State of Iowa

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

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

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

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

NOTE: Please review the "Preface" for both the Iowa Administrative Code and Biweekly Supplement and follow carefully the updating instructions.

The boldface entries in the left-hand column of the updating instructions correspond to the tab sections in the IAC Binders.

Obsolete pages of IAC are listed in the column headed "Remove Old Pages." New and replacement pages in this Supplement are listed in the column headed "Insert New Pages." It is important to follow instructions in both columns.

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UPDATING INSTRUCTIONS
November 3, 1999, Biweekly Supplement

[Previous Supplement dated 10/20/99]

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

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

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SUBSCRIPTION INFORMATION

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The Iowa Administrative Code and Supplements are sold in complete sets and by subscription basis only. Annual subscriptions for the Supplement (replacement pages) expire on June 30 of each year.

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INTRODUCTION

The philosophy and mechanics of the Iowa rule-making process are set out in Iowa Code sections 17A.1 through 17A.8, with additional provisions found in Iowa Code sections 2B.1, 2B.5, 2B.13, 2B.21, 3.6, 7.17, 17A.31 through 17A.33, and 25B.6.

The information which follows is intended to serve as a guide for rule making.

Inquiries may be directed to:

Iowa Administrative Code Division
Lucas State Office Building, First Floor
Des Moines, Iowa 50319

Telephone: (515)281-3355; 281-8157

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ADMINISTRATIVE RULES REVIEW COMMITTEE

Iowa Code section 17A.8

The Administrative Rules Review Committee (ARRC) is bipartisan and is composed of five members of the House of Representatives and five members of the Senate.

Iowa Code section 17A.8(5) requires that a regular Committee meeting be held on the second Tuesday of each month. However, a special meeting may be called by the Chair or Co-chair at any place in the state and at any time.

The Committee meets for the purpose of selectively reviewing rules, whether the rule is proposed or is in effect. Meetings are open to the public and any interested person may appear and present testimony. The Committee may require a representative of an agency whose rule or proposed rule is under consideration to attend a Committee meeting.

The Committee may refer a rule to the Speaker of the House and President of the Senate for review during the next regular session of the General Assembly. The Speaker and President must refer the rule to the appropriate standing committee of the General Assembly.

If the Committee finds objection to a rule, it may, in writing, notify the agency of the objection. In any subsequent court proceeding, the burden is on the agency to prove the rule is reasonable. The Committee may also recommend that the Legislature adopt a law to supersede the rule.

Upon a two-thirds vote of its members, the Committee may delay the effective date of a rule 70 days beyond its normal effective date if further time is needed to study and examine the rule.

Upon a two-thirds vote, the Committee may delay the effective date of a rule until the adjournment of the next regular session of the General Assembly. [17A.8(9)]

In the event the Committee has reason to believe a rule making will have an impact on small business, the Committee may request the agency to issue a Regulatory Analysis in accordance with Iowa Code section 17A.4A.

The General Assembly by Joint Resolution may nullify an administrative rule. [Ia. Const., Art III §40] The Resolution shall be published in the Iowa Administrative Bulletin.

The Committee may employ legal and technical staff to assist in its work. Those specific duties include preparation of memoranda on potentially controversial rules and setting time, place and agenda for ARRC meetings. [17A.8(10)]

During the Legislative Session, the Committee finds it increasingly difficult to devote the necessary time for thorough study of massive filings. The Committee has requested agencies to plan rule making so that the majority of administrative rules may be considered at times other than the months of February through May.

Inquiries may be directed to Joe Royce, Statehouse, Room 116A, Des Moines, Iowa 50319. Telephone (515)281-3084; fax (515)281-5995.

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EDITOR'S NOTE: Terms ending April 30, 2003.

CHAPTER 17A

IOWA ADMINISTRATIVE PROCEDURE ACT

1998 amendments to chapter apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 4 – 26, 45, 46

17A.1 Citation and statement of purpose.

1. This chapter may be cited as the *"Iowa Administrative Procedure Act"*.

2. This chapter is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public. Nothing in this chapter is meant to discourage agencies from adopting procedures providing greater protections to the public or conferring additional rights upon the public; and save for express provisions of this chapter to

the contrary, nothing in this chapter is meant to abrogate in whole or in part any statute prescribing procedural duties for an agency which are greater than or in addition to those provided here. This chapter is meant to apply to all rulemaking and contested case proceedings and all suits for the judicial review of agency action that are not specifically excluded from this chapter or some portion thereof by its express terms or by the express terms of another chapter.

The purposes of the Iowa administrative procedure Act are: To provide legislative oversight of powers and duties delegated to administrative agencies; to increase public accountability of administrative agencies; to simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions; to increase public access to governmental information; to increase public participation in the formulation of administrative rules; to increase the fairness of agencies in their conduct of contested case proceedings; and to simplify the process of judicial review of agency action as well as increase its ease and availability. In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical and effective government administration. The chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

[C75, 77, 79, 81, § 17A.1]

17A.2 Definitions.

As used in this chapter:

1. *"Agency"* means each board, commission, department, officer or other administrative office or unit of the state. *"Agency"* does not mean the general assembly, the judicial branch or any of its components, the office of consumer advocate, the governor, or a political subdivision of the state or its offices and units. Unless provided otherwise by statute, no less than two-thirds of the members eligible to vote of a multimember agency constitute a quorum authorized to act in the name of the agency.

2. *"Agency action"* includes the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

3. *"Agency member"* means an individual who is the statutory or constitutional head of an agency, or an individual who is one of several individuals who constitute the statutory or constitutional head of an agency.

4. *"ARC number"* means the identification number assigned by the governor's administrative rules coordinator to each rulemaking document.

5. *"Contested case"* means a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties

or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.

6. *"License"* includes the whole or a part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by statute.

7. *"Licensing"* includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

8. *"Party"* means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

9. *"Person"* means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

10. *"Provision of law"* means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or agency rule.

11. *"Rule"* means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. Notwithstanding any other statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include:

a. A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

b. A declaratory order issued pursuant to section 17A.9, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts.

c. An intergovernmental, interagency, or intra-agency memorandum, directive, manual, or other communication which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

d. A determination, decision, or order in a contested case.

e. An opinion of the attorney general.

f. Those portions of staff manuals, instructions, or other statements issued by an agency 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.

g. A specification of the prices to be charged for goods or services sold by an agency as distinguished from

a license fee, application fee, or other fees.

h. A statement concerning only the physical servicing, maintenance, or care of publicly owned or operated facilities or property.

i. A statement relating to the use of a particular publicly owned or operated facility or property, the substance of which is indicated to the public by means of signs or signals.

j. A decision by an agency not to exercise a discretionary power.

k. A statement concerning only inmates of a penal institution, students enrolled in an educational institution, or patients admitted to a hospital, when issued by such an agency.

12. *"Rulemaking"* means the process for adopting, amending, or repealing a rule.

[C54, 58, 62, 66, 71, 73, § 17A.1; C75, 77, 79, 81, § 17A.2]

83 Acts, ch 127, § 2; 83 Acts, ch 186, § 10005, 10201; 86 Acts, ch 1245, § 2036; 90 Acts, ch 1266, § 31; 98 Acts, ch 1047, § 11; 98 Acts, ch 1202, § 4 – 6, 46

Subsection 10 and 1998 amendments to subsection 11 apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 4 – 6, 46

NEW subsection 10 and former subsections 10 and 11 renumbered as 11 and 12

Subsection 11, unnumbered paragraph 1 and paragraph b amended

17A.3 Public information — adoption of rules — availability of rules and orders.

1. In addition to other requirements imposed by Constitution or statute, each agency shall:

a. Adopt as a rule a description of the organization of the agency which states the general course and method of its operations, the administrative subdivisions of the agency and the programs implemented by each of them, a statement of the mission of the agency, and the methods by which and location where the public may obtain information or make submissions or requests.

b. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available to the public, including a description of all forms and instructions that are to be used by the public in dealing with the agency.

c. As soon as feasible and to the extent practicable, adopt rules, in addition to those otherwise required by this chapter, embodying appropriate standards, principles, and procedural safeguards that the agency will apply to the law it administers.

d. Make available for public inspection all rules, and make available for public inspection and index by subject, all other written statements of law or policy, or interpretations formulated, adopted, or used by the agency in the discharge of its functions. Except as otherwise required by Constitution or statute, or in the use of discovery under the Iowa rules of civil procedure or in criminal cases, an agency shall not be required to make available for public inspection those portions of its staff manuals, instructions, or other statements excluded from the definition of *"rule"* by section 17A.2, subsection 11, paragraph *"f"*.

e. Make available for public inspection and index by name and subject all final orders, decisions, and opinions: Provided that to the extent required to prevent a clearly

unwarranted invasion of personal privacy or trade secrets, an agency shall delete identifying details when it makes available for public inspection any final order, decision, or opinion; however, in each case the justification for the deletion shall be explained fully in writing.

2. No agency rule or other written statement of law or policy, or interpretation, order, decision, or opinion is valid or effective against any person or party, nor shall it be invoked by the agency for any purpose, until it has been made available for public inspection and indexed as required by subsection 1, paragraphs *"d"* and *"e"*. This provision is not applicable in favor of any person or party who has actual timely knowledge thereof and the burden of proving such knowledge shall be on the agency.

[C75, 77, 79, 81, § 17A.3]

86 Acts, ch 1245, § 2037; 98 Acts, ch 1202, § 7, 46

1998 amendment to subsection 1 applies to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 7, 46

Subsection 1, NEW paragraph c, and former paragraphs c and d relettered as d and e

17A.4 Procedure for adoption of rules.

1. Prior to the adoption, amendment, or repeal of any rule an agency shall:

a. Give notice of its intended action by submitting three copies of the notice to the administrative rules coordinator, who shall assign an ARC number to each rulemaking document and forward two copies to the administrative code editor for publication in the Iowa administrative bulletin created pursuant to section 17A.6. Any notice of intended action shall be published at least thirty-five days in advance of the action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views.

b. Afford all interested persons not less than twenty days to submit data, views, or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation. The opportunity for oral presentation must be held at least twenty days after publication of the notice of its time and place in the Iowa administrative bulletin. The agency shall consider fully all written and oral submissions respecting the proposed rule. Within one hundred eighty days following either the notice published according to the provisions of paragraph *"a"* or within one hundred eighty days after the last date of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rulemaking proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative bulletin.

An agency shall include in a preamble to each rule it adopts a brief explanation of the principal reasons for its action and, if applicable, a brief explanation of the principal reasons

for its failure to provide in that rule for the waiver of the rule in specified situations if no such waiver provision is included in the rule. This explanatory requirement does not apply when the agency adopts a rule that only defines the meaning of a provision of law if the agency does not possess delegated authority to bind the courts to any extent with its definition. In addition, if requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule adopted, incorporating therein the reasons for overruling considerations urged against the rule. This concise statement shall be issued either at the time of the adoption of the rule or within thirty-five days after the agency receives the request.

c. Mail the number of copies of the proposed rule as requested to the state office of a trade or occupational association which has registered its name and address with the agency. The trade or occupational association shall reimburse the agency for the actual cost incurred in providing the copies of the proposed rule under this paragraph. Failure to provide copies as provided in this paragraph shall not be grounds for the invalidation of a rule, unless that failure was deliberate on the part of that agency or the result of gross negligence.

2. When an agency for good cause finds that notice and public participation would be unnecessary, impracticable, or contrary to the public interest, the provisions of subsection 1 shall be inapplicable. The agency shall incorporate in each rule issued in reliance upon this provision either the finding and a brief statement of the reasons for the finding, or a statement that the rule is within a very narrowly tailored category of rules whose issuance has previously been exempted from subsection 1 by a special rule relying on this provision and including such a finding and statement of reasons for the entire category. If the administrative rules review committee by a two-thirds vote, the governor, or the attorney general files with the administrative code editor an objection to the adoption of any rule pursuant to this subsection, that rule shall cease to be effective one hundred eighty days after the date the objection was filed. A copy of the objection, properly dated, shall be forwarded to the agency at the time of filing the objection. In any action contesting a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to show that the procedures of subsection 1 were impracticable, unnecessary, or contrary to the public interest and that, if a category of rules was involved, the category was very narrowly tailored.

3. No rule adopted after July 1, 1975, is valid unless adopted in substantial compliance with the above requirements of this section. However, a rule shall be conclusively presumed to have been made in compliance with all of the above procedural requirements of this section if it has not been invalidated on the grounds of noncompliance in a proceeding commenced within two years after its effective date.

4. *a.* If the administrative rules review committee created by section

17A.8, the governor, or the attorney general finds objection to all or some portion of a proposed or adopted rule because that rule is deemed to be unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency, the committee, governor, or attorney general may, in writing, notify the agency of the objection. In the case of a rule issued under subsection 2, or a rule made effective under section 17A.5, subsection 2, paragraph *"b"*, the committee, governor, or attorney general may notify the agency of such an objection. The committee, governor, or attorney general shall also file a certified copy of such an objection in the office of the administrative code editor and a notice to the effect that an objection has been filed shall be published in the next issue of the Iowa administrative bulletin and in the Iowa administrative code when that rule is printed in it. The burden of proof shall then be on the agency in any proceeding for judicial review or for enforcement of the rule heard subsequent to the filing to establish that the rule or portion of the rule timely objected to according to the above procedure is not unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to it.

b. If the agency fails to meet the burden of proof prescribed for a rule objected to according to the provisions of paragraph *"a"* of this subsection, the court shall declare the rule or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. Such court costs shall include a reasonable attorney fee and shall be payable by the director of revenue and finance from the support appropriations of the agency which issued the rule in question.

5. Upon the vote of two-thirds of its members the administrative rules review committee may delay the effective date of a rule seventy days beyond that permitted in section 17A.5, unless the rule was promulgated under section 17A.5, subsection 2, paragraph *"b"*. This provision shall be utilized by the committee only if further time is necessary to study and examine the rule. Notice of an effective date that was delayed under this provision shall be published in the Iowa administrative code and bulletin.

6. The governor may rescind an adopted rule by executive order within seventy days of the rule becoming effective. The governor shall provide a copy of the executive order to the administrative code editor who shall include it in the next publication of the Iowa administrative bulletin.

[C66, 71, § 17A.6, 17A.7; C73, § 17A.6, 17A.7, 17A.17; C75, 77, 79, 81, § 17A.4]

83 Acts, ch 142, § 9; 86 Acts, ch 1245, § 2038; 90 Acts, ch 1266, § 32; 91 Acts, ch 258, § 17, 18; 98 Acts, ch 1202, § 8, 9, 46

Rules mandating expenditures by political subdivisions; limitations; fiscal impact statements; § 25B.6

Subsection 5; see also § 17A.8(9)

1998 amendments to subsection 1 apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 8, 9, 46

Subsection 1, paragraph b amended

Subsection 1, paragraph c stricken and former paragraph d relettered as c

17A.4A Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule

that complies with subsection 2, paragraph *"a"*, if, within thirty-two days after the published notice of proposed rule adoption, a written request for the analysis is submitted to the agency by the administrative rules review committee or the administrative rules coordinator. An agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph *"b"*, if the rule would have a substantial impact on small business and if, within thirty-two days after the published notice of proposed rule adoption, a written request for analysis is submitted to the agency by the administrative rules review committee, the administrative rules coordinator, at least twenty-five persons signing that request who each qualify as a small business or by an organization representing at least twenty-five such persons. If a rule has been adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the written request for an analysis that complies with subsection 2, paragraph *"a"* or *"b"*, may be made within seventy days of publication of the rule.

2. *a.* Except to the extent that a written request for a regulatory analysis expressly waives one or more of the following, the regulatory analysis must contain all of the following:

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

(2) A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.

(3) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

(4) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

(5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

(6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

b. In the case of a rule that would have a substantial impact on small business, the regulatory analysis must contain a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

(1) Establish less stringent compliance or reporting requirements in the rule for small business.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

(3) Consolidate or simplify the rule's compliance or reporting requirements for small business.

(4) Establish performance standards to replace design or operational

standards in the rule for small business.

(5) Exempt small business from any or all requirements of the rule.

c. The agency shall reduce the impact of a proposed rule that would have a substantial impact on small business by using a method discussed in paragraph *"b"* if the agency finds that the method is legal and feasible in meeting the statutory objectives which are the basis of the proposed rule.

3. Each regulatory analysis must include quantifications of the data to the extent practicable and must take account of both short-term and long-term consequences.

4. Upon receipt by an agency of a timely request for a regulatory analysis, the agency shall extend the period specified in this chapter for each of the following until at least twenty days after publication in the administrative bulletin of a concise summary of the regulatory analysis:

a. The end of the period during which persons may make written submissions on the proposed rule.

b. The end of the period during which an oral proceeding may be requested.

c. The date of any required oral proceeding on the proposed rule.

In the case of a rule adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the summary must be published within seventy days of the request.

5. The published summary of the regulatory analysis must also indicate where persons may obtain copies of the full text of the regulatory analysis and where, when, and how persons may present their views on the proposed rule and demand an oral proceeding thereon if one is not already provided. Agencies shall make available to the public, to the maximum extent feasible, the published summary and the full text of the regulatory analysis described in this subsection in an electronic format, including, but not limited to, access to the documents through the internet.

6. If the agency has made a good faith effort to comply with the requirements of subsections 1 through 3, the rule may not be invalidated on the ground that the contents of the regulatory analysis are insufficient or inaccurate.

7. For the purpose of this section, *"small business"* means any entity including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which all of the following apply:

a. It is not an affiliate or subsidiary of an entity dominant in its field of operation.

b. It has either twenty or fewer full-time equivalent positions or less than one million dollars in annual gross revenues in the preceding fiscal year.

For purposes of this definition, *"dominant in its field of operation"* means having more than twenty full-time equivalent positions and more than one million dollars in annual gross revenues, and *"affiliate or subsidiary of an entity dominant in its field of operation"* means an entity which is at least twenty percent owned by an entity dominant in its field of operation, or by partners,

officers, directors, majority stockholders, or their equivalent, of an entity dominant in that field of operation.

98 Acts, ch 1202, § 10, 46

Section applies to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 10, 46

NEW section

17A.5 Filing and taking effect of rules.

1. Each agency shall file in the office of the administrative rules coordinator three certified copies of each rule adopted by it. The administrative rules coordinator shall assign an ARC number to each rulemaking document and forward two copies to the administrative code editor. The administrative rules coordinator shall keep a permanent register of the rules open to public inspection.

2. A rule adopted after July 1, 1975, is effective thirty-five days after filing, as required in this section, and indexing and publication in the Iowa administrative bulletin except that:

a. If a later date is required by statute or specified in the rule, the later date is the effective date.

b. Subject to applicable constitutional or statutory provisions, a rule becomes effective immediately upon filing with the administrative rules coordinator, or at a subsequent stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing and publication, if the agency finds:

(1) That a statute so provides;

(2) That the rule confers a benefit or removes a restriction on the public or some segment thereof; or

(3) That this effective date is necessary because of imminent peril to the public health, safety or welfare. In any subsequent action contesting the effective date of a rule promulgated under this paragraph, the burden of proof shall be on the agency to justify its finding. The agency's finding and a brief statement of the reasons therefor shall be filed with and made a part of the rule. Prior to indexing and publication, the agency shall make reasonable efforts to make known to the persons who may be affected by it a rule made effective under the terms of this paragraph.

[C54, 58, 62, § 17A.3, 17A.4; C66, 71, 73, § 17A.8; C75, 77, 79, 81, § 17A.5]

89 Acts, ch 83, § 10; 90 Acts, ch 1266, § 33; 91 Acts, ch 258, § 19

17A.6 Publications.

1. The administrative code editor shall cause the "Iowa Administrative Bulletin" to be published in a printed form at least every other week, unless the administrative code editor and the administrative rules review committee determine that an alternative publication schedule is preferable. An electronic version of the Iowa administrative bulletin may also be published as provided in section 2.42. The Iowa administrative bulletin shall contain all of the following:

a. Notices of intended action and adopted rules prepared in such a manner so that the text of a proposed or adopted rule shows the text of any existing rule being changed and the change being made.

b. All proclamations and executive orders of the governor which are general and permanent in nature.

c. Resolutions nullifying administrative rules passed by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

d. Other materials deemed fitting and proper by the administrative rules review committee.

2. Subject to the direction of the administrative rules coordinator, the administrative code editor shall cause the "Iowa Administrative Code" to be compiled, indexed, and published in a printed loose-leaf form containing all rules adopted and filed by each agency. The administrative code editor further shall cause loose-leaf supplements to the Iowa administrative code to be published as determined by the administrative rules coordinator and the administrative rules review committee, containing all rules filed for publication in the prior time period. The supplements shall be in such form that they may be inserted in the appropriate places in the permanent compilation. The administrative rules coordinator shall devise a uniform numbering system for rules and may renumber rules before publication to conform with the system. An electronic version of the Iowa administrative code may also be published as provided in section 2.42.

3. The administrative code editor may omit or cause to be omitted from the Iowa administrative code or bulletin any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency at no more than its cost of reproduction, and if the Iowa administrative code or bulletin contains a notice stating the specific subject matter of the omitted rule and stating how a copy of the omitted rule may be obtained.

The administrative code editor shall omit or cause to be omitted from the Iowa administrative code any rule or portion of a rule nullified by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

4. An agency which adopts standards by reference to another publication shall purchase and provide a copy of the publication containing the standards to the administrative rules coordinator who shall deposit the copy in the state law library where it shall be made available for inspection and reference.

5. The Iowa administrative code, its supplements, and the Iowa administrative bulletin shall be made available upon request to all persons who subscribe to any of them through the state printing division. Copies of this code so made available shall be kept current by the division.

6. All expenses incurred by the administrative code editor under this section shall be defrayed under section 2B.22.

7. The administrative code editor, with the approval of the administrative rules review committee and the administrative rules coordinator, may delete a rule from the Iowa administrative code if the agency that adopted the rule has ceased to exist, no successor agency has jurisdiction over the rule, and no statutory authority exists supporting the rule.

