt. Such receipt shall show the retailer's name, address and permit number; the purpose for the payment; and the amount of the payment. The retailer should retain all receipts, and only official receipts for payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 422.68(1), 422.70 and 422A.1.

701—103.4(422A) Retailers required to keep records. Every retailer shall keep and preserve the following records:

1. A daily record of the amount of all cash and time payments and credit sales from the renting of rooms subject to tax under Iowa Code chapter 422A.
2. A record of all deductions and exemptions taken in filing a tax return.

The records required in this rule must be preserved for a period of five years and open for examination by the department during this period of time.

Retailers performing all or part of their record keeping and retention of books, records, and other sources of information under electronic data interchange process or technology, see 701—subrule 11.4(4).

If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal. This provision applies equally to parties to the appeal and other retailers who could claim a refund as a result of the resolution of the appeal.

Failure to keep and preserve adequate records shall be grounds for revocation of the sales tax permit.

This rule is intended to implement Iowa Code sections 422.50 and 422A.1.

701—103.5(422A) Audit of records. The department shall have the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purposes of verifying the correctness of a return filed or estimating the tax liability of any retailer. The right to examine records includes the right to examine copies of the retailer's state and federal income tax returns. When a retailer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the retailer and any other witness whom the department deems necessary or expedient to examine and compel the retailer and witness to produce books, papers, records, memoranda or documents relating in any manner to the hotel and motel tax.

The department shall have the obligation to inform the retailer when an examination of the retailer's books, papers, records, memoranda or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

This rule is intended to implement Iowa Code sections 422.50, 422.70 and 422A.1.

701—103.6(422A) Billings.

103.6(1) *Notice of adjustments.*

a. An employee of the department, designated by the director to examine returns or make audits, who discovers discrepancies in returns or learns that gross receipts subject to the hotel and motel tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of the discovery by ordinary mail. The notice shall not be termed an assessment. It merely informs the person what amount would be due if the information discovered is correct.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the person wishes to contest the matter, the person should then file a claim for refund. However, payment will not be required until a certified assessment has been made (although interest will continue to accrue on any amount of tax which is determined to be due if payment is not made). If no payment is made, the person may discuss with the employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which the person considers relevant to the situation. This person may also ask for a conference with the department. Documents and records supporting the person's position may be requested.

c. Power of employee to compromise tax claim. Only the director has the power to compromise any tax claims. The power of the employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

103.6(2) *Notice of assessment.* If, after following the procedure outlined in paragraph 103.6(1)*"b,"* no agreement is reached and the person does not pay the amount determined to be correct within 20 days, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.41(17A) and Iowa Code subsection 422.54(2), proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by such appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice. See rule 701—7.41(17A).

This rule is intended to implement Iowa Code sections 422.54, 422.57, 422.70 and 422A.1.

701—103.7(422A) Collections. If determined expedient or advisable, the director may enforce the collection of the tax liability which has been determined to be due. In such action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of hotel and motel tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

This rule is intended to implement Iowa Code sections 422.54, 422.57, 422.70 and 422A.1.

701—103.8(422A) No property exempt from distress and sale. The provisions of Iowa Code section 422.26 apply with respect to a hotel-motel tax liability determined to be due by the department. The department shall proceed to collect the tax liability after it has become delinquent; and no property of the taxpayer is exempt from the process whereby the tax is collected.

This rule is intended to implement Iowa Code sections 422.26, 422.56 and 422A.1.

701—103.9(422A) Information confidential. When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to such person the amount of unpaid taxes due by a taxpayer. Such person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. The director may also authorize the examination of returns filed by a retailer by (1) other officers of the state of Iowa, (2) tax officers of another state if a reciprocal arrangement exists, or (3) tax officers of the federal government if a reciprocal arrangement exists. The director is also empowered to publish annual statistical reports relating to the operation of the hotel and motel tax. See rule 701—6.3(17A).

All other information obtained by employees of the department in the performance of their official duties is confidential as provided by law and cannot be disclosed.

This rule is intended to implement Iowa Code sections 422.72 and 422A.1.

701—103.10(422A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the hotel and motel tax, require any person subject to such tax to file with the department a bond in such amount as the director may fix, or in lieu of such bond, securities approved by the director in such amount as the director may prescribe.

The determination of when and in what amount a bond is required will be determined pursuant to rule 701—11.10(422). The bond required under this rule and rule 701—11.10(422) shall be a single requirement with the amount to be determined with reference to both the potential retail sales tax and the hotel and motel tax liabilities. Whether or not the person required to post the bond files a monthly deposit for sales tax purposes, the basis for determining the hotel and motel tax portion of the bond shall be an amount sufficient to cover nine months or three quarters of tax liability.

This rule is intended to implement Iowa Code sections 422.52 and 422A.1.

701—103.11(422A) Sales tax. The hotel and motel tax is levied in addition to the state sales tax imposed in Iowa Code chapter 422. Additionally, the director of revenue is required to administer the hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax. See 701—Chapters 12 to 14 for details. The computation of the hotel and motel tax shall be based on the price of the room excluding the sales tax.

This rule is intended to implement Iowa Code section 422A.1.

701—103.12(422A) Judicial review. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa Administrative Procedure Act in a manner similar to that provided for review of sales tax matter. See 701—Chapter 7 for details.

This rule is intended to implement Iowa Code sections 422.55 and 422A.1.

701—103.13(422A) Registration. All persons who are required to collect and remit the local option hotel and motel tax are required to hold an Iowa retail sales tax permit. No hotel-motel tax permit is required although persons may be required to register with the department in the future as a hotel and motel tax collector. Persons shall register as a retailer and hold the retail sales tax permit prior to the time they begin collecting the hotel and motel tax.

This rule is intended to implement Iowa Code sections 422.53 and 422A.1.

701—103.14(422A) Notification. Before a city or county's local option hotel and motel tax can become effective, be revised, or be repealed, 60 days' notice of such action must be given to the director in writing by mail.

This rule is intended to implement Iowa Code section 422A.1.

701—103.15(422A) Certification of funds. Within 45 days after the date that the quarterly returns and payments are due, the director of revenue and finance will certify to the treasurer of state the amount of hotel and motel tax to be transferred from the general fund to the local transient guest tax fund which is to be distributed to each city and county which has adopted the tax. Payments received after the date of certification will remain in the general fund until the next quarterly certification.

This rule is intended to implement Iowa Code sections 422A.1, 422A.2(1) and 422A.2(2).

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CHAPTER 104
HOTEL AND MOTEL— FILING RETURNS, PAYMENT OF TAX, PENALTY, AND INTEREST

[Prior to 12/17/86, Revenue Department[730]]

701—104.1(422A) Returns, time for filing. On the quarterly sales tax return, every retailer shall report the gross sales subject to the hotel and motel tax for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. The information required for the computation of the hotel and motel tax liability shall be separate from that required for the computation of the retail sales tax liability. Such information and computation must be stated and computed separately, even though the total tax liability may be paid with a single remittance.

The quarterly reports are due on the last day of the month following the end of the calendar quarter during which the tax is collected. If a person is required to collect the hotel and motel tax and file a monthly deposit for retail sales tax purposes, such monthly deposit should not include the hotel and motel tax collected during the period covered by the deposit.

When the due date falls on a Saturday, Sunday or legal holiday, the return is due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mail, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Sales and Use Tax Processing, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10412, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 421.14, 422.51, 422.52 and 422A.1.

701—104.2(422A) Remittances. The correct amount of tax collected and due shall accompany the forms prescribed by the department. The name, address and sales tax permit number of the sender and amount of tax for the quarterly remittance shall be stated. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the retailer; and, when feasible, every retailer shall use them when completing and mailing the return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

This rule is intended to implement Iowa Code sections 422.51, 422.52 and 422A.1.

701—104.3(422A) Permits. No permit other than an Iowa sales tax permit will be required under this chapter. However, the director may require all persons responsible for collecting and remitting a hotel-motel tax to register with the department.

"Single permit—principal place of business." Any person not in the business of renting rooms to transient guests, but who regularly rents rooms or residences at varying locations to transient guests, may operate under one sales tax permit. The sales tax permit will be issued to the taxpayer's principal place of business. (See 701—Chapter 13 relating to sales tax permits.)

This rule is intended to implement Iowa Code sections 422.53 and 422A.1.

701—104.4(422A) Sale of business. A retailer subject to the provisions of the Iowa Code relating to the hotel and motel tax who sells the business shall file a return within the month following the sale and pay all tax due. Any unpaid tax is due prior to the transfer of title of any personal property to the purchaser and, if unpaid, becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain records for a period of five years from the date of discontinuing business unless a release from the provision is given in writing by the department.

This rule is intended to implement Iowa Code sections 422.51(2), 422.52 and 422A.1.

701—104.5(422A) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code sections 422.51(2) and 422A.1.

701—104.6(422A) Claim for refund of tax. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer to collect the tax as an agent for purposes of receiving a refund of tax. Anyone claiming a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department within five years from the date the tax became due or one year from the date of payment, whichever is later, stating in detail the reasons and facts and, if necessary, attaching supporting documents on which the claim for refund is based. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule 701—7.41(17A).

This rule is intended to implement Iowa Code sections 422.73 and 422A.1.

701—104.7(422A) Application of payments. Since a combined hotel and motel tax and quarterly sales tax return is utilized by the department, all payments received will be first applied to satisfy hotel and motel tax liabilities.