8. The Iowa administrative code shall be cited as (agency identification

number) IAC, (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

9. The Iowa administrative bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

[C54, 58, 62, 66, § 14.3, 17A.9; C71, 73, § 14.6(5); C75, 77, 79, 81, § 17A.6]

88 Acts, ch 1158, § 2; 89 Acts, ch 296, § 4; 90 Acts, ch 1266, § 34; 91 Acts, ch 42, § 2, 3; 91 Acts, ch 258, § 20; 95 Acts, ch 14, § 1; 96 Acts, ch 1099, § 9, 10

See also § 7.17

17A.7 Petition for adoption of rules and request for review of rules.

1. An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within sixty days after submission of a petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with section 17A.4, or issue a rule if it is not required to be issued according to the procedures of section 17A.4, subsection 1.

2. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for an agency to conduct a formal review of a specified rule of that agency to determine whether the rule should be repealed or amended or a new rule adopted instead. The administrative rules coordinator shall determine whether the request is reasonable and does not place an unreasonable burden upon the agency.

If the agency has not conducted such a review of the specified rule within a period of five years prior to the filing of the written request, and upon a determination by the administrative rules coordinator that the request is reasonable and does not place an unreasonable burden upon the agency, the agency shall prepare within a reasonable time a written report with respect to the rule summarizing the agency's findings, its supporting reasons, and any proposed course of action. The report must include, for the specified rule, a concise statement of all of the following:

a. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.

b. Written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule tendered to the agency or granted by the agency.

c. Alternative solutions regarding the subject matter of the criticisms and the reasons they were rejected or the changes made in the rule in response to those criticisms and the reasons for the changes.

A copy of the report shall be sent to the administrative rules review committee and the administrative rules coordinator and shall be made available for public inspection.

[C75, 77, 79, 81, § 17A.7]

98 Acts, ch 1202, § 11, 46

1998 amendments apply to agency proceedings commenced, or conducted on a remand from a court

or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 11, 46
Section amended

17A.8 Administrative rules review committee.

1. There is created the "Administrative Rules Review Committee." The committee shall be bipartisan and shall be composed of the following members:

a. Five senators appointed by the majority leader of the senate.

b. Five representatives appointed by the speaker of the house.

2. A committee member shall be appointed prior to the adjournment of a regular session convened in an odd-numbered year. The term of office shall be for four years beginning May 1 of the year of appointment. However, a member shall serve until a successor is appointed. A vacancy on the committee shall be filled by the original appointing authority for the remainder of the term. A vacancy shall exist whenever a committee member ceases to be a member of the house from which the member was appointed.

3. A committee member shall be paid the per diem specified in section 2.10, subsection 5, for each day in attendance and shall be reimbursed for actual and necessary expenses. There is appropriated from money in the general fund not otherwise appropriated an amount sufficient to pay costs incurred under this section.

4. The committee shall choose a chairperson from its membership and prescribe its rules of procedure. The committee may employ a secretary or may appoint the administrative code editor or a designee to act as secretary.

5. A regular committee meeting shall be held at the seat of government on the second Tuesday of each month. Unless impracticable, in advance of each such meeting the subject matter to be considered shall be published in the Iowa administrative bulletin. A special committee meeting may be called by the chairperson at any place in the state and at any time. Unless impracticable, in advance of each special meeting notice of the time and place of such meeting and the subject matter to be considered shall be published in the Iowa administrative bulletin.

6. The committee shall meet for the purpose of selectively reviewing rules, whether proposed or in effect. A regular or special committee meeting shall be open to the public and an interested person may be heard and present evidence. The committee may require a representative of an agency whose rule or proposed rule is under consideration to attend a committee meeting.

7. The committee may refer a rule to the speaker of the house and the president of the senate at the next regular session of the general assembly. The speaker and the president shall refer such a rule to the appropriate standing committee of the general assembly.

8. If the committee finds objection to a rule, it may utilize the procedure provided in section 17A.4, subsection 4. In addition or in the alternative, the committee may include in the referral, under subsection 7, a recommendation that this rule be overcome by statute. If the committee of the general assembly to which a rule is referred finds objection to

the referred rule, it may recommend to the general assembly that this rule be overcome by statute. This section shall not be construed to prevent a committee of the general assembly from reviewing a rule on its own motion.

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule until the adjournment of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. A standing committee shall review a rule within twenty-one days after the rule is referred to the committee by the speaker of the house of representatives or the president of the senate and shall take formal committee action by sponsoring a joint resolution to disapprove the rule, by proposing legislation relating to the rule, or by refusing to propose a joint resolution or legislation concerning the rule. The standing committee shall inform the administrative rules review committee of the committee action taken concerning the rule. If the general assembly has not disapproved of the rule by a joint resolution, the rule shall become effective. The speaker of the house of representatives and the president of the senate shall notify the administrative code editor of the final disposition of each rule delayed pursuant to this subsection. If a rule is disapproved, it shall not become effective and the agency shall rescind the rule. This section shall not apply to rules made effective under section 17A.5, subsection 2, paragraph *"b"*.

10. Notwithstanding section 13.7, the committee may employ necessary legal and technical staff.

[C54, 58, 62, § 17A.2; C66, 71, 73, § 17A.2 – 17A.4, 17A.10; C75, 77, 79, 81, § 17A.8]

86 Acts, ch 1245, § 2024, 2039; 91 Acts, ch 258, § 21 – 23; 95 Acts, ch 49, § 1; 98 Acts, ch 1202, § 12, 46

1998 amendments to subsection 9 apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 12, 46

Subsection 9 amended

17A.9 Declaratory orders.

1. Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule adopted in accordance with subsection 2.

However, an agency shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

2. Each agency shall adopt rules that provide for the form, contents, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions. The

rules must describe the classes of circumstances in which the agency will not issue a declaratory order and must be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agency issuance of reliable advice.

3. Within fifteen days after receipt of a petition for a declaratory order, an agency shall give notice of the petition to all persons to whom notice is required by any provision of law and may give notice to any other persons.

4. Persons who qualify under any applicable provision of law as an intervenor and who file timely petitions for intervention according to agency rules may intervene in proceedings for declaratory orders. The provisions of sections 17A.10 through 17A.18 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

5. Within thirty days after receipt of a petition for a declaratory order, an agency, in writing, shall do one of the following:

a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances.

b. Set the matter for specified proceedings.

c. Agree to issue a declaratory order by a specified time.

d. Decline to issue a declaratory order, stating the reasons for its action.

6. A copy of all orders issued in response to a petition for a declaratory order must be mailed promptly to the petitioner and any other parties.

7. A declaratory order has the same status and binding effect as any final order issued in a contested case proceeding. A declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

8. If an agency has not issued a declaratory order within sixty days after receipt of a petition therefor, or such later time as agreed by the parties, the petition is deemed to have been denied. Once a petition for a declaratory order is deemed denied or if the agency declines to issue a declaratory order pursuant to subsection 5, paragraph *"d"*, a party to that proceeding may either seek judicial review or await further agency action with respect to its petition for a declaratory order.

[C75, 77, 79, 81, § 17A.9]

98 Acts, ch 1202, § 13, 46

1998 amendments to this section apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 13, 46

Section stricken and rewritten

17A.10 Informal settlements — waiver.

1. Unless precluded by statute, informal settlements of controversies that may culminate in contested case proceedings according to the provisions of this chapter are encouraged. Agencies shall prescribe by rule specific procedures for attempting such informal settlements prior to the commencement of contested case proceedings. This subsection shall not be construed to require either party to such a controversy to utilize the informal procedures or to

settle the controversy pursuant to those informal procedures.

2. The parties to a contested case proceeding may, by written stipulation representing an informed mutual consent, waive any provision of this chapter relating to such proceedings. In addition to consenting to such a waiver in individual cases, an agency may, by rule, express its consent to such a waiver as to an entire class of cases.

[C75, 77, 79, 81, § 17A.10]

17A.10A Contested cases — no factual dispute.

Upon petition by a party in a matter that would be a contested case if there was a dispute over the existence of material facts, all of the provisions of this chapter applicable to contested cases, except those relating to presentation of evidence, shall be applicable even though there is no factual dispute in the particular case.

98 Acts, ch 1202, § 14, 46

Section applies to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 14, 46

NEW section

17A.11 Presiding officer, disqualification, substitution.

1. *a.* If the agency or an officer of the agency under whose authority the contested case is to take place is a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multimember agency, or one or more administrative law judges assigned by the division of administrative hearings in accordance with the provisions of section 10A.801. However, a party may, within a time period specified by rule, request that the presiding officer be an administrative law judge assigned by the division of administrative hearings. Except as otherwise provided by statute, the agency shall grant a request by a party for an administrative law judge unless the agency finds, and states reasons for the finding, that any of the following conditions exist:

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

(2) A qualified administrative law judge is unavailable to hear the case within a reasonable time.

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

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

(5) Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal.

(6) The request was not timely filed.

(7) There is other identified good cause, as specified by rule, for denying the request.

b. If the agency or an officer of the agency under whose authority the contested case is to take place is not a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multimember agency,

an administrative law judge assigned by the division of administrative hearings in accordance with the provisions of section 10A.801, or any other qualified person designated as a presiding officer by the agency. Any other person designated as a presiding officer by the agency may be employed by and officed in the agency for which that person acts as a presiding officer, but such a person shall not perform duties inconsistent with that person's duties and responsibilities as a presiding officer.

c. For purposes of paragraph *"a"*, the division of administrative hearings established in section 10A.801 shall be treated as a wholly separate agency from the department of inspections and appeals.

2. Any person serving or designated to serve alone or with others as a presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is or may be disqualified.

3. Any party may timely request the disqualification of a person as a presiding officer by filing a motion supported by an affidavit asserting an appropriate ground for disqualification, after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification, whichever is later.

4. A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

5. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute shall be appointed by either of the following:

a. The governor, if the disqualified or unavailable person is an elected official.

b. The appointing authority, if the disqualified or unavailable person is an appointed official.

6. Any action taken by a duly-appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

[C75, 77, 79, 81, § 17A.11]

88 Acts, ch 1109, § 4; 98 Acts, ch 1202, § 15, 46

1998 amendments to this section apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 15, 46

Section stricken and rewritten

17A.12 Contested cases — notice — hearing — records.

1. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail return receipt requested. However, an agency may provide by rule for the delivery of such notice by other means. Delivery of the notice referred to in this subsection shall constitute commencement of the contested case proceeding.

2. The notice shall include:

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

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

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

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

or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

3. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. The parties shall be duly notified of the decision, together with the presiding officer's reasons for the decision, which is the final decision of the agency, unless within fifteen days, or such period of time as otherwise specified by statute or rule, after the date of notification or mailing of the decision, further appeal is initiated. If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

4. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

5. Unless precluded by statute, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

6. The record in a contested case shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. Any decision, opinion or report by the officer presiding at the hearing.

7. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision.

8. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

9. Unless otherwise provided by statute, a person's request or demand for a contested case proceeding shall be in writing, delivered to the agency by United States postal service or

personal service and shall be considered as filed with the agency on the date of the United States postal service postmark or the date personal service is made.

[C75, 77, 79, 81, § 17A.12]

87 Acts, ch 71, § 1; 98 Acts, ch 1202, § 16, 46

Interpreters in legal proceedings; see chapters 622A, 622B

1998 amendments to subsection 3 apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 16, 46

Subsection 3 stricken and rewritten

17A.13 Subpoenas — discovery.

1. Agencies have all subpoena powers conferred upon them by their enabling acts or other statutes. In addition, prior to the commencement of a contested case by the notice referred to in section 17A.12, subsection 1, an agency having power to decide contested cases may subpoena books, papers, records and any other real evidence necessary for the agency to determine whether it should institute a contested case proceeding. After the commencement of a contested case, each agency having power to decide contested cases may administer oaths and issue subpoenas in those cases. Discovery procedures applicable to civil actions are available to all parties in contested cases before an agency. Evidence obtained in discovery may be used in the hearing before the agency if that evidence would otherwise be admissible in the agency hearing. Agency subpoenas shall be issued to a party on request. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with the law applicable to the issuance of subpoenas or discovery in civil actions. In proceedings for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in cases of willful failure to comply.

2. An agency that relies on a witness in a contested case, whether or not an agency employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, shall, on request, make such statements or reports available to parties for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by Constitution or statute. Identifiable agency records that are relevant to disputed material facts involved in a contested case, shall, upon request, promptly be made available to a party unless the requested records are expressly exempt from disclosure by Constitution or statute.

[C75, 77, 79, 81, § 17A.13]

83 Acts, ch 186, § 10006, 10201

17A.14 Rules of evidence — official notice.

In contested cases:

1. Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Agencies shall give effect to the rules of privilege recognized by law.

Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

3. Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

5. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

[C75, 77, 79, 81, § 17A.14]

17A.15 Final decisions — proposed decisions — conclusiveness — review by the agency.

1. When the agency presides at the reception of the evidence in a contested case, the decision of the agency is a final decision.

2. When the agency did not preside at the reception of the evidence in a contested case, the presiding officer shall make a proposed decision. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a contested case unless the officer becomes unavailable to the agency. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

3. When the presiding officer makes a proposed decision, that decision then becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency

finds to be in error. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the agency, present oral arguments to the agency members who are to render the final decision.

4. This section shall not preclude an agency from instituting a system whereby the proposed decision of a presiding officer in a contested case may be appealed to, or reviewed on motion of, a body consisting of one or more persons that is between the presiding officer and the agency. If an agency institutes such a system of intermediate review, the proposed decision of the presiding officer becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the intermediate reviewing body within the time provided by rule. An intermediate reviewing body may be vested with all or a part of the power which it would have in initially making the decision. A decision of such an intermediate reviewing body is also a proposed decision and shall become the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. In cases where there is an appeal from a proposed decision rendered by a presiding officer to an intermediate reviewing body, or where such a proposed decision is reviewed on motion of an intermediate reviewing body, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the intermediate reviewing body, present oral arguments to those who are to render the decision.

5. When an appeal from an agency decision in a contested case may be taken to another agency pursuant to statute, or a second agency may according to statute review on its own motion the decision in a contested case by the first agency, the appeal or review shall be deemed a continuous proceeding as though before one agency. A decision of the first agency in such a case is a proposed decision and shall become the final decision without further proceedings unless there is an appeal to, or review on motion of, the second agency within the time provided by statute or rule. In deciding an appeal from or review of a proposed decision of the first agency, the second agency shall have all those powers conferred upon it by statute and shall afford each party an opportunity to file exceptions, present briefs and, with its consent, present oral arguments to agency members who are to render the final decision.

[C75, 77, 79, 81, § 17A.15]

98 Acts, ch 1202, § 17, 46

1998 amendments to subsection 3 apply to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 17, 46

Subsection 3 amended

17A.16 Decisions and orders — rehearing.

1. A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings

of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. Parties shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order in the manner provided by section 17A.12, subsection 1.

2. Except as expressly provided otherwise by another statute referring to this chapter by name, any party may file an application for rehearing, stating the specific grounds for the rehearing and the relief sought, within twenty days after the date of the issuance of any final decision by the agency in a contested case. A copy of the application for rehearing shall be timely mailed by the presiding agency to all parties of record not joining in the application. An application for rehearing shall be deemed to have been denied unless the agency grants the application within twenty days after its filing.

[C75, 77, 79, 81, § 17A.16]

86 Acts, ch 1245, § 518; 88 Acts, ch 1100, § 1; 98 Acts, ch 1202, § 18, 46

1998 amendments to subsection 1 apply to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 18, 46

Subsection 1 amended

17A.17 Ex parte communications and separation of functions.

1. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case, shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any person or party, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

However, without such notice and opportunity for all parties to participate, a presiding officer in a contested case may communicate with members of the agency, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties so long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

2. Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with a presiding officer in that contested

case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

3. If, before serving as the presiding officer in a contested case, a person receives an ex parte communication relating directly to the merits of the proceeding over which that person subsequently presides, the person, promptly after starting to serve, shall disclose to all parties any material factual information so received and not otherwise disclosed to those parties pursuant to section 17A.13, subsection 2, or through discovery.

4. A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all such written communications received, all written responses to the communications, and a memorandum stating the substance of all such oral and other communications received, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice of the communication.

5. If the effect of an ex parte communication received in violation of this section is so prejudicial that it cannot be cured by the procedure in subsection 4, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

6. The agency and any party may report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule shall provide for appropriate sanctions, including default, suspending or revoking a privilege to practice before the agency, and censuring, suspending, or dismissing agency personnel, for any violations of this section.

7. A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this section. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

8. An individual who participates in the making of any proposed or final decision in a contested case shall not have personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties. In addition, such an individual shall not be subject to the authority, direction, or discretion of any person who

has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties. However, this section shall not be construed to preclude a person from serving as a presiding officer solely because that person determined there was probable cause to initiate the proceeding.

[C75, 77, 79, 81, § 17A.17]

98 Acts, ch 1202, § 19, 46

1998 amendments to this section apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 19, 46

Section amended

17A.18 Licenses.

1. When the grant, denial, or renewal of a license is required by Constitution or statute to be preceded by notice and opportunity for an evidentiary hearing, the provisions of this chapter concerning contested cases apply.

2. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking judicial review of the agency order or a later date fixed by order of the agency or the reviewing court.

3. No revocation, suspension, annulment or withdrawal, in whole or in part, of any license is lawful unless, prior to the institution of agency proceedings, the agency gave written, timely notice by personal service as in civil actions or by restricted certified mail to the licensee of facts or conduct and the provision of law which warrants the intended action, and the licensee was given an opportunity to show, in an evidentiary hearing conducted according to the provisions of this chapter for contested cases, compliance with all lawful requirements for the retention of the license.

[C75, 77, 79, 81, § 17A.18]

98 Acts, ch 1202, § 20, 46

1998 amendment to subsection 3 applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 20, 46

Subsection 3 amended

17A.18A Emergency adjudicative proceedings.

1. Notwithstanding any other provision of this chapter and to the extent consistent with the Constitution, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

2. The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

3. The agency shall issue an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

4. The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when issued.

5. After issuing an order pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

6. The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

7. Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

98 Acts, ch 1202, § 21, 46

Section applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 21, 46

NEW section

17A.19 Judicial review.

Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action. However, nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the right to seek relief from such action in the courts.

1. A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter. When agency action is pursuant to rate regulatory powers over public utilities or common carriers and the aggrievement or adverse effect is to the rates or charges of a public utility or common carrier, the agency action shall not be final until all agency remedies have been exhausted and a decision prescribing rates which satisfy the requirements of those provisions of the Code has been rendered. A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy. If a declaratory order has not been rendered within sixty days after the filing of a petition therefor under section 17A.9, or by such later time as agreed by the parties, or if the agency declines to issue such a declaratory order after receipt of a petition therefor, any administrative remedy available under section 17A.9 shall be deemed inadequate or exhausted.

2. Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business. When a proceeding for judicial review has been commenced, a court may, in the interest of justice, transfer the proceeding to another county where the venue is proper. Within ten days after the filing of a petition for judicial review the petitioner shall serve

by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency. A mailing shall be addressed to the parties or their attorney of record at their last known mailing address. Proof of mailing shall be by affidavit. Any party of record in a contested case before an agency wishing to intervene and participate in the review proceeding must file an appearance within forty-five days from the time the petition is filed.

3. If a party files an application under section 17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application under section 17A.16, subsection 2, for rehearing, the petition must be filed within thirty days after the issuance of the agency's final decision in that contested case. If an application for rehearing is granted, the petition for review must be filed within thirty days after the issuance of the agency's final decision on rehearing. In cases involving a petition for judicial review of agency action other than the decision in a contested case, the petition may be filed at any time petitioner is aggrieved or adversely affected by that action.

4. The petition for review shall name the agency as respondent and shall contain a concise statement of:

a. The nature of the agency action which is the subject of the petition.

b. The particular agency action appealed from.

c. The facts on which venue is based.

d. The grounds on which relief is sought.

e. The relief sought.

5. *a.* The filing of the petition for review does not itself stay execution or enforcement of any agency action. Unless precluded by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

b. A party may file an interlocutory motion in the reviewing court, during the pendency of judicial review, seeking review of the agency's action on an application for stay or other temporary remedies.

c. If the agency refuses to grant an application for stay or other temporary remedies, or application to the agency for a stay or other temporary remedies is an inadequate remedy, the court may grant relief but only after a consideration and balancing of all of the following factors:

(1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

(2) The extent to which the applicant will suffer irreparable injury if relief is not granted.

(3) The extent to which the grant of relief to the applicant will

substantially harm other parties to the proceedings.

(4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

d. If the court determines that relief should be granted from the agency's action on an application for stay or other temporary remedies, the court may remand the matter to the agency with directions to deny a stay, to grant a stay on appropriate terms, or to grant other temporary remedies, or the court may issue an order denying a stay, granting a stay on appropriate terms, or granting other temporary remedies.

6. Within thirty days after filing of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of any contested case which may be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

7. In proceedings for judicial review of agency action a court may hear and consider such evidence as it deems appropriate. In proceedings for judicial review of agency action in a contested case, however, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by Constitution or statute to the agency in that contested case proceeding. Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

8. Except to the extent that this chapter provides otherwise, in suits for judicial review of agency action all of the following apply:

a. The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity.

b. The validity of agency action must be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time that action was taken.

9. The court shall make a separate and distinct ruling on each material issue on which the court's decision is based.

10. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant

other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:

a. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.

b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.

c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.

d. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process.

e. The product of decision making undertaken by persons who were improperly constituted as a decision-making body, were motivated by an improper purpose, or were subject to disqualification.

f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. For purposes of this paragraph, the following terms have the following meanings:

(1) *"Substantial evidence"* means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

(2) *"Record before the court"* means the agency record for judicial review, as defined by this chapter, supplemented by any additional evidence received by the court under the provisions of this chapter.

(3) *"When that record is viewed as a whole"* means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.

g. Action other than a rule that is inconsistent with a rule of the agency.

h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.

i. The product of reasoning that is so illogical as to render it wholly irrational.

j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker

in similar circumstances would have considered prior to taking that action.

k. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.

l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

11. In making the determinations required by subsection 10, paragraphs *"a"* through *"n"*, the court shall do all of the following:

a. Shall not give any deference to the view of the agency with respect to whether particular matters have been vested by a provision of law in the discretion of the agency.

b. Should not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency.

c. Shall give appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.

12. A defendant in a suit for civil enforcement of agency action may defend on any of the grounds specified in subsection 10, paragraphs *"a"* through *"n"*, if that defendant, at the time the enforcement suit was filed, would have been entitled to rely upon any of those grounds as a basis for invalidating the agency action in a suit for judicial review of that action brought at the time the enforcement suit was filed. If a suit for civil enforcement of agency action in a contested case is filed within the time period in which the defendant could have filed a petition for judicial review of that agency action, and the agency subsequently dismisses its suit for civil enforcement of that agency action against the defendant, the defendant may, within thirty days of that dismissal, file a petition for judicial review of the original agency action at issue if the defendant relied upon any of the grounds for judicial review in subsection 10, paragraphs *"a"* through *"n"*, in a responsive pleading to the enforcement action, or if the time to file a responsive pleading had not yet expired at the time the enforcement action was dismissed.

[C75, 77, 79, 81, § 17A.19; 81 Acts, ch 24, § 1, 2]

98 Acts, ch 1202, § 22 – 24, 46

1998 amendments to subsections 1, 5, and 8 apply to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 22 – 24, 46

Subsections 1 and 5 amended

Subsection 8 stricken and rewritten

17A.20 Appeals.

An aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the district court under this chapter by appeal. The appeal shall be taken as in other civil cases,

although the appeal may be taken regardless of the amount involved.

[C75, 77, 79, 81, § 17A.20]

83 Acts, ch 186, § 10007, 10201

17A.21 Inconsistency with federal law.

If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available to an agency of this state, or would otherwise be inconsistent with requirements of federal law, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds or services or to eliminate the inconsistency with federal requirements. If the attorney general makes such a suspension determination, the attorney general shall report it to the general assembly at its next session. This report shall include any recommendations in regard to corrective legislation needed to conform this chapter with the federal law.

[C75, 77, 79, 81, § 17A.21]

17A.22 Agency authority to implement chapter.

Agencies shall have all the authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise.

[C75, 77, 79, 81, § 17A.22]

17A.23 Construction.

Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in addition to those created or imposed by every other statute in existence on July 1, 1975, or enacted after that date. If any other statute in existence on July 1, 1975, or enacted after that date diminishes a right conferred upon a person by this chapter or diminishes a requirement imposed upon an agency by this chapter, this chapter shall take precedence unless the other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter.

The Iowa administrative procedure Act shall be construed broadly to effectuate its purposes. This chapter shall also be construed to apply to all agencies not expressly exempted by this chapter or by another statute specifically referring to this chapter by name; and except as to proceedings in process on July 1, 1975, this chapter shall be construed to apply to all covered agency proceedings and all agency action not expressly exempted by this chapter or by another statute specifically referring to this chapter by name.

An agency shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency.

[C75, 77, 79, 81, § 17A.23]

89 Acts, ch 83, § 11; 98 Acts, ch 1202, § 25, 46

1998 amendments to this section apply to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 25, 46

NEW unnumbered paragraph 3

17A.24 to 17A.30 Reserved.

17A.31 Small business regulatory flexibility analysis. Repealed by 98 Acts, ch 1202, § 45, 46.

17A.32 Time limit applicable to emergency rules. Repealed by 98 Acts, ch 1202, § 45, 46.

17A.33 Review by administrative rules review committee.

The administrative rules review committee shall review existing rules, as time permits, to determine if there are adverse or beneficial effects from these rules. The committee shall give a high priority to rules that are referred to it by small business as defined in section 17A.4A. The review of these rules shall be forwarded to the appropriate standing committees of the house and senate.

84 Acts, ch 1007, § 3; 98 Acts, ch 1202, § 26, 46

1998 amendment applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, § 26, 46

Section amended

DELAY	The Administrative Rules Review Committee may delay the effective date of a rule 70 days for further study or until adjournment of the next General Assembly. Notification of this fact shall be published in the IAB and IAC. [17A.4(5) and 17A.8(9)]
"DOUBLE BARRELING"	An expression used for simultaneous submission of Notice of Intended Action and Adopted and Filed Emergency rule-making documents. The emergency rule should be regarded as an interim stopgap measure, and the agency must fully consider all comments received in the regular rule-making process.
EQUAL ACCESS OF JUSTICE	Legislation which, in some cases, allows a citizen to collect costs and attorney fees in litigation involving state agencies. See Iowa Code section 625.29.
EXECUTIVE ORDER	The Governor may rescind an adopted rule by Executive Order within 70 days of the rule's becoming effective. The Order shall be published in the Iowa Administrative Bulletin. [17A.4(6)] All Executive Orders and Proclamations of the Governor which are general and permanent in nature are also published in the IAB. [17A.6(1)*"b"*]
FISCAL IMPACT STATEMENT	See Iowa Code section 25B.6 reproduced following chapter 17A (yellow tab) herein.
FORMS (ARC)	The Administrative Rules Coordinator requires the following forms which are reproduced herein: FORM A — complete and attach to one copy of each Notice of Intended Action, Notice of Termination or Amended Notice of Intended Action. FORM B — complete and attach to one copy of each Adopted and Filed or Adopted and Filed Without Notice. FORM C — complete and attach to one copy of each Adopted and Filed Emergency or Adopted and Filed Emergency After Notice.
HEARING	The term for oral presentation as prescribed in Iowa Code section 17A.4(1)*"b."*
HEARING OFFICER	See Administrative Law Judge.
HISTORY (IAC)	A chronological record of rule-making actions. This information appears at the end of each chapter of rules in the Iowa Administrative Code. Liability for violation of a rule is fixed to that particular rule as it appeared on a specific date.

IAB

The Iowa Administrative Bulletin (IAB) is published in pamphlet form (8½" x 11" newsprint) every other Wednesday. It contains Notices of Intended Action and rules adopted by state agencies; Proclamations and Executive Orders; Delays and Objections; Regulatory Analyses; Fiscal Impact Statements; Agenda of Administrative Rules Review Committee meetings; Schedule for Rule Making; List of Public Hearings; Supreme Court Decisions summarized; Opinions of the Attorney General summarized; other material mandated by the General Assembly or deemed appropriate by the Administrative Rules Review Committee.

IAC

The Iowa Administrative Code (IAC) is the loose-leaf compilation of rules promulgated by state agencies and supplemented biweekly. Prior to July 1, 1975, this compilation was entitled "Iowa Departmental Rules" and was supplemented every six months.

IAPA

The Iowa Administrative Procedure Act adopted July 1, 1975. [Iowa Code chapter 17A]

IMPLEMENTATION

In prescribing style and form, the Administrative Rules Coordinator shall require that the agency include a reference to the statute which the rules are intended to implement. Each rule making shall include a reference to the Iowa statute, executive order, federal statute or regulation which the rules carry out. [7.17]

IOWA CODE

The compilation of the laws of Iowa as promulgated by the Legislature.

NOTICE OF INTENDED ACTION

This document declares an agency's intent to adopt, amend or rescind a rule. Pursuant to Iowa Code section 17A.4(1), publication of a Notice of Intended Action in the Iowa Administrative Bulletin shall precede the adoption, amendment or rescission by at least 35 days.

NOTICE OF TERMINATION

Pursuant to Iowa Code section 17A.4(1)*"b,"* an agency shall terminate any rule-making proceeding that has not been adopted within 180 days of publication of the Notice of Intended Action or the last date of oral presentation, whichever is later.

An agency may elect to terminate any Notice of Intended Action in lieu of adoption.

In the situation of "double barreling," when no comments were received or no substantive changes were made following the Notice, it is appropriate to terminate a Notice.

NULLIFICATION OF ADMINISTRATIVE RULES

The General Assembly may nullify an adopted administrative rule of a state agency by passage of a Joint Resolution by a majority of all of the members of each house of the General Assembly. [Excerpt from Article III[38], Constitution of Iowa]

The Administrative Code Editor shall publish the Resolution in the Iowa Administrative Bulletin and cause to be omitted from the Iowa Administrative Code all rules which have been nullified. [17A.6]

OBJECTION

There are two types of Objections to rules which may be imposed by the Administrative Rules Review Committee, the Governor, or the Attorney General.

(1) An emergency adoption by an agency that for good cause finds that notice and public participation would be unnecessary, impracticable or contrary to public interest. With this objection the rule would cease to be effective 180 days after the date the objection was filed. [17A.4(2)]

(2) A proposed, adopted or emergency rule which the ARRC, Governor or Attorney General deems to be unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to the agency.

The burden of proof shall be on the agency in any proceeding for judicial review or enforcement of the rule subsequent to the filing of the objection. [17A.4(4)*"a"*]

A certified copy of any Objection shall be filed with the Administrative Code Editor and published in the Iowa Administrative Bulletin and Iowa Administrative Code.

ORAL PRESENTATION

This term is synonymous with "public hearing." [17A.4]

PERMANENT REGISTER (DEPOSITORY)

The ARC shall keep a permanent register of all rules open to public inspection. (Prior to July 1, 1978, the Secretary of State served as depository.)

PREAMBLE OR INTRODUCTION

The explanatory paragraphs that preface each rule-making document. Examples are reproduced herein.

Also, a Preamble summarizing intent of rules is occasionally inserted before the first rule in a chapter.

PROPOSAL

Synonymous with Notice or Notice of Intended Action.

REFERRAL TO GENERAL ASSEMBLY

The Administrative Rules Review Committee may refer a rule to the Speaker of the House and the President of the Senate. Those officers may then refer such a rule to the appropriate standing committee of the General Assembly for study. The Committee may include a recommendation that a rule be overcome by statute. This action does not change the effective date of a rule. [17A.8(7),(8)]

REGULATORY ANALYSIS	On written request by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 small business persons signing the request, or a registered organization representing at least 25 persons, the agency shall issue a Regulatory Analysis. A summary of this analysis must be published in the Iowa Administrative Bulletin. [17A.4A]
RESCISSION BY GOVERNOR	The Governor may rescind an adopted rule by Executive Order within 70 days of the effective date of the rule. The Executive Order shall be published in the Iowa Administrative Bulletin. [17A.4(6)]
RULE	An agency statement that is the equivalent of statutory law. It differs from statute in that it was adopted by an administrative body as opposed to the Legislature, and it affects the general public as opposed to specific individuals. Numerous exceptions to the definition of "Rule" are set out in Iowa Code section 17A.2(11).
SCHEDULE FOR RULE MAKING	Table of time frames for the various steps of rule making. This table is updated annually and is published in the IAB and IAC.
STATE MANDATES ACT	Iowa Code section 25B.6 sets out requirements for Fiscal Impact Statements relative to rule-making. Iowa Code chapter 25B is reproduced herein following Iowa Code chapter 17A (yellow tab).
TABLES OF CORRESPONDING NUMBERS	Published in the IAC when major renumbering and transferring of rules is necessary. The Table would appear at the beginning of the Chapter Analysis of the agency involved.
TABLE OF RULES IMPLEMENTING STATUTES	A compilation listing Iowa Statutes, Executive Orders, Federal Regulations, Public Laws, and U.S. Code which are implemented by Iowa Administrative Rules. The Table is updated periodically and appears in the first volume of the Iowa Administrative Code.
UNIFORM RULES	Rules of Agency Procedure for Rule Making, Petitions for Rule Making, Declaratory Orders, Fair Information Practices and Contested Cases developed by the Governor's Task Force. These rules are suitable for adoption by reference by most state agencies and are published herein under the green tab sheet in the first volume of the Iowa Administrative Code.
U.S.C.	United States Code.
VETO	This term is not used in the Iowa Administrative Procedure Act but is descriptive of the rescission process by which the Governor disapproves a rule. [17A.4(6)]

DEADLINES — DATES

PUBLICATION DATE KEY TO TIME COMPUTATION

In the regular administrative rules procedure, the key date is the date rules are published in the Iowa Administrative Bulletin (IAB), not the date they are adopted by the agency or delivered to the office of the Administrative Rules Coordinator (ARC).

The deadline date for submitting documents to be published in the IAB is 19 days prior to the publication date. Filing deadlines and publication dates are printed in each IAB on the Schedule for Rule Making page.

Rules will not be accepted after 12 o'clock noon on the Friday filing deadline days unless prior approval has been received from the ARC.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted. Possible exceptions are Thanksgiving, Christmas, and New Year's Day.

NOTICE OF INTENDED ACTION

The agency submits a proposal for rule making and allows a minimum of 20 days for comment. The 20-day period is counted from the publication date of the Iowa Administrative Bulletin, e.g., comments on rules published 5/10/95 would be possible through 5/30/95; however, a later time could be designated by the agency.

Public Hearings—Written Comments

Agencies must allow a minimum of 20 days after the date of publication of a Notice of Intended Action for holding public hearings and receiving written or oral comments. [17A.4(1)"*b*"] In computing time, the first day is not counted, but the last day is counted.

Adopting a Noticed Rule

Notice of Intended Action shall be published at least 35 days before an agency may adopt the noticed rule. An agency "adopts" a rule when it votes approval or when the person with rule-making authority signs the rule instrument.

An agency has 180 days after the publication of a Notice of Intended Action or 180 days after oral presentations, whichever is later, to adopt the rule.

Terminating a Notice

If the agency fails to adopt the rule within the 180-day time frame, it must terminate the proceedings by publishing a Notice of Termination in the Iowa Administrative Bulletin. [17A.4(1)"*b*"]

EFFECTIVE DATE

Adopted Rule

A rule which has been adopted by an agency becomes effective 35 days after its publication in the IAB, unless a later date is specified in the rule. A rule cannot become effective before it is filed with the ARC.

The Governor may rescind an adopted rule by Executive Order within 70 days of the effective date.

In the 35 days following publication of the adopted rule:

1. The Governor may file an objection.
2. The Attorney General may file an objection.
3. The Administrative Rules Review Committee (ARRC) may file an objection, delay the effective date 70 days for further study or delay the effective date until adjournment of the next General Assembly. [17A.8(9)]

Adopted and Filed Emergency

Subject to applicable constitutional or statutory provisions, a rule can become effective immediately upon filing.

Adopted and Filed Emergency After Notice

In this instance, the agency does not adopt the rule until 35 days after publication of the Notice of Intended Action, but waives the second 35-day waiting period for an earlier effective date.

Adopted and Filed Without Notice

In this instance, the agency adopts the rules without allowing for notice and public comment, but the rules do not become effective until 35 days after publication.

Objection to Emergency Filing

Within 70 days of the date an emergency filed rule, an emergency after notice, or a rule filed without notice becomes effective, the Governor, the Attorney General or the ARRC may object to the emergency filing. This objection is filed with the Administrative Code Editor, a copy is sent to the agency, and the objection is published in the IAB and IAC. [17A.4(4)*"a"*]

A rule shall cease to be effective 180 days after an objection to the use of emergency provisions is filed. [17A.4(2)]

REGULATORY ANALYSIS

The agency shall issue a Regulatory Analysis if, within 32 days after publication of the notice, a written request is filed with the agency by the ARRC, the ARC, at least 25 small business persons signing the request, or a registered organization representing at least 25 persons.

A concise summary of the Regulatory Analysis must be published in the IAB 20 days prior to the adoption of the rule. In the case of a rule adopted emergency or without notice, 70 days are allowed for publishing of the summary. [17A.4A]

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ANIMAL WELFARE

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DAIRY

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MILK TANKER, MILK HAULER, MILK GRADER, CAN MILK TRUCK BODY

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CHAPTER 68
DAIRY

[Prior to 3/9/88, see Agriculture Department 30—Ch 30]
[Prior to 7/27/88, see 21—Ch 30]

21—68.1(192,194) Definitions. In addition to the definition found in the Code of Iowa, the following terms shall mean:

"Habitual violator" is a producer or other dairy industry business entity that is regulated by the department, for whom the monthly official records for somatic cell counts, bacteria, cooling or added water show that the violation has occurred eight times in a 12-month period, including the accelerated testing counts; or has received three, two-of-four warning letters in a 12-month period; or has received a second three-of-five, off-the-market letter in a 12-month period; or has been found with a fourth positive antibiotic in a 12-month period.

"Imminent hazard to the public health" means any condition so serious as to require immediate action to protect the public health. It shall include, but is not limited to: pesticide, antibiotic, or any other substance in milk or milk products considered to be dangerous if consumed by humans.

"Public health hazard" means any condition which, if not corrected, could endanger the public health.

"Qualified personnel" means employees certified or approved by the department to perform certain tasks as required by the Code of Iowa. It shall include, but not be limited to, dairy industry inspectors and hearing officers.

21—68.2(192) Licenses and permits required.

68.2(1) *Milk plant permit.* A person who brings, sends into, or receives into this state, milk or milk products for storage, transfer, processing, sale or to offer for sale, shall possess a "milk plant" permit.

68.2(2) *Grade A farm permit.* A person who operates a dairy farm to produce "Grade A milk" shall possess a "Grade A farm" permit.

68.2(3) *Grade B farm permit.* A person who operates a dairy farm to produce milk to be used as "milk for manufacturing purposes" shall possess a "Grade B farm" permit.

68.2(4) *Hauler/grader license.* A person engaged in the transporting, transferring, sampling, weighing or measuring of milk shall possess a "hauler/grader" license.

68.2(5) *Tester license.* A person who tests a dairy product for fat content to establish a value of the product shall possess a "tester's" license.

68.2(6) *Milk truck license.* A vehicle used primarily for collecting or transporting milk or milk product in the bulk shall possess a "milk truck" license.

21—68.3(192) License application. Reserved.

21—68.4(192) Certification of personnel. Certification programs conducted by the department shall follow closely the procedures as outlined in the pasteurized milk ordinance, Appendix B.

68.4(1) *Dairy industry inspectors.* Reserved.

68.4(2) *Fieldman.* The department shall provide a certification program for individuals who work as "quality control" officers in the dairy industry but are not employees of the department.

An individual certified as a "fieldman" may perform certain tasks for the department when authorized to do so by the department.

21—68.5(190,192,194,195) Milk tests. The department recognizes the Babcock test and the turbidimetric method or the Gerber test as an approved method of testing milk or cream for milk fat and other dairy products as specified in Standard Methods for the Examination of Dairy Products (16th Edition). That publication is hereby incorporated into this rule by this reference and made part thereof insofar as applicable, a copy of which is on file with the department.

All milk or cream, graded or tested, as provided by Iowa Code chapters 194 and 195 shall be graded and tested by samples which shall be taken in the following manner:

1. Samples may only be taken from vats or tanks which pass the required organoleptic test; the temperature of bulk tanks from which the sample is to be taken must not be higher than 50° F.
2. The temperature of the bulk tank shall then be recorded.
3. The quantity of the milk or cream in the bulk tank shall then be measured and the measurement recorded.
4. Bulk tanks of less than 1,000-gallon size shall be agitated for a period of not less than five minutes. Bulk tanks of 1,000 gallons or greater shall be agitated for a period of not less than ten minutes.
5. The sample shall then be taken by using a sterile dipper and the liquid shall be placed in an approved sterile container.
6. The sample of milk or cream shall then be immediately stored at a temperature of between 32° F and 40° F.

This rule is intended to implement Iowa Code sections 194.4, 194.5, 194.6 and 195.14.

21—68.6(190,192,194,195) Test bottles. The following makes of guaranteed test bottles and pipettes are approved by the department for universal use in Iowa: the Nafis, the Kimball and the Wagner. All test bottles should be graduated to the half point.

This rule is intended to implement Iowa Code chapter 192.

21—68.7(190,192,194,195) Test transactions. All persons using the Babcock test and the turbidimetric method or the Gerber test shall retain within the premises an exact copy of all transactions and all appliances where the test is used, as well as samples of all milk and cream tested, properly labeled so that a representative of the department, by testing said samples with these appliances, can check the milk and cream bought with the cream on hand and thereby verify the test given in each transaction. Both copies and milk and cream samples must be held until 6 p.m. of the second day following the application. When Sundays or legal holidays intervene, the samples shall be held one additional day. When considered necessary, the department may require any sample held for a longer period.

This rule is intended to implement Iowa Code section 194.4.

21—68.8(190,192,194,195) Cream testing. All stations shall be equipped with test bottles graduated to the half point and all cream testing should be read to the half point.

This rule is intended to implement Iowa Code section 195.14.

21—68.9(192,194,195) Tester's license. The examination for a tester's license must be approved and administered by the department.

This rule is intended to implement Iowa Code chapter 192 and sections 194.13, 195.7, and 195.8.

21—68.10(192,194,195) Contaminating activities prohibited in milk plants. All "milk plants," "creameries," "cream stations," or any other facility for handling of bulk milk or milk products shall be a facility separated from any activity that could contaminate or tend to contaminate the milk or milk products.

21—68.11(192,194) Suspension of dairy farm permits.

68.11(1) *Grade A and Grade B farm permit suspension and revocation.* The department may temporarily suspend a Grade A or Grade B farm permit if the dairy farm fails to meet all the requirements as set forth in "Grade A Pasteurized Milk Ordinance, 1997 Revision, printed as Public Health Service/Food and Drug Administration Publication No. 229" and incorporated into rule 21—68.12(192) or Grade B United States Department of Agriculture document titled, "Milk for Manufacturing and Its Production and Processing, Recommended Requirements," 1996 Revision. A Grade A farm under temporary suspension of the Grade A permit may sell the milk as "milk for manufacturing purposes" until reinstated as a Grade A farm if the former Grade A farm meets the requirements necessary to sell Grade B milk. A Grade B farm under temporary suspension of the Grade B permit may sell milk as "Undergrade Class 3" until reinstated as a Grade B farm if the former Grade B farm meets the requirements of Undergrade Class 3. If an inspection reveals a violation which, in the opinion of the inspector, is an imminent hazard to the public health, the inspector shall take immediate action to prevent any milk believed to have been exposed to the hazard from entering commerce. In addition, the inspector shall immediately notify the department that such action has been taken. In other cases, if there is a repeat violation of a dairy standard as determined by two consecutive routine inspections of a dairy farm, the inspector shall immediately refer the violation to the department for action.