All revenues received under Iowa Code chapter 422A are to be credited to the "local transient guest tax fund." Revenues include all interest and penalties applicable to any hotel and motel tax report or remittance, whether resulting from delinquencies or audits. All revenues received or moneys refunded 180 days after the date on which a city or county terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund. The 180-day limitation applies to actual receipts or disbursements and not to accrued but unpaid tax liabilities or potential refunds.

This rule is intended to implement Iowa Code section 422A.1.

701—104.8(422A) Interest and penalty. Renumbered as 701—10.110(422A), IAB 1/23/91.

104.8(1) Rescinded IAB 1/23/91.

104.8(2) Renumbered as 701—subrule 10.110(1), IAB 1/23/91.

104.8(3) Renumbered as 701—subrule 10.110(2), IAB 1/23/91.

104.8(4) Renumbered as 701—subrule 10.110(3), IAB 1/23/91.

701—104.9(422A) Request for waiver of penalty. Renumbered as 701—10.111(422A), IAB 1/23/91.

701—104.10(422A) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code sections 422.51 and 422A.1.

701—104.11(421,422A) Personal liability of corporate officers and partners for unpaid tax. If a retailer fails to pay hotel or motel tax due and unpaid on or after July 1, 1990, any officer of a corporation or association or any partner of a partnership who has control of, supervision of, or the authority for remitting the hotel or motel tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax. Rule 701—12.15(422,423) describes this liability in more detail and also characterizes the term "accounts receivable." The statements of the rule are made with reference to sales tax, but are also applicable to personal liability for hotel and motel tax.

This rule is intended to implement Iowa Code section 421.26 and chapter 422A.

701—104.12(421,422A) Good faith exception for successor liability. For taxes due and unpaid on and after July 1, 1990, an immediate successor's liability for unpaid hotel and motel tax is extinguished if the immediate successor can show that its purchase of the business owing the hotel and motel tax was done "in good faith." See rule 701—12.14(422,423) for a detailed analysis of immediate successor liability and the "good faith" exception to that liability.

This rule is intended to implement Iowa Code section 421.28 and chapter 422A.

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CHAPTER 105
HOTEL AND MOTEL—IMPOSITION OF TAX
[Prior to 12/17/86, Revenue Department[730]]

701—105.1(422A) Local option. A city or county may impose by ordinance of the city council or by resolution of the board of supervisors a hotel and motel tax subject to the approval of its citizens. The tax when imposed by a city shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within the county. A city or county can impose the tax only after an election at which a majority of those voting on the question favors imposition.

This rule is intended to implement Iowa Code section 422A.1.

701—105.2(422A) Tax rate. The hotel and motel tax rate cannot exceed 7 percent and must be imposed in increments of one or more full percentage points.

This rule is intended to implement Iowa Code section 422A.1.

701—105.3(422A) Tax base. The hotel and motel tax is imposed upon the gross receipts from the renting of any and all sleeping rooms, apartments or sleeping quarters in a facility covered by Iowa Code chapter 422A. Facilities which are covered are defined as any hotel, motel, inn, public lodging house, rooming house, tourist court or any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. Gross receipts from renting include any direct or indirect charge for the rooms.

105.3(1) The hotel-motel tax shall not apply: (a) when rooms are furnished to a person if that person rents any rooms or facility for more than 31 consecutive days, (b) to the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state, (c) to contracts made directly with the federal government, or (d) to the renting of a room to the guest of a religious institution upon real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient guests generally.

105.3(2) The tax base shall include the entire cost directly or indirectly related to the renting of a room. If a person is charged for items other than "rent" in connection with the renting of a room (e.g., food, telephone, laundry or recreation facility use), such charges must be stated separately or the entire charge will be considered "rent."

This rule is intended to implement Iowa Code section 422A.1.

701—105.4(422A) Imposition dates. A local hotel and motel tax shall be imposed on the first day of a quarter following the notification to the director of revenue and finance. The first day of the quarter shall be January 1, April 1, July 1, and October 1. Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one year. See rule 701—103.14(422A) regarding notification.

This rule is intended to implement Iowa Code section 422A.1.

701—105.5(422A) Adding or absorbing tax. It is unlawful for any retailer responsible for collecting and remitting the hotel and motel tax to advertise or hold out, or state to the public or to any person, that the tax imposed will be assumed or absorbed by the retailer, or that the tax will not be considered as an element in the price to the public or the person renting a facility subject to the hotel-motel tax. When a retailer advertises in a manner so that it may be readily seen and read by the public that the price "includes tax," the retailer may charge a lump sum for renting the facility without making a separate charge for the hotel and motel tax. It is the responsibility of the retailer to provide proof that the retailer has complied with the method of advertising or displaying the price.

This rule is intended to implement Iowa Code sections 422.49 and 422A.1.

701—105.6(422A) Termination dates. A local hotel and motel tax may be terminated only on March 31, June 30, September 30, or December 31. See rule 701—103.13(422A) regarding notification.

This rule is intended to implement Iowa Code section 422A.1.

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CHAPTER 106
Reserved

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