The department may revoke the dairy permit of a person that the department determines is a habitual violator as defined in rule 21—68.1(192,194).

68.11(2) *Summary suspension of dairy farm permits.* If the department finds that the public health, safety or welfare imperatively requires emergency action, summary suspension of a permit may be ordered pending proceedings for revocation or other action. If a permit is summarily suspended, no milk or milk products may be sold or offered for sale until permit is reinstated.

The following situations or incidents are situations in which summary suspension is appropriate:

a. Unclean milk contact surfaces of equipment or utensils.

b. Filthy conditions in a milking barn or parlor or in a cattle housing area, including several days' accumulation of manure in the milking barn gutters, calf pens or in other areas.

c. Filthy conditions in a cow yard and very dirty cows.

d. Filthy conditions in a milk room/milk house.

e. Water supply, water pressure, or water heating facilities not in compliance with standard operating procedures.

f. No access to hand-washing facility in the milk room/milk house.

g. Violation of standards under this chapter related to well construction or potability of water supply, including any cross connections between potable and nonpotable water sources.

h. Lack of an approved sanitizer in the milk room/milk house or adjacent storage area to meet the sanitizing requirements.

i. Visibly dirty udders and teats on cows being milked.

j. Milk not cooled in compliance with subrule 68.22(4).

k. Rodent activity in the milk room/milk house, or severe rodent activity in a milking barn or milking parlor or in a feed storage room.

l. Dead animals in the milking barn, parlor or cow yard.

m. Other situations where the department determines that conditions warrant immediate action to prevent an imminent threat to the public health or welfare.

GRADE A MILK

21—68.12(192) Milk standards. Standards for the production, processing, distribution, transportation, handling, sampling, examination, grading, labeling, sale and standards of identity of Grade A pasteurized milk, Grade A milk products and Grade A raw milk, the inspection of Grade A dairy herds, dairy farms, milk plants, milk receiving stations and milk transfer stations, the issuing, suspension and revocation of permits and licenses to milk producers, milk haulers, and milk distributors shall be regulated in accordance with the provisions of the Grade A Pasteurized Milk Ordinance, 1995 Recommendations of the United States Public Health Service/Food and Drug Administration, a copy of which is on file with the department and is incorporated into this rule by reference and made a part of this rule.

Where the mandatory compliance with the provisions of the appendixes therein is specified, the provisions shall be deemed a requirement of this rule.

Cottage cheese, dry curd cottage cheese and low fat cottage cheese bearing the Grade A label must conform to the standards of identity for Title 21, section 133 of the Code of Federal Regulations. However, cottage cheese, dry curd cottage cheese, and low fat cottage cheese shall not require a Grade A rating for sale within this state.

The discharge pipe on all gravity flow manure removal systems in milk barns shall be sufficient in size to handle the flow of manure generated by the cows using the system and any bedding materials or other materials that may enter the system.

Lighting systems shall be adequate to produce sufficient light as required by the Pasteurized Milk Ordinance. Such systems may include, but are not limited to, electrical powered lighting systems or pressurized white gasoline, pressurized kerosene, or battery powered lanterns. Such systems shall be designed and used in a manner that no odors can reasonably be expected to be emitted into the milk room unless there is sufficient ventilation to remove the odors. Lanterns shall be mounted on permanently affixed hooks and shall remain in place at all times.

If artificial lighting is provided by nonelectrical means, then a portable battery operated fluorescent light shall be made available for use and maintained in working order in the milk house. The fluorescent bulb shall either be shatterproof or shall be enclosed in a shatterproof enclosure.

Raw milk for pasteurization shall be cooled to 7° C (45° F) or less within two hours after milking. However, the blend temperature after the first milking and subsequent milkings shall not exceed 10° C (50° F). No specific bulk milk tank equipment is required in achieving this cooling standard; however, producers are expected to use all necessary diligence in achieving compliance.

This rule is intended to implement Iowa Code chapter 192.

21—68.13(192,194) Public health service requirements.

68.13(1) *Certification.* A rating of 90 percent or more calculated according to the rating system as contained in Public Health Service "Methods of Making Sanitation Ratings of Milk Supplies, 1995 Revision," shall be necessary to receive or retain a Grade A certification under Iowa Code chapter 192. That publication is hereby incorporated into this rule by this reference and made a part thereof insofar as applicable, a copy of which is on file with the department.

68.13(2) *Documents.* The following publications of the Public Health Service of the Food and Drug Administration are hereby adopted. A copy of each is on file with the department:

1. "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers, 1995 Revision."
2. "Fabrication of Single Service Containers and Closures for Milk and Milk Products, 1993 Revision."
3. "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey, Supplement I to the Grade A Pasteurized Milk Ordinance, 1995 Ordinance."
4. "Evaluation of Milk Laboratories, 1995 Revision."

This rule is intended to implement Iowa Code chapter 192.

21—68.14(190,192,194,195) Laboratories. Evaluation of methods and reporting of results for approval of a laboratory shall be based on procedures and tests contained in "Standard Methods for the Examination of Dairy Products, 16th Edition 1992," and "Methods of Analysis of the Association of Official Analytical Chemists, 15th Edition 1990." These publications are hereby incorporated into this rule by this reference and made a part thereof insofar as applicable; a copy of each being on file with the department. The health authority shall accept, without the imposition of a fee for testing or inspection, supplies of milk and milk products from an area or an individual shipper not under routine inspection provided they are delivered in closed and date-coded containers; provided further that if the code date has expired, reasonable inspection testing fees may be assessed the processor or establishment having care, custody and control of the milk and milk products.

This rule is intended to implement Iowa Code chapter 192.

GRADE B MILK

21—68.15(192,194) Milk standards. Standards for the production and processing of milk for manufacturing purposes shall conform to standards contained in the USDA document entitled "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," Volume 37, Number 68, Part II, dated November 12, 1996, which is hereby incorporated into this rule by reference and made a part thereof insofar as applicable, a copy of which is on file with the department.

21—68.16(194) Legal milk.

68.16(1) All milk delivered to a creamery, cheese factory or milk processing plant shall be subject to an examination, as provided in Iowa Code chapter 194, which shall be made at the plant if delivered in separate containers or before mixing with other milk collected in a bulk tank container and the examination shall be made by a licensed grader.

68.16(2) Every creamery, cheese factory or milk processing plant which gathers its milk by a bulk tank vehicle whether operated by an independent contractor or otherwise shall provide for a licensed grader in the operation of the bulk tank and for examination of the milk by the grader upon receipt thereof at the bulk tank.

68.36(7) For the third violative occurrence within a 12-month period, the permit shall be suspended for four days and, in addition, the department shall initiate administrative procedures to revoke the producer's permit. Upon revocation the producer may reapply for a permit effective at least four days after the effective date of the revocation. However, a Grade A permit holder shall be ineligible for a Grade A permit until the applicant has been selling on the Grade B Class 1 market for at least 60 days. A Grade B permit holder shall be ineligible for a Grade A or Grade B permit until the applicant has been selling on the undergrade Class 3 market for at least 60 days. For purposes of this rule, a producer on the undergrade market shall be paid no more than 90 percent of the Grade B rate.

68.36(8) Rescinded IAB 11/3/99, effective 12/8/99.

68.36(9) When the tests show a load is nonviolative, but routine regulatory sampling shows that a producer on the load is violative, the permit shall be suspended until subsequent testing establishes that the milk does not exceed safe levels of inhibitory residues. The first or second monetary penalty within a 12-month period shall be waived. In case of a third violation within a 12-month period, the permit shall be suspended and revocation procedures shall be initiated as provided in subrule 68.36(7).

68.36(10) Each violative occurrence within a 12-month period, including a violative producer found on a nonviolative load, shall count as a first, second, third or fourth violation against the producer. The permit shall be reinstated to a temporary status after subsequent testing shows no inhibitor residues. With each violation, the Milk and Dairy Beef Residue Prevention Protocol program shall be administered by the veterinarian to the producer, with the program certificate being signed by both. Failure to obtain the program certificate within 30 days and failure to mail or fax a copy to the dairy products control bureau office within 35 days from the date of the producer notice will result in the permit suspension of both the Grade A and Grade B producer to the Class 3 manufacturing undergrade status with the respective lowered milk price.

68.36(11) Records shall be kept by the industry at each receiving or transfer station of all incoming farm pickup loads of raw milk. The records shall be retained for a period of at least 12 months.

a. The records shall include the following information:

(1) Name of the organization;
(2) Name of test(s) used;
(3) Controls, positive and negative;
(4) Date of test(s);
(5) Time the test was performed;
(6) Temperature;
(7) Identification of the load;
(8) Pounds of milk on the load;
(9) Initials of the person filling out the record.

b. When the load is violative, the records shall also include the following:

(1) Names of the producers on the load;
(2) Identification of the violative producer(s);
(3) The first name of the dairy products control bureau office person telephoned;
(4) Location of disposition of the violative load;
(5) The number of pounds of milk belonging to each producer.

68.36(12) When telephoning the dairy products control bureau office to report a violative load or violative producer, the following information shall be given:

a. Name of the person telephoning;
b. Name of the organization;
c. Date of violation;
d. Route number and name of the milk hauler;
e. Verification that all producers on the violative load were tested;
f. Name and producer number(s) of the violative producer(s) and milk grade;
g. The concentration of residue in the producer sample;
h. The concentration of residue in the load sample, if available;
i. Name of test(s) used;
j. Name of analyst;
k. Pounds of milk on the load and violative producer(s) pounds;
l. Location of disposition of the milk.

This rule is intended to implement Iowa Code chapter 192.

21—68.37 to **68.39** Reserved.

MILK TANKER, MILK HAULER, MILK GRADER, CAN MILK TRUCK BODY

21—68.40(192) Definitions.

"Bulk milk tanker" means a mobile bulk container used to transport milk or fluid milk products from farm to plant or from plant to plant. This includes both the over-the-road semitankers and the tankers that are permanently mounted on a motor vehicle.

"Bulk tank" means a bulk tank used to cool and store milk on a farm.

"Can milk truck body" means a truck body permanently mounted on a motor vehicle for the purpose of picking up milk in milk cans from dairy farms for delivery to a milk plant.

"Dairy farm" means any place where one or more cows, sheep or goats are kept for the production of milk.

"Milk" means the lacteal secretion of cows, sheep or goats, and includes dairy products.

"Milk can" means a sanitary-designed, seamless, stainless steel can, manufactured from approved material for the purpose of storing raw milk on can milk farms, to be picked up and loaded onto a can milk truck body.

"Milk grader" means a person who collects a milk sample from a bulk tank or a bulk milk tanker. This includes dairy industry field personnel and dairy industry milk intake personnel.

"Milk hauler" means any person who collects milk at a dairy farm for delivery to a milk plant.

"Milk plant" means any facility where milk is processed, received or transferred.

"Milk producer" means any person who owns or operates a dairy farm.

21—68.41(192) Bulk milk tanker license required.

68.41(1) A milk tanker shall not operate in Iowa without a valid license.

68.41(2) The license application shall include a description of the bulk milk tanker, including the make, serial number, capacity and the address at which the bulk milk tanker is customarily kept when not being used. The applicant shall also furnish any other information which the department reasonably requires for identification and licensing.

68.71(3) A license pursuant to this rule expires June 30 annually and is not transferable between truck bodies.

68.71(4) The department may take enforcement action against a person operating a can milk truck body if the department determines that the person has operated without a license or a person has procured another person to operate without a license.

68.71(5) The cost of the can milk truck body license is $25 per year.

68.71(6) The applicant shall have received an annual inspection by a department inspector and shall make the vehicle available for inspection prior to receiving the license.

These rules are intended to implement Iowa Code chapter 192.

[Filed November 28, 1962; amended March 11, 1964, April 22, 1968]
[Filed without Notice 1/7/77—published 1/26/77, effective 3/2/77]
[Filed without Notice 2/17/77—published 3/9/77, effective 4/13/77]
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[Filed 6/18/82, Notice 3/3/82—published 7/7/82, effective 8/11/82]
[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]
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[Filed emergency 7/8/88 after Notice 6/1/88—published 7/27/88, effective 7/8/88]
[Filed 10/30/90, Notice 7/11/90—published 11/28/90, effective 1/2/91]
[Filed 2/7/92, Notice 11/27/91—published 3/4/92, effective 4/8/92]
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[Filed 6/2/95, Notice 2/15/95—published 6/21/95, effective 7/26/95]
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[Filed 5/2/96, Notice 3/27/96—published 5/22/96, effective 6/26/96]
[Filed 12/13/96, Notice 10/23/96—published 1/1/97, effective 2/5/97]
[Filed 1/9/98, Notice 12/3/97—published 1/28/98, effective 3/4/98]
[Filed 10/15/99, Notice 7/14/99—published 11/3/99, effective 12/8/99]

2.2(14) *Motion.*

STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD

(insert case title)	}	DOCKET NO. (insert docket No.) MOTION FOR (insert subject matter of motion)

COMES NOW (insert name of moving party) and moves the board to (insert specific relief sought) and in support thereof states:

(The motion shall then set forth in separately numbered paragraphs the grounds relied on in making the motion, including specific statutory or other authority.)

WHEREFORE, (insert name of moving party) prays the board to (insert specific relief or order sought).

Respectfully submitted,

(signature)
(name)
(address and zip code)

2.2(15) *Written appearance.*

STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD

(insert case title)	}	DOCKET NO. (insert docket No.) APPEARANCE

COMES NOW (insert name of person filing appearance) and enters (insert pronoun) appearance on behalf of (insert name(s), address(es) and zip code(s) of person(s) on behalf of whom the appearance is filed) in this matter.

Respectfully submitted,

(signature)
(name)
(address and zip code)

2.2(16) *Certificate of service.*

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of the rules of the Iowa utilities board.

Dated at _____ this _____ day of _____,19 _____.

By _____
(signature)
(name)
(address and zip code)

This rule is intended to implement Iowa Code sections 474.6, 476.6 and 476.8.

199—2.3 Rescinded, effective 9/8/86.

199—2.4(17A,474) Forms. The following forms for proceedings under Iowa Code chapters 478, 479, and 479B are available upon request:

1. Petition for Electric Line Franchise.
2. Petition for Amendment of Electric Line Franchise.
3. Petition for Extension of Electric Franchise.
4. Exhibit C, Overhead Transmission Line: Typical Engineering Specifications.
5. Exhibit C-UG, Engineering Specifications for Underground Transmission Line.
6. Petition for Permit to Construct, Operate, and Maintain a Pipeline.
7. Petition for Renewal of Permit to Construct, Operate, and Maintain a Pipeline.
8. Exhibit C, Specifications for Pipeline.
9. Petition for Permit for Hazardous Liquid Pipeline.

These rules are intended to implement Iowa Code sections 474.1, 474.5, 474.6, 474.10, 476.6, 476.8 and 546.7.

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CHAPTER 7
PRACTICE AND PROCEDURE

[Previously ch 15, renumbered 10/20/75 Supp.]
[Prior to 10/8/86, Commerce Commission[250]]

199—7.1(476) General information.

7.1(1) *Procedure governed.* These rules are promulgated under Iowa Code chapter 476 as guides for practice and procedure thereunder before the Iowa utilities board (hereinafter referred to as "board") unless otherwise ordered by the board in any proceeding, and subject to such special rules, or amendments thereto which may hereafter be adopted.

No rule of the board shall in any way relieve a utility from any of its duties under the law of this state.

Except for rules 7.8(476) and 7.9(476), none of the procedures provided for herein shall apply to electric transmission line hearings under chapter 478 or to pipeline and underground gas storage hearings under chapter 479 or 479B.

The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise provided by law, may be waived by the board pursuant to 199 IAC 1.3(17A,474) to prevent undue hardship to a party to this proceeding.

7.1(2) Rescinded, effective 3/29/76.

7.1(3) *Suspension or alterations of rules.* The board may in its discretion on its own motion, or upon request, amend, modify or suspend any of these rules.

7.1(4) *Administrative law judges.* Hearings will be conducted by the board.

Administrative law judges may be designated by the board to preside at and conduct hearings and shall have the following authority:

a. To regulate the course of hearings, the recessing, reconvening and adjournment thereof, unless otherwise ordered by the board;

b. To administer oaths and affirmations;

c. To rule upon the admissibility of evidence and offers of proof;

d. To take or cause depositions to be taken;

e. To dispose of procedural matters and to dispose of motions to dismiss proceedings or other motions which involve final determination of proceedings, subject to review by the board upon application by the aggrieved party;

f. Within their discretion, or upon direction of the board, to certify any question to the board for its consideration and disposition;

g. To permit the filing of written briefs, if any, and to fix the conditions thereof and the time in accordance with 7.7(13) and to provide for the service thereof on the parties;

h. To hold appropriate conferences before or during hearings;

i. To render a final proposed decision and order in a contested case proceeding subject to review by the board on its own motion or upon application by an aggrieved party;

j. To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with law and with the rules and orders of the board.

This rule is intended to implement Iowa Code sections 474.3, 474.5, 476.2 and 476.6.

199—7.2(476) Matters applicable to all proceedings.

7.2(1) Each party to a proceeding shall file a separate written appearance identifying one person upon whom the board may serve all orders, correspondence, or other documents. The written appearance shall substantially conform with the form set forth in 199—subrule 2.2(15), and may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed. If filed after docketing the appearance shall include reference to the applicable docket numbers.

7.2(2) Rescinded, effective 3/29/76.

7.2(3) *Orders of the board.* All orders made by the board will be filed in the office of the board in Des Moines. Orders of the board shall be deemed to become effective upon entry by the board unless otherwise provided in the order.

7.2(4) and 7.2(5) Rescinded, effective 3/29/76.

7.2(6) *Copies of exhibits.* An original and three copies of all exhibits, rate compilations, statistical and other tabulated statements which any applicant intends to offer in evidence other than in rebuttal, must be filed with the board not later than the beginning of the first day of the first hearing. One copy of such exhibits, compilations or statements shall be furnished to each party upon request. Any party desiring to introduce any exhibit during the course of a hearing shall furnish an original and three copies of such exhibits for the use of the board, and one copy to each party upon request.

7.2(7) *Parties.* The parties to proceedings before the board are complainants, petitioners, applicants, respondents and intervenors. The term corporation as used herein shall include municipal corporation.

a. "Complainants" are persons, corporations or associations who complain to the board by written complaint of any act or things done or omitted to be done in violation, or claimed to be in violation, of chapter 476, or of any order or rules of the board shall be deemed a complainant in any proceeding initiated on its own motion.

b. "Petitioners" and *"applicants"* are parties who by written petition, application or filing, apply for or seek relief from the board, and who are not otherwise designated in this rule.

c. "Respondents" are parties against whom a complaint or petition is filed, or who by reason of interest or possible interest in the subject matter of a petition or application or the relief sought therein are made respondents, or to whom an order is directed by the board initiating a proceeding.

d. "Intervenors" are persons, corporations (including municipal corporations), associations or public authorities who upon written petition, are permitted to intervene in any proceeding before the board.

(1) Intervention of right:

In the case of any inquiry, investigation or hearing on any matter relating to rates or other charges or services within any city or county, the city or county may become a party to the proceeding and an intervenor as a matter of right by filing with the board its written appearance.

Any persons, corporations (including municipal corporations), incorporated associations or public authorities will be permitted to intervene as a matter of right in a proceeding:

When the petitioner has an interest in the subject matter of the proceeding, and

The petitioner's interests are unique and require representation in addition to the existing parties. For the purpose of this provision, existing parties shall include the original parties to the proceeding plus all intervenors that have been approved prior to the filing of the petition for intervention in question. In determining whether a petitioner's interests are unique, requiring representation in addition to the existing parties, the consumer advocate's role of representing the public interest shall not be interpreted as representing every potential interest in a proceeding before the board.

(2) Permissive intervention:

Any persons, corporations (including municipal corporations), associations, or public authorities having an interest in the subject matter of the proceedings but not meeting the requirements of intervention of right, may be permitted to intervene at the discretion of the board. In determining whether to grant intervention, the board shall consider:

1. The prospective intervenor's precise interest in the subject matter of the proceeding.
2. The effect of a decision which may be rendered upon the prospective intervenor's interest.
3. The extent to which the prospective intervenor's interest will be represented by other parties.
4. The availability of other means by which the prospective intervenor's interest may be protected.
5. The extent to which the prospective intervenor's participation may reasonably be expected to assist the development of a sound record through the presentation of relevant evidence and argument.

These rules are intended to implement Iowa Code sections 474.3, 474.5, 474.6, 476.1 to 476.3, 476.6, 476.8 to 476.10, 476.15, 476.31 to 476.33 and 546.7.

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CHAPTER 10
INTRASTATE GAS AND HAZARDOUS LIQUID PIPELINES AND UNDERGROUND GAS STORAGE

[Prior to 10/8/86, Commerce Commission[250]]

199—10.1(479) Definitions. Terms not otherwise herein defined shall be understood to have their usual meaning.

10.1(1) *"Approximate right angle"* shall mean within 5 degrees of a 90 degree angle.

10.1(2) *"Board"* shall mean the Iowa utilities board.

10.1(3) *"Multiple line crossing"* shall mean a point at which a proposed pipeline will either overcross or undercross an existing pipeline.

10.1(4) Rescinded IAB 11/19/97, effective 12/24/97.

10.1(5) *"Permit"* shall mean a new, amended, or renewal permit issued after appropriate application to and determination by the board.

10.1(6) *"Pipeline"* shall mean any pipe, pipes, or pipelines used for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

10.1(7) *"Pipeline company"* shall mean any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

10.1(8) *"Renewal permit"* shall mean the extension and reissuance of a permit after appropriate application to and determination by this board.

10.1(9) *"Underground storage"* shall mean storage of gas in a subsurface stratum or formation of the earth.

10.1(10) *Terms not defined.* Technical terms not defined shall be as defined in the appropriate standard adopted in rule 10.12(479).

199—10.2(479) Petition for permit.

10.2(1) A petition for a permit shall be made to the board upon the form prescribed and shall include all required exhibits. The petition shall be considered as filed upon receipt at the office of the board. An original and one copy of the petition and exhibits shall be filed. Required exhibits shall be in the following form:

a. Exhibit "A." A legal description showing, at minimum, the general direction of the proposed route through each quarter section of land to be crossed, including township and range and whether on private or public property, public highway or railroad right-of-way, together with such other information as may be deemed pertinent. Construction deviation of 160 rods (one-half mile) from proposed routing will be permitted.

If it becomes apparent that there will be deviation of greater than 160 rods (one-half mile) in some area from the proposed route as filed with this board, construction of such line in such area shall be suspended. Exhibits A, B, E, and F reflecting such deviation shall be filed, and the procedure hereinafter set forth to be followed upon the filing of a petition for permit shall be followed.

b. Exhibit "B." Maps showing the proposed routing of the pipeline. Strip maps will be acceptable. Two copies of such maps shall be filed. The maps may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

(1) The route of the pipeline which is the subject of the petition, including the starting and ending points, and when paralleling a road or railroad, which side it is on. Multiple pipelines on the same right-of-way shall be indicated.

(2) The name of the county, county and section lines, and township and range numbers.

(3) The location and identity of public roads, railroads, major streams or bodies of water, and other pertinent natural or man-made features influencing the route.

(4) The name and corporate limits of cities, and the name and boundaries of any public lands or parks.

(5) Other pipelines and the identity of the owner.

c. Exhibit "C." A showing on forms prescribed by this board of engineering specifications covering the engineering features, materials and manner of construction of the proposed pipeline, its approximate length, diameter and the name and location of each railroad and primary highway and the number of secondary highways to be crossed, if any, and such other information as may be deemed pertinent.

d. Exhibit "D." Satisfactory attested proof of solvency and financial ability to pay damages in the sum of $250,000 or more; or surety bond satisfactory to this board in the penal sum of $250,000 with surety approved by this board, conditioned that the petitioner will pay any and all damages legally recovered against it growing out of the operation of its pipeline or gas storage facilities in the state of Iowa; security satisfactory to this board as a guarantee for the payment of damages in the sum of $250,000; or satisfactory proofs that the company has property subject to execution within this state, other than pipelines, of a value in excess of $250,000.

e. Exhibit "E." Consent or other showing of right of appropriate public highway authorities, or railroad companies, where the pipeline will be placed longitudinally on, over or under, or at other than an approximate right angle to railroad tracks or highway, when such consent is obtained prior to filing of the petition and hearing shall be filed with the petition.

If the exact and specific route is uncertain at the time of petition, a statement shall be made by petitioner that all consents or other showing of right will be obtained prior to construction and copies filed with this board.

f. Exhibit "F." A general statement covering each of the following topics: the nature of the lands, waters, and public or private facilities to be crossed; the possible use of alternative routes; the relationship of the proposed pipeline to present and future land use and zoning ordinances; and the inconvenience or undue injury which may result to property owners as a result of the proposed project.

g. Exhibit "G." If informational meetings were required, an affidavit that such meetings were held in each county affected by the proposed project and the time and place of each meeting. Copies of the mailed notice letter and the published notice(s) of the informational meeting shall be attached to the affidavit.

h. Exhibit "H." This exhibit is required only if the petition requests the right of eminent domain. The extent of the eminent domain request may be uncertain at the time the petition is filed. However, this exhibit must be in final form before a hearing is scheduled. It shall consist of a map of the route showing the location of each property for which the right of eminent domain is sought and for each such property:

(1) The legal description of the property.

(2) The legal description of the desired easement.

(3) A specific description of the easement rights being sought.

(4) The names and addresses of the owners of record and parties in possession of the property.

(5) A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of pipelines or pipeline facilities within the proposed easement, the location of and distance to any building within 300 feet of the proposed pipeline, and any other features pertinent to the location of the line to the rights being sought.

199—10.10(479) Fees and expenses.

10.10(1) *Permit expenses.* The petitioner shall pay the actual unrecovered cost incurred by the board attributable to the processing, investigation, and inspection related to a petition requesting a pipeline permit action.

Any moneys collected by the board from other sources for chargeable activities will be deducted from billings for actual expenses submitted to the petitioner.

10.10(2) *Construction inspection.* The petitioner shall reimburse the board for the actual unrecovered expenses incurred due to inspection of pipeline construction or testing activities following from a permit action.

Any moneys collected by the board from other sources for chargeable activities will be deducted from billings for actual expenses submitted to the petitioner.

10.10(3) *Annual inspection fee.* A pipeline company shall pay an annual inspection fee on all pipelines under permit of 50 cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state of Iowa. The fee shall be paid for the calendar year in advance between January 1 and February 1 of each year. When new pipeline subject to the fee is installed, the fee shall be paid beginning the following calendar year. Pipelines removed from service shall remain subject to the fee until the calendar year following the year the board is notified of the removal from service in accordance with rule 10.18(479).

199—10.11(479) Inspections. This board shall from time to time examine the construction, maintenance and condition of pipelines, underground storage facilities and equipment used in connection with pipelines or facilities in the state of Iowa to determine if the same are unsafe or dangerous and whether they comply with the appropriate standards of pipeline safety. One or more members of this board, or one or more duly appointed representatives of the board may enter upon the premises of any pipeline company within the state of Iowa for the purpose of making the inspections.

199—10.12(479) Standards for construction, operation and maintenance.

10.12(1) All pipelines, underground storage facilities, and equipment used in connection therewith shall be designed, constructed, operated, and maintained in accordance with the following standards:

a. 49 CFR Part 191, "Transportation of Natural and Other Gas By Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through April 30, 1999.

b. 49 CFR Part 192, "Transportation of Natural and Other Gas By Pipeline; Minimum Federal Safety Standards," as amended through April 30, 1999.

c. 49 CFR Part 195, "Transportation of Hazardous Liquids By Pipeline," as amended through April 30, 1999.

d. 49 CFR Part 199, "Drug Testing," as amended through April 30, 1999.

e. ASME B31.4 - 1992, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols."

f. ASME B31.8 - 1995, "Gas Transmission and Distribution Piping Systems."

g. ASME B31.11 - 1989, "Slurry Transportation Piping Systems."

h. 199 IAC 9, "Protection of Underground Improvements and Soil Conservation Structures and Restoration of Agricultural Lands After Pipeline Construction."

Conflicts between these standards, or between the requirements of this rule and other requirements which are shown to exist by appropriate written documentation filed with the board, shall be resolved by the board.

10.12(2) If review of Exhibit C, or inspection of facilities which are the subject of a permit petition, finds noncompliance with the standards adopted in this rule, no final action will be taken by the board on the petition without a satisfactory showing by the petitioner that the noncompliance has been or will be corrected.

10.12(3) Pipelines in tilled agricultural land shall be installed with a minimum cover of 48 inches.

199—10.13(479) Minimum safety standards. Rescinded IAB 2/21/90, effective 3/28/90.

199—10.14(479) Crossings of highways, railroads, and rivers.

10.14(1) Iowa Code chapter 479 gives the Iowa utilities board primary authority over the routing of pipelines. However, highway and railroad authorities and environmental agencies may have a jurisdictional interest in the routing of the pipeline, including requirements that permits or other authorizations be obtained prior to construction for crossings of highway or railroad right-of-way, or rivers or other bodies of water.

Except for other than approximate right angle crossings of highway or railroad right-of-way, the approval of other authorities need not be obtained prior to petitioning the board for a pipeline permit. It is recommended the appropriate other authorities be contacted well in advance of construction to determine what restrictions or conditions may be placed on the crossing, and to obtain information on any proposed reconstruction or relocation of existing facilities which may impact the routing of the pipeline.

10.14(2) Pipeline routes which include crossings of highway or railroad right-of-way at other than an approximate right angle, or longitudinally on such right-of-way, will not be granted a pipeline permit by the board unless a showing of consent by the appropriate authority is provided by the petitioner (ref: 199—10.2(1)*"e"*).

199—10.15(479) River crossings. Rescinded IAB 3/6/91, effective 4/10/91.

199—10.16(479) When a permit is required. A pipeline permit shall be required for any pipeline which will be operated at a pressure of 150 pounds per square inch gage or more, or which, regardless of operating pressure, is a transmission line as defined in ASME B31.8 or 49 CFR Part 192. Questions on whether a pipeline requires a permit are to be resolved by the board.

199—10.17(479) Accidents and incidents. Any pipeline incident or accident which is reportable to the U.S. Department of Transportation under 49 CFR Part 191 or Part 195 as amended through April 30, 1999, shall also be reported to the board, except that the minimum economic threshold of damage required for reporting to the board is $15,000. Duplicate copies of any written accident reports and safety-related condition reports submitted to the U.S. Department of Transportation shall be provided to the board.

199—10.18(479) Reportable changes to pipelines under permit.

10.18(1) The board shall receive prior notice of any of the following actions affecting a pipeline under permit:

a. Abandonment or removal from service.

b. Relocation of more than 300 feet from the original alignment, or any relocation that would bring the pipeline to within 300 feet of an occupied residence. Relocations of 160 rods (one-half mile) or more shall require the filing of a petition for permit.

c. Pressure test, uprating, or increase in operating pressure.

d. Change in product being transported.

e. Replacement of a pipeline or significant portion thereof, not including short repair sections of pipe at least as strong as the original pipe.

f. Extensions of existing pipelines by 160 rods (one-half mile) or less.

10.18(2) The notice shall include the docket and permit numbers of the pipeline, the location involved, a description of the proposed activity, anticipated dates of commencement and completion, revised maps and technical specifications, where appropriate, and the name and telephone number of a person to contact for additional information.

199—10.19(479) Sale or transfer of permit.

10.19(1) No permit shall be sold without prior written approval of the board. A petition for approval shall be jointly filed by the buyer and seller, shall include assurances that the buyer is authorized to transact business in the state of Iowa; is willing and able to construct, operate, and maintain the pipeline in accordance with these rules; and if the sale is prior to completion of construction of the pipeline shall show that the buyer has the financial ability to pay up to $250,000 in damages.

10.19(2) No transfer of pipeline permit prior to completion of pipeline construction shall be effective until the person to whom the permit was issued files notice with the board of the transfer. The notice shall include the date of the transfer and the name and address of the transferee.

10.19(3) The board shall receive notice from the transferor of any other transfer of a pipeline permit after completion of construction.

For the purposes of this rule, reassignment of a pipeline permit as part of a corporate restructuring, with no change in pipeline operating personnel or procedures, is considered a transfer.

199—10.20(479) Amendments to rules. These rules are subject to such amendments or exceptions as this board may deem advisable. Parties desiring to depart from these rules may make written requests to this board, whereupon appropriate action will be taken. Amendments hereto shall apply only to permits issued after the effective date of such amendments.

These rules are intended to implement Iowa Code sections 476.2, 479.5, 479.17, 479.23, 479.26, 479.42, 479.43 and 546.7.

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CHAPTER 11
ELECTRIC LINES

[Previously Ch 2, renumbered 10/20/75 Supp.]
[Prior to 10/8/86, Commerce Commission[250]]

199—11.1(478) General information.

11.1(1) *Iowa electrical safety code.* Overhead and underground electric supply line minimum requirements to be applied in installation, operation and maintenance, are found in 199—Chapter 25, Iowa electrical safety code.

11.1(2) *Application* of *rules.* This chapter shall apply to any individual, company, corporation, or city engaged in the construction, operation and maintenance of electric transmission lines to the extent provided in Iowa Code chapter 478. These rules shall in no way relieve any utility from any of its duties under the laws of this state.

11.1(3) *Special situations.* For good cause shown the board may permit deviation from any rule or requirement thereof and adopt another requirement in a special case.

11.1(4) *Date of service.* A petition for franchise shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made. The petition must be delivered by United States Postal Service or personal service.

11.1(5) *Franchise—when required.* An electric franchise shall be required for the construction, operation, and maintenance of any electric line which is capable of operating at 34,500 volts or more outside of cities.

11.1(6) *Definition—capable of operating at.* "Capable of operating at" as defined in this chapter means the standard voltage rating at which the line, wire or cable can be operated consistent with the level of the insulators and the conductors used in construction of the line, wire or cable, based on manufacturer's specifications, industry practice, and applicable industry standards.

199—11.2(478) Form of petition for franchise, extension, or amendment. Petition for a franchise action by the board shall be made in the following manner. Exhibits in addition to those required by this rule may be attached when appropriate.

11.2(1) Petition. Petition shall be made on forms prescribed by the board, shall be notarized, and shall have attached all required exhibits.

11.2(2) Exhibit A—a legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning and ending points of the line, and whether the route is on public, private, or railroad right-of-way. In the case of the multicounty projects, the description shall identify all counties involved in the total project and any termini located in other counties.

11.2(3) Exhibit B—a map showing the route of the line drawn with reasonable accuracy considering the scale. Two copies shall be submitted. The map may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

a. The route of the electric line which is the subject of the petition, including starting and end points, and, when paralleling a road or railroad, which side it is on. Line sections with double circuit construction or underbuild shall be designated.

b. The name of the county, county and section lines, section numbers, and the township and range numbers.

c. The location and identity of roads, major streams and bodies of water, and any other pertinent natural or man-made features influencing the route.

d. The name and corporate limits of cities.

e. The name and boundaries of any public lands or parks, recreational areas, preserves or wildlife refuges. This information need only be provided with petitions proposing construction of a new electric line or relocation of an existing electric line.

f. All electric supply lines, including petitioner's, within six-tenths of a mile of the route, including the nominal voltage and the name and address of the owners. Any lines to be removed or relocated shall be designated.

g. The location of railroad rights-of-way, including the name and address of the owners.

h. The location of airports or landing strips within one mile of the route, along with the name and address of the owners.

i. The location of pipelines used for the transportation of any solid, liquid, or gaseous substance, except water, within six-tenths of a mile of the route, along with the name and address of the owners.

j. The name and address of the owners of telephone, communication, or cable television lines within six-tenths of a mile of the route. The location of these lines need not be shown.

k. The name and address of the owners of rural water districts organized pursuant to Iowa Code chapter 357A with facilities within six-tenths of a mile of the route. The location of these facilities need not be shown.

11.2(4) Exhibit C. Technical information and engineering specifications describing typical materials, equipment and assembly methods as specified on forms provided by the board.

11.2(5) Exhibit D. The exhibit shall consist of a written text containing the following:

a. An allegation, with supporting testimony, that the line is necessary to serve a public use, plus such additional substantiated allegations as may be required by Iowa Code subsection 478.3(2).

b. If the route or any portion thereof is not near and parallel to railroad right-of-way or along division lines of the lands, according to government surveys, a showing of why such parallel routing is not practicable or reasonable.

c. If the route and manner of construction result in separate pole lines for two or more electric supply lines occupying or adjacent to the same road right-of-way in a manner not in compliance with 199 IAC 11.6(1), a request that the board authorize separate pole lines and justification for the authorization.

d. Any other information or explanations in support of the petition.

11.2(6) Exhibit E. This exhibit is required only if the petition requests the right of eminent domain. This exhibit shall be in its final form prior to issuance of the form of notice by the board pursuant to 199 IAC 11.5(2)*"a."* It shall consist of a map of the route showing the location of each property for which the right of eminent domain is sought, and for each property:

a. The legal description of the property.

b. The legal description of the desired easement.

c. A specific description of the easement rights being sought.

d. The names and addresses of all persons with an ownership interest in the property, and tenants.

e. A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of all electric lines and supports within the proposed easement, the location of and distance to any building within 100 feet of the proposed electric line, and any other features pertinent to the location of the line and its supports or to the rights being sought.

11.2(7) Exhibit F. The showing of notice to potentially affect parties as required by 199 IAC 11.5(4).

11.2(8) Exhibit G. The affidavit required by Iowa Code section 478.3 on the holding of an informational meeting. Copies of the mailed notice letter and the published notice(s) of the informational meeting shall be attached to the affidavit. This exhibit is required only if an informational meeting was conducted.

199—11.3(478) Additional filing instructions.

11.3(1) *Forms.* The following forms are available from the utilities board and the appropriate form shall be used when filing any petition. An original and one copy of the petition and exhibits shall be filed.

a. Petition for Franchise. Temporary Construction Permits may also be requested on this form where the permits are allowed by Iowa Code section 478.31.

b. Petition for Extension of Franchise.

c. Petition for Amendment to Franchise.

d. Petition for Permit to Survey.

e. Exhibit C: Engineering Specifications for Overhead Transmission Line.

f. Exhibit C-UG: Engineering Specifications for Underground Transmission Line.

11.3(2) *When filing is required.*

a. A petition for franchise shall be filed with the board for the construction of any electric line outside of a city which is capable of operating at a nominal voltage of 34,500 volts or more.

b. A petition for extension of franchise may be filed at any time after the issuance of the franchise, but must be filed prior to its expiration. The extension of more than one franchise may be requested in a single petition, including for all franchised lines in a county as provided for in Iowa Code section 478.13.

However, an extension of franchise is unnecessary for an electric line which is capable of operating at 34,500 volts or more, when the line has been permanently retired from operation at 34,500 volts or more, and the board has been notified of the retirement. The line may remain in service at a lesser voltage. The notice shall include the franchise number and issue date, the docket number, and, if the entire franchised line is not retired, a map showing the location of the portion retired.

c. A petition for amendment to franchise shall be filed with the board for approval prior to:

(1) Increasing the operating voltage of any electric line, or the level to which it is capable of operating, to a voltage greater than that specified in the existing franchise.

(2) Construction of an additional circuit which is capable of operating at a nominal voltage of 34,500 volts or more on a previously franchised line, where an additional circuit at such voltage is not authorized by the existing franchise.

(3) Relocation of a franchised electric line to a route different than that authorized by an existing franchise. For the purpose of this subrule, relocation means changing the route of an existing electric line in a manner which requires new or additional interests in property be obtained, or new or additional authorization be obtained from highway or railroad authorities, for a total distance of one mile or more, except that an amendment is not required for relocations made pursuant to Iowa Code section 319.5. Petitions for amendment to franchise may be filed for relocations of less than one mile if the right of eminent domain is sought.

11.3(3) *Form of papers.*

a. All petition papers shall be cut or folded so as not to exceed a width of 8½ inches and a length of 11 inches.

b. All petition maps or drawings shall be cut or folded so as not to exceed a width of 8½ inches and a length of 11 inches. The unfolded sheet shall be limited to a maximum size of 24 inches by 36 inches.

c. All maps and drawings submitted to the board shall be neatly and clearly drawn, shall have an appropriate legend, and shall have a title block or heading which indicates its origin and purpose.

d. Insofar as practicable, all papers, maps or drawings to be submitted as hearing exhibits shall be cut or folded so as not to exceed a width of 8½ inches and a length of 11 inches.

11.3(4) *Multiple county.* For a proposed line to be constructed in more than one county a petition for each county shall be filed in a form which provides for a general description of the total project, including a separate legal description for the line route in each county so that an official notice may be prepared for each county separately. A franchise or certificate for construction of lines or improvements will be prepared for each county separately, although they may be consolidated and acted upon by one order.

11.3(5) *Segmental ownership.*

a. Petitions covering line routes, having segments of the total line with different owners, shall establish the need to serve the public use for the total line.

b. Petitions covering line routes, having segments of the total line with different owners, shall include affidavits furnished by the other owners certifying that said other owners will actually construct a particular segment.

11.3(6) *Termini.* This means the electrically functional end points of an electric line, without which it could not serve a public use. Examples include generating stations, substations, or other electric lines. In any franchise petition the termini must be identified in Exhibit A, B, or D.

11.3(7) *Compliance with Iowa electrical safety code.* If review of Exhibit C, or inspection of an existing electric line which is the subject of a franchise petition, finds noncompliance with 199 IAC 25, the Iowa electrical safety code, no final action will be taken by the board on the petition without a satisfactory showing by petitioner that the areas of noncompliance have been or will be corrected. Any disputed safety code compliance issues will be resolved by the board.

This rule is intended to implement Iowa Code section 474.5 and chapter 478.

199—11.7(478) Termination of franchise petition proceedings.

11.7(1) Upon notice to the board by a petitioner that a franchise petition is withdrawn, if the notification is made prior to the publication of a public notice, the proceeding may be terminated and the docket closed without formal action by the board.

11.7(2) If petitioner takes no action, for a period of 12 months after written notification by the board, to cure an incomplete or deficient franchise petition, or fails to publish notice within 90 days after the form of notice is provided by the board, the board may dismiss the petition as abandoned. If dismissal would cause an existing line to be without a franchise, the board may also pursue imposition of civil penalties.

These rules are intended to implement Iowa Code sections 474.5 and 546.7 and chapter 478.

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CHAPTER 13
INTERSTATE HAZARDOUS LIQUID PIPELINES AND UNDERGROUND STORAGE

199—13.1(479B) Definitions. Words and terms not otherwise defined shall be understood to have their usual meaning. The following words and terms shall have the meaning indicated below:

"Approximate right angle" means within 5 degrees of a 90 degree angle.

"Board" means the utilities board within the utilities division of the department of commerce.

"Hazardous liquid" means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

"Multiple line crossing" means a point at which a proposed pipeline will either cross over or under an existing pipeline.

"Permit" means a new, amended, or extended permit issued after appropriate application to and determination by the board.

"Pipeline" means any pipe or pipeline and necessary appurtenances used for the interstate transportation or transmission of any hazardous liquid.

"Pipeline company" means any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines for the interstate transportation or transmission of any hazardous liquid or underground storage facilities for the underground storage of any hazardous liquid.

"Renewal permit" means the extension and reissuance of a permit after appropriate application to and determination by the board.

"Underground storage" means storage of hazardous liquid in a subsurface stratum or formation of the earth.

199—13.2(479B) Petition for permit.

13.2(1) A petition for a permit shall be made to the board upon the form prescribed and shall include all required exhibits. The petition shall be considered as filed upon receipt at the office of the board. An original and two copies of the petition and exhibits shall be filed. Required exhibits shall be in the following form:

a. Exhibit "A." A legal description showing, at minimum, the general direction of the proposed route through each quarter section of land to be crossed, including township and range and whether on private or public property, public highway or railroad right-of-way, together with other information as may be deemed pertinent. Construction deviation of 160 rods (one-half mile) from proposed routing will be permitted.

If it becomes apparent there will be a deviation of greater than 160 rods (one-half mile) in some area from the proposed route as filed with the board, construction of the line in the area shall be suspended. Exhibits A, B, E, and F reflecting the deviation shall be filed, and the procedure set forth shall be followed upon the filing of a petition for amendment of a permit.

b. Exhibit "B." Maps showing the proposed routing of the pipeline. Strip maps will be acceptable. Two copies of the maps shall be filed. The maps may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

(1) The route of the pipeline which is the subject of the petition, including the starting and ending points, and when paralleling a road or railroad, which side it is on. Multiple pipelines on the same right-of-way shall be indicated.

(2) The name of the county, county and section lines, and township and range numbers.

(3) The location and identity of public roads, railroads, major streams or bodies of water, and other pertinent natural or man-made features influencing the route.

(4) The name and corporate limits of cities and the name and boundaries of any public lands or parks.

(5) Other pipelines and the identity of the owner.

c. Exhibit "C." An explanation of the purpose of the proposed project and a general description of the proposed pipeline, including its approximate length, size, products carried, and other information as may be pertinent to describe the project.

d. Exhibit "D." Satisfactory attested proof of solvency and financial ability to pay damages in the sum of $250,000 or more; or surety bond satisfactory to the board in the penal sum of $250,000 with surety approved by the board, conditioned that the petitioner will pay any and all damages legally recovered against it growing out of the operation of its pipeline or gas storage facilities in the state of Iowa; security satisfactory to the board as a guarantee for the payment of damages in the sum of $250,000; or satisfactory proofs that the company has property subject to execution within this state, other than pipelines, of a value in excess of $250,000.

e. Exhibit "E." Consent or other showing of right of appropriate public highway authorities, or railroad companies, where the pipeline will be placed longitudinally on, over or under, or at other than an approximate right angle to railroad tracks or highway, when consent is obtained prior to filing of the petition and hearing shall be filed with the petition.

If the exact and specific route is uncertain at the time of petition, a statement shall be made by petitioner that all consents or other showing of right will be obtained prior to construction and copies filed with the board.

f. Exhibit "F." A general statement covering each of the following topics: the nature of the lands, waters, and public or private facilities to be crossed; the possible use of alternative routes; the relationship of the proposed pipeline to present and future land use and zoning ordinances; and the inconvenience or undue injury which may result to property owners as a result of the proposed project.

g. Exhibit "G." If informational meetings were required, an affidavit that the meetings were held in each county affected by the proposed project and the time and place of each meeting. Copies of the mailed notice letter and the published notice(s) of the informational meeting shall be attached to the affidavit.

199—13.19(479B) Sale or transfer of permit.

13.19(1) No permit shall be sold without prior written approval of the board. A petition for approval shall be jointly filed by the buyer and seller and shall include assurances that the buyer is authorized to transact business in the state of Iowa; that the buyer is willing and able to construct, operate, and maintain the pipeline in accordance with these rules; and, if the sale is prior to completion of construction of the pipeline, that the buyer has the financial ability to pay up to $250,000 in damages.

13.19(2) No transfer of pipeline permit prior to completion of pipeline construction shall be effective until the person to whom the permit was issued files notice with the board of the transfer. The notice shall include the date of the transfer and the name and address of the transferee.

13.19(3) The board shall receive notice from the transferor of any other transfer of a pipeline permit after completion of construction.

For the purposes of this rule, reassignment of a pipeline permit as part of a corporate restructuring, with no change in pipeline operating personnel or procedures, is considered a transfer.

199—13.20(479B) Amendments to rules. These rules are subject to such amendments or exceptions as the board may deem advisable. Parties desiring to depart from these rules may make written requests to the board, whereupon appropriate action will be taken. Amendments shall apply only to permits issued after the effective date of such amendments.

These rules are intended to implement Iowa Code chapter 479B.

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CHAPTER 14
Reserved

4. The number of deaths or personal injuries and the extent of those injuries, if any.
5. Initial estimate of damages.
6. Number of services interrupted, if applicable.
7. A summary of the significant information available to the utility regarding the probable cause of the incident and extent of damages.

Within 30 days of the date of the incident, the utility shall file a written report with the utilities board. The report shall include the information required for telephone notice, the probable cause as determined by the utility, and the amount of monetary damages. If significant additional information becomes available at a later date, a supplemental report shall be filed.

Copies of the report forms and responses to data requests submitted to the U.S. Department of Transportation Office of Pipeline Safety or to the National Transportation Safety Board shall be filed with the utilities board.

c. Construction programs. Rescinded IAB 11/19/97, effective 12/24/97.

d. Reports of gas service. Each utility shall compile a monthly record of gas service. The record shall be completed within 30 days after the end of the month covered. The compilation is to be kept available, for inspection by the board or its staff, at the utility's principal office within the state of Iowa. Such record shall contain:

(1) The daily and monthly average of total heating values of gas in accordance with 19.7(6).
(2) The monthly acquisition and disposition of gas.
(3) Interruptions of service occurring during the month in accordance with 19.7(7). If there were no interruptions, then it should be so stated.
(4) The number of customer pressure investigations made and the results.
(5) The number of customer meters tested and test results tabulated as follows: The number that falls into limits 0 to + 2%, + 2 to + 4%, 0 to - 2%, - 2 to - 4%, over + 4%, under - 4%, and "Does Not Register" in accuracy.
(6) Progress on leak survey programs including the number of leaks found classified as to hazard and nature, and if known, the cause and type of pipe involved.
(7) Number of district regulators checked and nature of repairs required.
(8) Number of house regulators checked and nature of repairs required.
(9) Description of any unusual operating difficulties.
(10) Type of odorant and monthly average pounds per million cubic feet used in each individual distribution system.

A summary of the 12 monthly gas service records for each calendar year shall be attached to and submitted with the utility's annual fiscal plant and statistical report to the board.

e. Filing published meter and service installation rules. A copy of the utility's current rules, if any, published or furnished by the utility for the use of engineers, architects, plumbing contractors, etc., covering meter and service installation shall be filed with the board.

f. Filing customer bill forms. A copy of each type of customer bill form in current use shall be filed with the board.

g. Reports to federal agencies. Copies of reports submitted pursuant to 49 CFR Part 191 as amended through April 30, 1999, "Transportation of Natural and Other Gas by Pipeline: Annual Reports, Incident Reports, and Safety-Related Condition Reports," shall be filed with the board. Utilities operating in states besides Iowa shall provide to the board data for Iowa only.

h. Change in rate. A notification to the board shall be made of any planned change in rate of service by a utility even though the change in rate of service is provided for in its tariff filing with the board. This information shall reflect the amount of increase or decrease and the effective date of application. An up-to-date tariff sheet shall be supplied to the Iowa utilities board for its copy of the tariff showing the current rates.

i. List of persons authorized to receive board inquiries. Each utility shall file with the board a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the board in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; (4) meter tests and repairs; (5) emergencies during nonoffice hours; (6) pipeline permits (gas). Such information shall be kept current as changes or corrections are made.

j. Residential customer statistics. Each rate-regulated gas utility shall file with the board on or before the fifteenth day of each month one copy of the following residential customer statistics for the preceding month:

(1) Number of accounts;
(2) Number of accounts certified as eligible for energy assistance since the preceding October 1;
(3) Number of accounts past due;
(4) Number of accounts eligible for energy assistance and past due;
(5) Total revenue owed on accounts past due;
(6) Total revenue owed on accounts eligible for energy assistance and past due;
(7) Number of disconnection notices issued;
(8) Number of disconnection notices issued on accounts eligible for energy assistance;
(9) Number of disconnections for nonpayment;
(10) Number of reconnections;
(11) Number of accounts determined uncollectible; and
(12) Number of accounts eligible for energy assistance and determined uncollectible.

k. Monthly, periodic and annual reports. Each utility shall file such other monthly, periodic and annual reports as are requested by the board. Monthly and periodic reports shall be due in the board's office within 30 days after the end of the reporting period. All annual reports shall be filed with this board by April 1 of each year for the preceding calendar year.

This rule is intended to implement Iowa Code section 476.2.

199—19.3(476) General service requirements.

19.3(1) *Disposition of gas.* The meter and any service line pressure regulator shall be owned by the utility. The utility shall place a visible seal on all meters and service line regulators in customer use, such that the seal must be broken to gain entry.

a. All gas sold by a utility shall be on the basis of meter measurement except:
(1) Where the consumption of gas may be readily computed without metering; or
(2) For temporary service installations.

b. All gas delivered to multioccupancy premises where units are separately rented or owned shall be sold by a utility on the basis of individual meter measurement for each unit except for that gas used in centralized heating, cooling or water-heating systems, where individual metering is impractical, where a facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual tenants, or where submetering or resale of service was permitted prior to 1966.

199—19.5(476) Engineering practice.

19.5(1) *Requirement for good engineering practice.* The gas plant of the utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice in the gas industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

19.5(2) *Standards incorporated by reference.*

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

(1) 49 CFR Part 191, "Transportation of Natural and Other Gas By Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through April 30, 1999.

(2) 49 CFR Part 192, "Transportation of Natural and Other Gas By Pipeline; Minimum Federal Safety Standards," as amended through April 30, 1999.

(3) 49 CFR Part 193, "Liquefied Natural Gas Facilities: Federal Safety Standards," as amended through April 30, 1999.

(4) 49 CFR Part 199, "Drug Testing," as amended through April 30, 1999.

(5) ASME B31.8 1995, "Gas Transmission and Distribution Piping Systems."

(6) ANSI/NFPA No. 59-1998, "Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants."

b. The following publications are adopted as standards of accepted good practice for gas utilities:

(1) ANSI Z223.1/NFPA 54-1996, "National Fuel Gas Code."

(2) ANSI A225/NFPA 501A-1997, "Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities."

19.5(3) *Adequacy of gas supply.* The gas supply regularly available from pipeline sources supplemented by production or storage capacity must be sufficiently large to meet all reasonable demands for firm gas service.

19.5(4) *Gas transmission and distribution facilities.* The utility's gas transmission and distribution facilities shall be designed, constructed and maintained as required to reliably perform the gas delivery burden placed upon them. Each utility shall be capable of emergency repair work on a scale consistent with its scope of operation and with the physical conditions of its transmission and distribution facilities.

In appraising the reliability of the utility's transmission and distribution system, the board will consider, as principal factors, the condition of the physical property and the size, training, supervision, availability, equipment and mobility of the maintenance forces.

19.5(5) *Inspection of gas plant.* Each utility shall adopt a program of inspection of its gas plant in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility's experience and accepted good practice. Each utility shall keep sufficient records to give evidence of compliance with its inspection program.

199—19.6(476) Metering.

19.6(1) *Inspection and testing program.* Each utility shall adopt a written program for the inspection and testing of its meters to determine the necessity for adjustment, replacement or repair. The frequency of inspection and methods of testing shall be based on the utility's experience, manufacturer's recommendations, and accepted good practice. The board considers the publications listed in 19.6(3) to be representative of accepted good practice. Each utility shall maintain inspection and testing records for each meter and associated device until three years after its retirement.

19.6(2) *Program content.* The written program shall, at minimum, address the following subject areas:

a. Classification of meters by capacity, type, and any other factor considered pertinent.

b. Checking of new meters for acceptable accuracy before being placed in service.

c. Testing of in-service meters, including any associated instruments or corrective devices, for accuracy, adjustments or repairs. This may be accomplished by periodic tests at specified intervals or on the basis of a statistical sampling plan, but shall include meters removed from service for any reason.

d. Periodic calibration or testing of devices or instruments used by the utility to test meters.

e. Leak testing of meters before return to service.

f. The limits of meter accuracy considered acceptable by the utility.

g. The nature of meter and meter test records maintained by the utility.

19.6(3) *Accepted good practice.* The following publications are considered to be representative of accepted good practice in matters of metering and meter testing:

a. American National Standard for Gas Displacement Meters (500 Cubic Feet Per Hour Capacity and Under), ANSI B109.1-1992.

b. American National Standard for Diaphragm Type Gas Displacement Meters (Over 500 Cubic Feet Per Hour Capacity), ANSI B109.2-1992.

c. American National Standard for Rotary Type Gas Displacement Meters, ANSI B109.3-1992.

d. Handbook E-4: Displacement Gas Meters, American Meter Company, 1970.

e. Measurement of Gas Flow by Turbine Meters, ANSI/ASME MFC-4M-1990.

f. Measurement of Fuel Gas by Turbine Meters, American Gas Association Transmission Measurement Committee Report No. 7, 1981.

g. Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, ANSI/API 2530-1991.

19.6(4) *Meter adjustment.* All meters and associated metering devices shall, when tested, be adjusted as closely as practicable to the condition of zero error.

19.6(5) *Request tests.* Upon request by a customer, a utility shall test the meter servicing that customer, except that such tests need not be made more frequently than once in 18 months.

A written report of the test results shall be mailed to the customer within ten days of the completed test and a record of each test shall be kept on file at the utility's office. The utility shall give the customer or a representative of the customer the opportunity to be present while the test is conducted.

If the test finds the meter is accurate within the limits accepted by the utility in its meter inspection and testing program, the utility may charge the customer $25 or the cost of conducting the test, whichever is less. The customer shall be advised of any potential charge before the meter is removed for testing.

19.6(6) *Referee tests.* Upon written request by a customer or utility, the utilities board will conduct a referee test of a meter except that such tests need not be made more frequently than once in 18 months. The request shall be accompanied by a $30 check or money order made payable to the utility.

Within 5 days of receipt of the written request and payment, the utilities board shall forward the deposit to the utility and notify the utility of the requirement for a test. The utility shall, within 30 days after notification of the request, schedule the date, time and place of the test with the board and customer. The meter shall not be removed or adjusted before the test and the utility shall furnish all testing equipment and facilities for the test. If the tested meter is found to be more than 2 percent fast or 2 percent slow the deposit will be returned to the party requesting the test and billing adjustments shall be made as required in 19.4(13). The board shall issue its report within 15 days after the test is conducted, with a copy to the customer and the utility.

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Upon installing a service limiter, the utility shall post the premises with a notice informing the occupant of the installation of the service limiter, its purpose, how it operates, and how it can be reset by the occupant.

The notice of pending service limitation required by these rules shall satisfy the requirements of subrule 20.4(15), substituting "service limitation" for "disconnection" or "refusal or disconnection of service" throughout the rule.

Service may be limited for nonpayment of bill or deposit, except as restricted by subrule 20.4(16), relating to insufficient reasons for denying service, provided that the utility has satisfied the requirements of 20.4(15)*"h,"* excluding the portion of subparagraph (4) "special circumstances" relating to same-day reconnection, and substituting "service limitation" for "disconnection" (and all other forms of that term) throughout that subrule. An installed service limiter shall be removed no later than the next working day after the residential customer has paid the delinquent bill or deposit in full or has entered into a reasonable payment agreement with the utility.

Service may be limited without the written 12-day notice for failure of the customer to comply with the terms of a payment agreement, provided that the requirements of 20.4(15)*"i"* have been satisfied, excluding the portion of subparagraph (2) relating to same-day reconnection, and substituting "service limitation" for "disconnection" (and all other forms of that term) throughout that subrule.

These rules are intended to implement Iowa Code sections 476.6, 476.8, 476.20 and 476.54.

199—20.5(476) Engineering practice.

20.5(1) *Requirement for good engineering practice.* The electric plant of the utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

20.5(2) *Acceptable standards.* The utility shall use the applicable provisions in the publications listed below as standards of accepted good practice unless otherwise ordered by the board.

a. Iowa Electrical Safety Code, as defined in IAC [199], Chapter 25.

b. National Electrical Code, ANSI/NFPA 70-1999.

c. American National Standard Requirements for Instrument Transformers, ANSI/IEEE C57.13.1 (1981); C57.13.2 (1992); and C57.13.3 (1983).

d. American National Standard Requirements for Electrical Analog Indicating Instruments, ANSI C39.1-1981.

e. Rescinded IAB 11/19/97, effective 12/24/97.

f. American National Standard Voltage Ratings for Electric Power Systems and Equipment (60Hz), ANSI C84.1-1995.

g. Grounding of Industrial and Commercial Power Systems, IEEE 142-1991.

20.5(3) *Adequacy of supply and reliability of service.* The generating capacity of the utility's plant, supplemented by the electric power regularly available from other sources, must be sufficiently large to meet all normal demands for service and provide a reasonable reserve for emergencies.

In appraising adequacy of supply the board will segregate electric utilities into two classes viz., those having high capacity transmission interconnections with other electrical utilities and those which lack such interconnection and are therefore completely dependent upon the firm generating capacity of the utility's own generating facilities.

a. In the case of utilities having interconnecting ties with other utilities, the board will, upon appraising adequacy of supply, take appropriate notice of the utility's recent past record, as of the date of appraisal, of any widespread service interruptions and any capacity shortages along with the consideration of the supply regularly available from other sources, the normal demands, and the required reserve for emergencies.

b. In the case of noninterconnected utilities the board will give attention to the maximum total coincident customer demand which could be satisfied without the use of the single element of plant equipment, the disability of which would produce the greatest reduction in total net plant productive capacity and also give attention to the normal demands for service and to the reasonable reserve for emergencies.

20.5(4) *Electric transmission and distribution facilities.* The utility's electrical transmission and distribution facilities shall be designed, constructed, maintained and electrically reinforced and supplemented as required to reliably perform the power delivery burden placed upon them in the storm and traffic hazard environment in which they are located. Each utility shall carry on an effective preventive maintenance program and shall be capable of emergency repair work on a scale which its storm and traffic damage record indicates as appropriate to its scope of operations and to the physical condition of its transmission and distribution facilities.

In appraising the reliability of the utility's transmission and distribution system the board will consider the condition of the physical property and the size, training, supervision, availability, equipment and mobility of the maintenance forces all as demonstrated in actual cases of storm and traffic damage to the facilities.

20.5(5) *Inspection of electric plant.* Each utility shall adopt a written program for inspection of its electric plant in order to determine the necessity for replacement and repair in compliance with board rule 199—25.3(476,478).

This rule is intended to implement Iowa Code section 476.8 and 478.18.

199—20.6(476) Metering.

20.6(1) *Inspection and testing program.* Each utility shall adopt a written program for the inspection and testing of its meters to determine the necessity for adjustment, replacement or repair. The frequency of inspection and methods of testing shall be based on the utility's experience, manufacturer's recommendations, and accepted good practice. The publications listed in 20.6(3) are representative of accepted good practice. Each utility shall maintain inspecting and testing records for each meter and associated device until three years after its retirement.

20.6(2) *Program content.* The written program shall, at minimum, address the following subject areas:

a. Classification of meters by capacity, type, and any other factor considered pertinent.

b. Checking of new meters for acceptable accuracy before being placed in service.

c. Testing of in-service meters, including any associated instruments or corrective devices, for accuracy, adjustments or repairs. This may be accomplished by periodic tests at specified intervals or on the basis of a statistical sampling plan, but shall include meters removed from service for any reason.

d. Periodic calibration or testing of devices or instruments used by the utility to test meters.

e. The limits of meter accuracy considered acceptable by the utility.

f. The nature of meter and meter test records which will be maintained by the utility.

20.6(3) *Accepted good practice.* The following publications are considered to be representative of accepted good practice in matters of metering and meter testing:

a. American National Standard Code for Electricity Metering, ANSI C12.1-1995.

b. American National Standard for Solid-State Electricity Meters, ANSI C12.16-1991.

c. American National Standard for Cartridge-type Solid-State Pulse Recorders for Electricity Metering, ANSI C12.17-1991.

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CHAPTER 25
IOWA ELECTRICAL SAFETY CODE
[Prior to 10/8/86, Commerce Commission[250]]

199—25.1(476,476A,478) General.

25.1(1) *Purpose and intent.* The rules apply to electric and communication utility facilities located in the state of Iowa and shall supersede all conflicting rules of any such utility.

These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.

This rule shall in no way relieve any utility from any of its duties under the laws of this state.

25.1(2) Reserved.

199—25.2(476,476A,478) Iowa electrical safety code defined. The standard minimum requirements for the installation and maintenance of electric substations, generating stations, and overhead and underground electric supply or communications lines adopted below, collectively constitute the "Iowa Electrical Safety Code."

25.2(1) *National Electrical Safety Code.* The American National Standards Institute (ANSI) C2-1997 "National Electrical Safety Code" (NESC) as ultimately conformed to the ANSI-approved draft by correction of publishing errors through issuance of printed corrections is adopted as part of the Iowa electrical safety code, except Part 4, "Rules for Operation of Electric Supply and Communications Lines and Equipment," which is not adopted by the board.

25.2(2) *Modifications and qualifications to ANSI C2.* The standards set forth in ANSI C2 are modified or qualified as follows:

a. Introduction to the National Electrical Safety Code.

(1) The following paragraph is added to NESC 011: "The National Electrical Safety Code (NESC) covers utility facilities and functions from the point of generation by the utility, or delivery from another entity, of electricity or communications signals through the utility system to the point of delivery to a customer's facilities."

(2) NESC 013A2 is modified to read as follows: "Types of construction and methods of installation other than those specified in the rules may be used experimentally to obtain information, if done where qualified supervision is provided and prior approval is obtained from the board."

b. Minimum clearances.

(1) In any instance where minimum clearances are provided in Iowa Code chapter 478 which are greater than otherwise required by these rules, the statutory clearances shall prevail.

(2) The following clearances shall apply to all lines regardless of date of construction: NESC 232, vertical clearances for "Water areas not suitable for sailboating or where sailboating is prohibited," "Water areas suitable for sailboating. . .," and "Public or private land and water areas posted for rigging and launching sailboats"; and NESC 234E, "Clearance of Wires, Conductors, or Cables Installed Over or Near Swimming Areas With No Wind Displacement."

(3) Table 232-1, Footnote 19, is changed to read: "Where the U.S. Army Corps of Engineers or the state, or a surrogate thereof, issues a crossing permit, the clearances of that permit shall govern if equal to or greater than those required herein. Where the permit clearances are less than those required herein and water surface use restrictions on vessel heights are enforced, the permit clearances may be used."

(4) Except for clearances near grain bins, for measurements made under field conditions, the board will consider compliance with the overhead vertical line clearance requirements of Subsection 232 and Table 232-1 of the 1987 NESC indicative of compliance with the 1997 NESC. (For an explanation of the differences between 1987 and subsequent code edition clearances, see Appendix A of the 1997 NESC.)

c. Rescinded IAB 8/5/92, effective 9/9/92.

d. Rule 264E.1 is changed to read:

"The ground end of anchor guys exposed to pedestrian or vehicle traffic shall be provided with a substantial marker not less than eight feet long. The guy marker shall be of a conspicuous color such as yellow, orange, or red. Green, white, gray or galvanized steel colors are not reliably conspicuous against plant growth, snow, or other surroundings. Noncomplying guy markers shall be replaced as part of the utility's inspection and maintenance plan."

e. There is added to Rule 381G:

(3) Pad-mounted equipment not located within a fenced or otherwise protected area shall have affixed to its outside access door or cover a prominent "Caution" or other appropriate warning sign of highly visible color, warning of hazardous voltage and including the name of the utility. These signs shall be in place on or before December 31, 1992.

f. There is added to the first paragraph of Rule 110.A.1, after the sentence stating, "Entrances not under observation of an authorized attendant shall be kept locked," the following sentence:

Entrances may be unlocked while authorized personnel are inside. However, if unlocked, the entrance gate must be fully closed, and must also be latched or fastened if there is a gate-latching mechanism.

25.2(3) *Grain bins.*

a. Utilities shall conduct annual public information campaigns to inform farmers, farm lenders, grain bin merchants, and city and county zoning officials of the hazards of and standards for construction of grain bins near power lines.

b. An electric utility may refuse to provide electric service to any grain bin built near an existing electric line which does not provide the clearances required by The American National Standards Institute (ANSI)C2-1997 "National Electrical Safety Code," Rule 234F. This paragraph *"b"* shall apply only to grain bins loaded by portable augers, conveyors or elevators and built after September 9, 1992, or to grain bins loaded by permanently installed augers, conveyors, or elevator systems installed after December 24, 1997.

25.2(4) *General rules for operation, coordination and cooperation.* Aerial electric supply lines and aerial communication lines shall utilize joint construction whenever feasible and advantageous to each party unless inductive effects prevent safe adequate communication service. The means of avoiding or reducing inductive effects such as are outlined below shall be applied in each case insofar as is practical for the sufficient reduction of inductive interference. In the event that the parties of interest fail to agree upon the application of these means to a specific case, the matter shall be referred to the board for determination.

a. Location of electric supply lines. Electric supply lines and communication lines may be required to be located on opposite sides of the highway and separated as far as practical within highway limits. When electric supply and communication lines are located on private rights-of-way, the horizontal separation shall, if practical, be of such distance that no structure conflict will be created. In the event it is not practical to obtain such a separation when these lines are on private rights-of-way and the parties involved can reach an agreement with regard to the conflict or joint use of poles, no further action is necessary. In the event no agreement can be reached, the matter shall be referred to the board for determination.

Electric utilities shall furnish pertinent data regarding new construction and major improvements of electric supply lines to communication utilities operating communication lines involved in crossings, conflicts and inductive exposures.

Crossings from side to side of a highway should be avoided as far as practical.

b. Location of communication lines. Communication utilities shall furnish pertinent data regarding new construction and major improvements of communication lines to utilities operating electric supply lines involved in crossings, conflicts and inductive exposures.

In the absence of a joint occupancy agreement, communication lines shall be constructed on one side of the highway so that the other side of the highway may be used by electric supply lines.

Crossings from side to side of a highway should be avoided as far as practical.

c. Lines. In order to limit the residual currents and voltages arising from line unbalances, the resistance, inductance, capacitance and leakage conductance of each phase conductor of an electric supply circuit in any section shall be as nearly equal as practical to the corresponding quantities in the other phase conductors in the same section.

The ampacity of a multigrounded neutral conductor of an electric supply circuit shall be adequate for the load which it is required to carry. The ampacity of a multigrounded neutral conductor of an electric supply circuit shall not be less than 60 percent of that of any phase conductor with which it is associated, except for three phase four wire wye circuits where it shall have ampacity not less than 50 percent of that of any associated phase conductor. In no case shall the resistance of a multigrounded neutral conductor exceed 3.6 ohms per mile. (This does not modify the mechanical strength requirements for conductors.) A multigrounded conductor installed and utilized primarily for lightning shielding of the associated phase conductors need not comply with the above percentage ampacity requirements for neutral conductors.

Where the neutral conductor of the electrical supply circuit is not multigrounded or in an inductive exposure involving communication or signal circuits and equipment where the controlling frequencies are 360 Hertz or lower, any neutral conductor shall have the same ampacity as the phase conductors with which it is associated.

25.2(5) *Other references adopted.*

a. The "National Electrical Code," ANSI/NFPA 70-1999, is adopted as a standard of accepted good practice for customer owned electrical facilities beyond the utility point of delivery.

b. "The Lineman's and Cableman's Handbook," Eighth Edition; Kurtz, Edwin B. and Shoemaker, Thomas M.; New York, McGraw-Hill Book Co., is adopted as a recommended guideline to implement the "National Electrical Safety Code" or "National Electrical Code," and for developing the inspection and maintenance plans required by 199 IAC 25.3(476,478).

199—25.3(476,478) Inspection and maintenance plans.

25.3(1) *Filing of plan.* Each electric utility shall adopt and file with the board a written program for inspecting and maintaining its electric supply lines and substations (excluding generating stations) in order to determine the necessity for replacement and repair. If the plan is amended or altered, revised copies of the appropriate plan pages shall be filed.

25.3(2) *Annual report.* Each utility shall include as part of its annual report to the board, as required by 199—Chapter 23, certification of compliance with the inspection plan or a detailed statement on areas of noncompliance.

25.3(3) *Contents of plan.* The inspection plan shall include the following elements:

a. General. A listing of all counties or parts of counties in which the utility has electric supply lines in Iowa. If the utility has district or regional offices responsible for implementation of a portion of the plan, the addresses of those offices and a description of the territory for which they are responsible shall also be included.

b. Inspection schedule. A schedule for the periodic inspection of the various units of the utility's electric plant. The period between inspections shall be based on accepted good practice in the industry, but shall not exceed ten years for any given line or piece of equipment. Lines operated at 34.5 KV or above shall be inspected at least annually for damage and to determine the condition of the overhead line insulators.

c. Inspection coverage. The plan shall provide for the inspection of all supply line and substation units within the adopted inspection periods and shall include a complete listing of all categories of items to be checked during an inspection.

d. Instructions to inspectors. Copies of instructions or guide materials used by utility inspectors in determining whether a facility is in acceptable condition or in need of corrective action or further investigation.

25.3(4) *Records.* Each utility shall keep sufficient records to demonstrate compliance with its inspection program. For each inspection unit, the records shall include the inspection date(s), the findings of the inspection, and the disposition or scheduling of repairs or maintenance found necessary during the inspection. The record shall be kept until two years after the next periodic inspection is completed, or until all necessary repairs or maintenance are completed, whichever is longer.

25.3(5) *Guidelines.* Applicable portions of Rural Electrification Bulletins 161-3, 161-4, and 165-1 and of The Lineman's and Cableman's Handbook are suggested as guidelines for the development and implementation of an inspection plan.

199—25.4(476,478) Correction of problems found during inspections. Corrective action shall be taken within a reasonable period of time on all potentially hazardous conditions, safety code noncompliance, maintenance needs, or other concerns identified during inspections. Hazardous conditions shall be corrected promptly.

199—25.5(476,478) Accident reports. A utility shall file with the board a written report on any accident to an employee or other person involving contact with its energized electrical supply facilities which results in a fatality, admission to a hospital, $10,000 in damages to the property of the utility and others, or any other accident considered significant by the utility. Prompt telephone notice of any electrical contact accident which results in a fatality shall be given to the board's engineering section during normal working hours. Written reports shall be submitted as soon as is practical following the accident.

Written and telephone accident reports shall include the following information:

— The name of the utility, the name of the person making the report, and their telephone number.

— The time and location of the accident.

— The number of fatalities, extent of personal injuries, and the extent of property damage.

— A description of the events associated with the accident.

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CHAPTER 26

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CHAPTER 27
IOWA-SAVE AMERICA'S VITAL ENERGY

Rescinded IAB 5/13/92, effective 6/17/92

◊ Two ARCs

IOWA FINANCE AUTHORITY[265]

[Prior to 7/26/85, Housing Finance Authority[495]]
[Prior to 4/3/91, Iowa Finance Authority[524]]

CHAPTER 7
CONTESTED CASES

CHAPTER 8
PRIVATE ACTIVITY BOND ALLOCATION

CHAPTER 9
TITLE GUARANTY DIVISION

CHAPTER 10
MORTGAGE CREDIT CERTIFICATES

CHAPTER 11
Reserved

CHAPTER 12
LOW-INCOME HOUSING TAX CREDIT

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265—12.1(16) Definitions.

"Affiliate" means an individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other person, and specifically shall include parents or subsidiaries.

"Applicable fraction" means the fraction used to determine the qualified basis of the qualified low-income building, which is the smaller of the unit fraction or the floor space fraction, as defined more fully in IRC Section 42(c)(1).

"Applicable percentage" means the percentage used to determine the amount of the low-income housing tax credit, as defined more fully in IRC Section 42(b).

"Applicant" means any person and any affiliate of such person that submits an application to the authority requesting a tax credit allocation pursuant to these rules. Each project owner and each of the project owner's successors in interest shall be obligated to carry out the commitments made to the authority by the applicant.

"Application" means those forms required by the authority, including any required attachments, exhibits or other supporting materials, filed with the authority by an applicant requesting a low-income housing tax credit allocation. The application must include all information required by rule and as may be subsequently required by the authority.

"Area gross median income (AGMI)" means the most current tenant income requirements pursuant to the qualified low-income housing project requirements of IRC Section 42(g).

"Board" means the board of directors of the authority.

"Carryover agreement and allocation and taxpayer's election statement" means an allocation of current year tax credit authority by the authority pursuant to the provisions of IRC Section 42(h)(1)(E) and Treasury Regulations, § 1.42-6.

"Code" or *"IRC"* means the Internal Revenue Code of 1986 together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the low-income housing tax credit program authorized by IRC Section 42. A copy of the Internal Revenue Code and Treasury regulations relating to this program are found in the state law library and are available for review by the public.

"Combined 30 percent and 70 percent of the present value of the credit" means the total amount of credit calculated at either 4 percent or 9 percent used to calculate the total number of credits requested per unit for a project.

"Compliance period," as defined in IRC Section 42(i)(1) as amended to January 1, 1986, means, with respect to any building, the period of 15 consecutive taxable years beginning with the first taxable year of the credit period.

"Control" (including the terms "controlling," "controlled by," "under common control with," or some variation or combination of all three) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person or affiliate thereof, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50 percent of the general partner interest in a limited partnership, or designation as a managing general partner or the managing member of a limited liability company.

"Cost certification procedures" means those procedures described by these rules for the filing of requests for IRS Form 8609 for projects placed in service under the low-income housing tax credit program and for carryover agreements and allocations and taxpayer's election statements.

"Credit" means the low-income housing tax credit issued pursuant to the program, IRC Section 42 and Iowa Code section 16.52.

"Credit period" means, with respect to a building within a project, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the project owner, the succeeding taxable year, as more fully defined in IRC Section 42(f)(1).

"Declaration of land use restrictive covenants (LURA)" means an agreement between the authority, the project owner and all successors in interest to the project owner which encumbers the project with respect to provisions stipulated in IRC Section 42(h), this chapter and Iowa Code section 16.52.

"Determination notice" means a notice issued by the authority to the owner of a tax-exempt bond project which states that the project may be eligible to claim low-income housing tax credits without receiving an allocation of credits from the state housing credit ceiling, sets forth conditions which must be met by the individual project before the authority shall issue the IRS Form(s) 8609 to the project owner, and specifies the amount of tax credits necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

"Difficult development area" means any area that is so designated by the Secretary of the United States Department of Housing and Urban Development (HUD) as an area which has high construction, land, and utility costs relative to area median family income.

"Eligible basis" means, with respect to a building within a project, the building's eligible basis as defined in IRC Section 42(d).

"Equity gap" means the difference between the total sources of financing for the project and the total project costs that is to be filled with the proceeds of the credit.

"Evaluator" means members of the authority staff or temporary staff hired to review and score the applications after October 18, 1999.

"Fannie Mae" means the Federal National Mortgage Association.

"FHLB" means the Federal Home Loan Bank.

"Forward funding" or *"forward commitment"* shall have the same meaning as described in IRC Section 42(b)(2)(A)(ii)(I) and 42(h)(1)(C).

"Freddie Mac" means the Federal Home Loan Mortgage Corporation.

"General requirements" means items at a construction site necessary to complete the job. For example, general requirements may include power to the site, toilets, signage or other barriers.

"Governmental entity" means federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities, their employees, board members or agents.

"HART team" means the housing assistance review team. It is a committee comprised of representatives of governmental and quasi-governmental entities which administer affordable housing programs that may contribute financing and market information to low-income housing projects eligible for low-income housing tax credits. Members of the HART team include representatives from the authority, the Iowa department of economic development, the United States Department of Agriculture, the Federal Home Loan Bank of Des Moines, HUD and Fannie Mae.

"Housing credit agency" means the authority. Pursuant to Iowa Code section 16.52, the authority is charged with the responsibility of allocating low-income housing tax credits pursuant to IRC Section 42(h)(8)(A) and pursuant to Iowa Code section 16.52.

"Housing project for older persons" shall have the same meaning as described in 42 U.S.C. Section 3607(b)(2).

"Housing support services" means medical and psychological counseling, financial counseling, employment counseling, nutritional counseling, housing and placement counseling, and assistance in applying for other benefits and services such as child care and transportation.

"HUD" means the United States Department of Housing and Urban Development, or its successor.

"Intermediary costs" means costs associated with the sale or use of credits to raise equity capital. Such costs include, but are not limited to, financing fees and expenses, soft costs, syndication costs, developer fees and project reserves as described in subrule 12.6(47), numbered paragraphs "26" to "41."

"IRS" means the Internal Revenue Service, or its successor.

"Low-income housing credit allocation amount" means, with respect to a project or a building within a project, the amount of credit the authority allocates to a project and determines to be necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the compliance period.

"Low-income housing tax credit (LIHTC)" means the credit determined under IRC Section 42(a) for any taxable year in the credit period equal to the amount of the applicable percentage of the qualified basis for each qualified low-income building.

"Low-income unit" means any residential rental unit if such unit is rent-restricted and the occupant's income meets the limitations applicable as required for a qualified low-income housing project.

"Market study" means a study of the rental market conditions for the communities where projects are or will be located. An outline of the market study requirements prepared by the authority is incorporated by this reference and pursuant to 265—subrules 17.4(2) and 17.12(2).

"Metropolitan statistical area (MSA)" means a central city containing at least 50,000 people with a total metropolitan population of at least 100,000.

"Organized community revitalization program" means a strategic plan adopted by a political subdivision that designates neighborhood plans, area plans, or comprehensive plans that address housing needs.

"Per capita component" means an item of the state housing credit ceiling, as defined in IRC Section 42(h)(3)(C)(i). The per capita component is based upon the calendar-year population estimates as determined by IRC Section 146(j) and promulgated on an annual basis by an IRS Service Notice.

"Person" shall have the same meaning as contained in Iowa Code chapter 4.

"Program" means the low-income housing tax credit program.

"Project" means a low-income rental housing property the owner of which represents that it is or will be a qualified low-income housing project within the meaning of IRC Section 42(g). With regard to this definition, the "project" is that property which is the basis for the application.

"Project owner" or *"owner"* means any person or affiliate thereof that owns or proposes to own and develop a project or expects to acquire control of a project consistent with control documents provided by the owner to the authority as part of the application for low-income housing tax credits.

"Property" means the real estate and all improvements thereon which are the subjects of the application, including all items of personal property affixed or related thereto, whether currently existing or proposed to be built thereon in connection with the application.

"Qualified allocation plan (the QAP)" means an allocation plan as described in these rules and in conformance with IRC Section 42 and Iowa Code section 16.52 and incorporated herein by this reference and pursuant to 265— subrules 17.4(2) and 17.12(2). The requirements set forth in these rules also apply to tax-exempt bond financed projects, which may be eligible for credits apart from the annual state housing credit per capita component. Tax-exempt bond financed projects must also satisfy the requirements for allocation under the qualified allocation plan.

"Qualified basis" means, with respect to a building within a project, the building's eligible basis multiplied by the applicable fraction, within the meaning of IRC Section 42(c)(1).

"Qualified census tract" means any census tract which is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, in which 50 percent or more of the households have an income which is less than 60 percent of the area median family income for such year.

"Qualified nonprofit organization" or *"nonprofit"* means an organization that is described in IRC Section 501(c)(3) or (4), that is exempt from federal income taxation under IRC Section 501(a), that is not affiliated with or controlled by a for-profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of IRC Section 42(h)(5)(C) and is allowed by law or otherwise to hold and develop property.

"Qualified nonprofit project" means a project in which a qualified nonprofit organization has control (directly or through a partnership or wholly owned subsidiary as defined in IRC Section 42(h)(5)(D)(ii)) and materially participates (within the meaning of IRC Section 469(h)) in its development and operation throughout the compliance period.

"Real estate owned (REO) projects" means any existing residential development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Fannie Mae, Freddie Mac, a federally chartered bank, a savings bank, a savings and loan association, the FHLB, a federally approved mortgage company or any other federal agency.

"Recovered credits" means either credits previously awarded to a project or projects that cannot use all the credits the project was awarded or credits from projects that cannot be placed in service by the owner.

"Rehabilitation expenditure" means amounts incurred in connection with the rehabilitation which the project owner represents to be "rehabilitation expenditures" within the meaning of IRC Section 42(e)(2).

"Rental assistance" means any assistance received by a low-income person from a governmental unit or other entity that permits the person to live in rental housing.

"Rural project" means a project located in Iowa within an area which:

1. Is situated outside the boundaries of an MSA; or
2. Is situated within the boundaries of an MSA if it has a population of not more than 20,000 and does not share boundaries with an urbanized area; or
3. Is located in an area that is eligible for funding by the United States Department of Agriculture-Rural Development.

"Selection criteria" means the criteria described in this chapter to determine the housing priorities of the state under the low-income housing tax credit program.

"State housing credit ceiling" means the limitation imposed by IRC Section 42(h) on the aggregate amount of housing credit allocations that may be made by the authority during any calendar year, as determined from time to time by the authority in accordance with IRC Section 42(h)(3).

"Tax-exempt organization" means an entity which is described in IRC Section 501(c)(3) or (4), and which is either registered or qualified to conduct business in the state or in the governmental unit wherein the project may be situated.

"Threshold criteria" means criteria used to determine the project's qualifications that are the minimum level of acceptability for consideration under the credit program. If a project fails to meet threshold criteria, it shall not be scored.

"Unallocated or unreserved credits" means credits that are not awarded by the authority during its most recent round of financing or are returned to the authority during the current year. These credits would be eligible for redistribution in accordance with the rules of the authority.

"USDA-Rural Development (USDA-RD)" means the rural housing division of the United States Department of Agriculture.

"Utilities" means gas, electricity, water and sewer service.

265—12.2(16) Purpose and objectives. The purpose of the low-income housing tax credit program is to provide an incentive to developers to construct or to acquire or to substantially rehabilitate, or some combination thereof, affordable rental housing units throughout the state for qualified individuals and families. These individuals or families must have an income that is at 60 percent or below the area median gross income. The units must remain in compliance for a minimum period of 15 years. The intent of the program is to allocate tax credits to those projects which best meet and serve the objectives outlined as follows:

1. To assist in the creation of affordable housing units for individuals and families which serve qualified individuals and families for the longest periods of time.

2. To assist in the creation of affordable housing units for individuals and families at the lowest income levels.

3. To assist in the creation of affordable housing units in areas of the greatest need for such housing in the state.

4. To encourage the preservation and rehabilitation of existing affordable housing units.

5. To encourage the construction of new affordable housing units.

6. To encourage the efficient use, leveraging, and coordination of various federal, state, community and private sources of funding and incentives to finance low-income housing development.

7. To assist in the creation of quality, decent, safe and affordable housing units for limited income individuals and families at reasonable costs.

265—12.3(16) Fees. The authority shall collect the following fees for the low-income housing tax credit program.

12.3(1) A nonrefundable $300 application processing fee for projects with up to 12 units. The authority shall collect a nonrefundable application fee of $500 for proposed projects with 13 or more units. The authority may accept checks made payable to the Iowa Finance Authority for the application fee. The fee shall be due with the application. An application shall not be reviewed or scored unless the application fee accompanies the application.

12.3(2) The authority shall collect a reservation fee of 5 percent of the total annual credit amount for projects receiving $100,000 or less in annual credit, and a reservation fee equal to 7 percent of the total annual credit shall be required for projects receiving $100,001 or more in annual credit. The reservation fee is nonrefundable.

12.3(3) A compliance monitoring fee shall be charged once the project has been placed in service, but prior to the issuance of IRS 8609 form after the authority has received, reviewed and approved the IRS 8609 request package. The compliance monitoring fee shall be charged one time. A compliance monitoring manual may be provided with the IRS 8609 forms free of charge. The compliance fee shall be 2.55 percent of the total annual credit amount awarded to the owner. The compliance monitoring manual is incorporated in this rule by this reference and pursuant to 265—subrules 17.4(2) and 17.12(2).

265—12.4(16) Application process and general information. Upon request, the authority shall forward an application packet to a potential applicant. As may be necessary for the benefit of the program, the authority may distribute unsolicited application packets to local financial institutions, regional councils of government, landlord associations, and other rental housing groups.

12.4(1) The application packet shall consist of the qualified allocation plan as described in these rules and the application form prepared by the authority to reflect the requirements of the qualified allocation plan.

a. All applications shall be typed, not handwritten. The application form provided by the authority must be used. The authority may supply the application form to any applicant in electronic form upon request.

b. Applications submitted on forms that have been retyped or on a form other than the application form supplied by the authority shall not be accepted.

c. All exhibits shall be labeled to match the applicable page of the application and must be submitted in numerical order.

12.4(2) For purposes of the applications due for the 1999 cycle of tax credit reservations, the authority shall consider only the applications, attachments and supporting documents filed on October 1, 1998, for the 1999 cycle and amendments filed pursuant to subrule 12.4(3). All applications filed on October 1, 1998, shall be considered newly filed as of October 7, 1999. All amendments filed between and including October 2, 1998, and March 9, 1999, shall be deemed part of the application filed on October 7, 1999. Any site visit conducted by the authority between August 1, 1999, and October 6, 1999, may be relied upon during the scoring of these applications after October 6, 1999.

12.4(3) Amendments to the applications filed on October 7, 1999, shall be due on October 18, 1999. Thereafter, no amendments to the 1999 applications shall be accepted. Except as provided in this subrule, applicants may amend their applications to conform with or address changes made in the qualified allocation plan as described in these rules.

a. Applicants may change the site described in the application as of March 9, 1999, only if the change in site was caused by a delay necessitated by the contested cases consolidated under 99 IFA 001 initially filed on March 23, 1999, and the ruling entered on July 2, 1999. An applicant shall certify in writing to the authority that the site change is due to delay necessitated by the contested case and the ruling and provide adequate evidence of the need for a site change. Adequate evidence shall include but is not limited to a letter notifying an applicant that an option had lapsed or a contract clearly showing that the passage of the option date qualifies as adequate evidence.

b. For the 1999 round every applicant shall provide an update confirming all of its financial commitments whether the commitments are firm or conditional. The applicant shall make these amendments to its sources and uses of funds included in the application.

c. In the event an applicant intends to syndicate or place tax credits, updated information regarding the syndicator or the placement of the credits shall be included as an amendment to the applicant's application. The amendment shall include the proceeds from the tax credit, proceeds from historic tax credits, the date the funds will be paid, the type of offering, the type of investor, the name of the fund, the name of the syndicator, the address, state, and ZIP code, and the telephone number. A copy of any agreement or contract relating to the syndication or placement of partnership interest must be included with the amendment.

12.4(4) Incomplete applications shall not be scored. An incomplete application is any application that is missing any document required by these rules. The authority will not notify an applicant if required documents are missing from the application.

12.4(5) The authority shall designate a single contact person for the low-income housing tax credit program for the 1999 cycle. The contact person shall not be an evaluator. Questions concerning the qualified allocation plan and the application may be addressed in writing to the authority's contact person by mail, E-mail, hand delivery or facsimile, no later than October 13, 1999, 3 p.m. Central time. Questions received and answers the authority provides shall be mailed or faxed on October 14, 1999, to all applicants and posted on the authority's Web page under Frequently Asked Questions regarding the 1999 tax credit round. Responses shall not be E-mailed to applicants. Oral questions shall not be accepted. The authority shall not be bound by any oral representation made in connection with the application or award of tax credit reservations. For the 1999 cycle, the authority shall have an in-person question and answer period for all applicants regarding the 1999 applications on October 13, 1999, for any applicant wishing to attend. The authority shall notify all applicants of the time and place of the meeting by fax prior to the meeting.

12.4(6) The authority is not responsible for any costs incurred by an applicant which are related to the preparation or delivery of the application or any other activities carried out by the applicant related to its response to the qualified allocation plan and application.

12.4(7) By submitting an application, an applicant agrees that the authority shall copy the application for purposes of facilitating the evaluation or to respond to requests for public records. The applicant agrees that such copying shall not violate the rights of any third party.

12.4(8) All applications become property of the authority and shall not be returned to the applicants even in the event that no tax credits are awarded. At the conclusion of the selection process, the contents of all proposals shall be placed in the public domain and be opened to inspection by interested parties subject to the provisions of Iowa Code chapter 22.

12.4(9) All information submitted by an applicant may be treated as a public record by the authority unless the applicant properly requests that the information be treated as confidential information at the time the application is submitted. Public records shall be copied by the authority as necessary to comply with Iowa's public record laws and to be consistent with the authority's rules.

a. Any request for confidential treatment of information must be included with the application and must enumerate the specific grounds in Iowa Code chapter 22 which support treatment of the material as confidential and must indicate why disclosure is not in the best interest of the public. The request must also include the name, address, and telephone number of the person authorized by the applicant to respond to any inquiries by the authority concerning the confidential status of the materials.

b. In the event the authority receives a request for the release of information that includes material an applicant has marked as confidential, the authority shall provide a written notice by fax to the applicant regarding the request as soon as practicable. Unless otherwise directed by a court of competent jurisdiction, the authority shall release the requested information within 15 days after faxing and mailing a written notice to the affected applicant.

c. The applicant's failure to request confidential treatment of material pursuant to this subrule and the relevant laws and administrative rules shall be deemed by the authority as a waiver of any right to confidentiality that the applicant may have had.

12.4(10) The amount of tax credits available in Iowa in each calendar year shall reflect the sum of the amounts allowed as the state credit ceiling under IRC Section 42(h)(3)(C). One or more reservation cycles may be established for each calendar year. The executive director, in consultation with authority staff, may determine in each calendar year the dates for each reservation cycle and the amount of tax credit (up to 100 percent of the state credit ceiling) available for reservation in each cycle. The authority shall maintain a list of persons who have expressed an interest in receiving a copy of the QAP and the application. Notices announcing specific dates and the amounts of tax credit available for reservation in each cycle shall be mailed to the persons on the list and posted on the authority's Web site at http://ifahome.com or otherwise made available prior to the beginning of each reservation cycle. The notice shall be deemed to have been given for the 1999 cycle.

12.4(11) The following conditions shall apply to the 1999 cycle of tax credits:

a. Any credit not reserved at the end of the first cycle shall be carried over to the next cycle, if any, for the same purpose.

b. Any unallocated or recovered credits or a combination of both may be awarded as part of the 1999 cycle of awards for tax credits, or may be carried over to 2000 at the discretion of the board.

c. The board may establish a waiting list to distribute unreserved or recovered credits for 1999 and as provided in rules 12.11(16) and 12.13(16). This is not a commitment to forward fund any project or ensure that a project shall be funded in another round of tax credit reservations.

12.4(12) Any determinations by the authority in connection with any aspect of the low-income housing tax credit program shall not be construed to be a representation or warranty to any person, sponsor, investor, or lender as to the feasibility or viability of any project. The authority's review of the applications and the supporting exhibits is for its own purposes. The authority makes no representations or warranties to owners, investors, lenders or any other persons as to compliance with the Internal Revenue Code, the Iowa Code, Treasury regulations or any other laws or regulations governing low-income housing tax credits.

12.4(13) The authority shall make a determination as to the amount of credit as required by IRC Section 42(m)(2) at each of the following times:

1. When the application is made.
2. When the allocation is made.
3. When the project is placed in service (if subsequent to allocation).

Prior to each determination above, the applicant shall certify to the authority the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) to the project.

12.4(14) The authority may request additional information from an applicant. The information requested shall not be used to amend any category that is scored except as described herein. The information obtained from the applicant shall be reduced to writing and shall be added to the project file.

12.4(15) The authority may make site visits as it deems necessary to review proposed project sites. The staff shall prepare a written document describing the site and make it available to the board for review in the consideration of awarding tax credits to a particular project. The written document may include photographs including electronic or digital photographs to describe the site. Applicants may not be notified of a site visit unless access to a building is required.

12.4(16) For the 1999 round, once the time has expired for making amendments to the applications, neither the applicants nor any person on behalf of the applicant may contact the evaluators assigned by the authority to review and score the applications for the cycle under consideration. Any such contact may require the authority to reject the applicant's proposal. Applicants shall not contact board members to discuss the merits of the applicant's application.

12.4(17) Applicants who have no previous history of receiving tax credit allocations in the state of Iowa must submit a certification to the authority concerning the applicant's previous participation and histories as principals in rental housing projects.

12.4(18) In the event an applicant is seeking funding from any other public funding source, including but not limited to the housing assistance program administered by the authority (HAF), HOME funds, a program administered by the department of economic development, or FHLB loan or grant funds or USDA-RD funds, the applicant must submit a copy of the application for the funds or a letter of intent to fund from the appropriate funding source at the same time the application for tax credits is submitted. For the purpose of the 1999 cycle, the applicant must submit a letter indicating that funding previously awarded remains in place or will be awarded or provide adequate evidence of financial feasibility without one of these funding sources.

265—12.5(16) Nonprofit set-aside.

12.5(1) In accordance with IRC Section 42 and Iowa Code section 16.52, at least 10 percent of the annual state housing credit ceiling must be set aside for qualified nonprofit organizations which own an interest in and materially participate in the development and the operation of a qualified low-income housing project. This credit amount cannot be used for any other purpose, and any unused credit portion may be carried over at the end of the allocation year. Any amount of the credit carried over at the end of the allocation year shall be used to fund nonprofit projects during the following year.

12.5(2) The authority shall allocate housing credits from the 10 percent set-aside to qualified nonprofit organizations based upon the selection criteria and scoring and other factors described in these rules. Nonprofit applicants shall be scored with all of the for-profit applicants except that the 10 percent nonprofit set-aside shall be available in its entirety beginning with the first cycle, until fully allocated. In the event the nonprofit set-aside is exhausted, projects proposed by qualified nonprofit organizations shall be permitted to compete for the remaining 90 percent of the annual state credit ceiling.

265—12.6(16) Application contents. Applicants shall be required to respond to the following questions or provide the following information in the application prepared by the authority:

12.6(1) Identify the type of low-income housing tax credit requested.

12.6(2) Identify whether the applicant is requesting credit from the nonprofit set-aside, housing assistance fund, HOME, or Federal Home Loan Bank.

12.6(3) Identify project information including legal name of owner, whether the owner is formed or will be formed, the name of the general partner or managing partner, or both.

12.6(4) Identify the contact person for the project, including address, telephone number, fax number and E-mail address, if applicable.

12.6(5) Identify the name of the project, the project address including all buildings, the city, the ZIP code, the census tract, census block and the county.

12.6(6) Identify whether the project is in a metropolitan statistical area.

12.6(7) Identify whether the project is in a qualified census tract or high-cost area.

12.6(8) Identify the congressional district, the state senate district and the state house district in which the project is located.

12.6(9) Calculate the applicable fraction using the number of low-income units, the total number of units in the project, the percentage of low-income units, the total floor space of the low-income units measured in square feet, the total floor space of all units measured in square feet, and the percentage of floor space of low-income units.

12.6(10) Identify other project characteristics including the total number of buildings, the gross floor area of all buildings in the project, the residential floor area, and the nonresidential or commercial floor area.

12.6(11) Identify the types of units in the project including detached housing, transient housing, townhouse, row house, residential condominiums, detached single family, multifamily rental residential, garden apartments, single-room occupancy housing, or other type of housing that is specified in the application.

12.6(12) Identify whether the building has an elevator, basement and the number of stories in the building.

12.6(13) Identify whether the units have been targeted to specific populations including housing projects for older persons, family (three or more bedrooms), units specifically designed for persons with disabilities, persons on the public housing waiting list, persons needing transitional housing, or other targeted groups as identified by the applicant. The applicant must indicate the number of units for each target population.

12.6(14) Identify accessory buildings and areas, recreation facilities, commercial facilities, the total number of parking spaces, and the total number of garages.

12.6(15) Identify whether the building has four or fewer units any of which will be occupied by the owner of the building or any person related to the owner.

12.6(16) Identify whether the site is controlled by the applicant, the owner or taxpayer or some combination thereof for the project and describe the site control form, i.e., purchase contract, option, recorded warranty deed, executed long-term lease through compliance and extended use period.

12.6(17) Identify information regarding the form of site control including the expiration date of the contract or option, the total cost of the land, the exact area of the site, the name of the seller, the seller's address and telephone number.

12.6(18) Identify whether the site currently has proper zoning for the project.

12.6(19) Identify whether the site is the subject of a current request for rezoning.

12.6(20) Identify whether all utilities are presently available at the site.

12.6(21) Identify which utilities need to be brought to the site and describe what actions are required to bring utilities to the site.

12.6(22) Identify any activities anticipated to be located within a 100-year flood plain.

12.6(23) Identify whether the applicant is a for-profit entity or a not-for-profit entity and include the name of the entity, the contact person, the address, the city, state and ZIP code for the entity, the telephone number, fax number and E-mail address for the applicant.

12.6(24) If the applicant is a partnership, identify the name of the partnership, the type of partnership, the federal identification number for the partnership, and the names of each of the partners indicating which are the general partners, the partners' share of ownership and the telephone number for each partner.

12.6(25) If the applicant is a corporation, identify the name of the corporation, its federal identification number, the names and titles of the corporate officers and shareholders, an indication of the number of shares owned by each shareholder, and the telephone numbers of the officers and shareholders.

12.6(26) If the applicant is a limited liability company, identify the name of the limited liability company, its federal identification number, the names and titles of the managers, officers and members, an indication of the number of members and the telephone numbers of the managers, officers and the members.

12.6(27) Identify all projects in which the applicant(s) or general partner(s) has received an allocation of low-income housing tax credits or sold a project which received an allocation of low-income housing tax credits. Additionally, if the applicant has not received tax credits for projects in Iowa, additional information shall be required by the authority. An applicant shall be required to describe all previous projects and certify the project list.

12.6(28) Identify each member of the development team for a project. An applicant must submit a résumé that lists qualifications, address, and telephone number. The development team includes the applicant, developer, general partner, majority shareholder, contractor, architect, management company, the sponsoring organization for the development team member, consultant, tax accountant, attorney, engineer, and any other person assisting with the application or project. Identify the function for each person on the development team. An applicant must also identify whether any member of the development team has an indirect or direct financial interest or other interest with any other member of the development team. The applicant must identify the nature of the interest. If there is no identification of interests, the applicant should list "None."

12.6(29) An applicant that seeks a portion of the nonprofit set-aside must demonstrate that it owns an interest in the proposed project and that it is materially participating in the development and operation of the project throughout the compliance period. Consistent with IRC Section 469(h), "materially participating" means an activity only if the nonprofit is involved in the operations of the activity on a basis which is regular, continuous and substantial. The nonprofit must identify that it is an organization described in paragraph (3) or (4) of IRC Section 501(c) and is exempt from tax under Section 501(a); that one of its exempt purposes includes fostering low-income housing; or that it is not affiliated with or controlled by a for-profit corporation.

12.6(30) Describe the nonprofit's ownership interest or percentage of ownership, or both, in the project.

12.6(31) Describe the nonprofit's participation in the development and operation of the project, including management, social services, development and funding.

12.6(32) Describe any support services to be offered by the nonprofit to tenants of the project and where these services will be offered.

12.6(33) Identify the names of its board members and its officers.

12.6(34) Identify all paid full-time staff and sources of funding for annual operation expenses and current programs.

12.6(35) Indicate whether the nonprofit applicant's ownership of the project will remain the same throughout the compliance period.

12.6(36) Indicate whether it is a certified community housing development organization (CHDO).

12.6(37) Identify how many buildings, if any, will be acquired for the proposed project. An applicant must also indicate whether the buildings are currently under the control of the project owner and, if not, when the buildings will be under the control of the project owner for acquisition. An applicant must list the buildings under its control, the type of control, the expiration of the control document, the number of units and the acquisition cost of the building.

12.6(38) Identify whether the building or buildings acquired or to be acquired were acquired from a related party or an unrelated party.

12.6(39) Identify whether the building or buildings acquired or to be acquired with buyer's basis are or are not determined with reference to seller's basis.

12.6(40) Identify whether the building or buildings were acquired or are to be acquired from an insured depository institution in default or from a receiver or conservator of such institution. If so, an applicant must identify the name of the institution.

12.6(41) Identify whether the building or buildings were acquired or are to be acquired from an owner in default or as a result of foreclosure. If so, an applicant must identify the name of the owner.

12.6(42) Identify whether the building or buildings were acquired or are to be acquired from a governmental unit or a qualified nonprofit organization. If so, an applicant must identify the governmental unit or the nonprofit organization.

12.6(43) Identify whether the building or buildings were acquired or are to be acquired from an owner who used such residence for no other purpose than the owner's principal residence. If so, the applicant must identify the name of the owner.

12.6(44) An applicant must confirm eligibility under IRC Section 42(d)(2)(B)(ii) (the ten-year rule) by listing each building by building address, the date the building was placed in service by the owner from whom the building was or will be acquired, the date the building was or is planned for acquisition by the applicant, and the number of years between the date the building was last placed in service and the expected date of acquisition. If the number of years for any building is less than ten years, an applicant must explain any exception under the Internal Revenue Code, which would make the building eligible for credit under IRC Section 42(d)(2)(B)(ii).

12.6(45) If the applicant is proposing to rehabilitate a building or several buildings, information regarding rehabilitation expenditures for each building must be provided. An applicant must identify, with respect to each building, the rehabilitation expenditures as defined in IRC Section 42(e)(2) which shall be allocable to or substantially benefit the affordable units in such building. An applicant must show the calculations for whether the amount of rehabilitation expenditures is at least equal to the greater of 10 percent of the expected adjusted basis of the building or $3,000 rehabilitation expenditure per low-income unit. Additionally, an applicant must indicate that all buildings in the project qualify for the exception provided for in IRC Section 42(e)(3)(B) regarding the 10 percent basis requirement or that all the buildings qualify for the exception provided for in IRC Section 42(f)(5)(B)(ii)(II) regarding the $3,000 per unit requirement or that there are different circumstances for each building as described by an applicant.

12.6(46) Identify whether the project involves the relocation of tenants and describe any relocation assistance, if any.

12.6(47) An applicant must list the total project costs and eligible basis by credit type for the residential portion of a project. Based on this information, the eligible basis for the project shall be calculated along with the total adjusted eligible basis, the total qualified basis, the maximum allowable credit amount, the combined 30 percent and 70 percent of the present value of the credit and the total credit requested per unit. The qualified eligible basis must be determined on a building-by-building basis. Project costs include costs for:

1. Land and broker fees;
2. Existing structures;
3. On-site work;
4. Off-site work;
5. Demolition;
6. Relocation;
7. Other work around the site;
8. A new building;
9. Rehabilitation;
10. General requirements for rehabilitation and new construction;
11. Contractor overhead;
12. Contractor profit;
13. Other items for rehabilitation and new construction;
14. Architect fees;

15. Engineer fees;
16. Attorney fees;
17. Accountant fees;
18. Consultant fees;
19. Processing agent fees;
20. Other professional fees;
21. Construction insurance;
22. Construction interest;
23. Construction loan origination fees;
24. Construction loan credit enhancement;
25. Taxes during construction;
26. A permanent loan origination fee;
27. Permanent loan credit enhancement;
28. Title and recording fees;
29. Other financing fees and expenses;
30. Property appraisal;
31. Market study;
32. Environmental report;
33. Tax credit fees;
34. The organization of a partnership;
35. Bridge loan fees or expenses;
36. Tax opinion;
37. Developer overhead;
38. Developer fees;
39. Other items related to the developer fees;
40. The rent-up reserve;
41. The operation reserve.

12.6(48) Identify the sources of construction financing including the amount of funds and the term of the loan.

12.6(49) Identify the sources of permanent financing not including equity funds.

12.6(50) Identify all sources of funds for the project.

12.6(51) Identify all sources and amounts of funds that are financed directly or indirectly with federal, state or local government funds.

12.6(52) Indicate whether the applicant will exclude any below market federal loan from the eligible basis of the project building.

12.6(53) Indicate whether tax-exempt financing is used for the project and the percentage of tax-exempt financing used in comparison to the total cost of the project.

12.6(54) Indicate whether taxable bond financing is used and in what amount.

12.6(55) Indicate whether the project's permanent financing will have any type of credit enhancement and, if so, the type of enhancement.

12.6(56) Indicate whether the project has any existing subsidies provided by a federal, state, local or other source.

12.6(57) Indicate whether HUD approval is required for the transfer of any physical assets associated with the project.

12.6(58) Indicate whether a project investor will be providing equity funds for the project in exchange for tax credits. If so, provide information concerning any syndication or placement of interest in the owner entity and estimated proceeds to be received from such sale or placement as follows:

a. Amount of low-income tax credit proceeds;
b. Amount of historic tax credit proceeds;
c. Date the proceeds from the low-income tax credits and historic tax credits will be paid;
d. Whether the funds result from a public or private offering;

e. The type of investors; and

f. The name of the fund, the name, address and telephone number of the syndicator.

12.6(59) The authority shall provide space where an applicant can calculate a trial amount for the tax credit needed for a project. However, the authority shall calculate the actual amount of the credit needed for the proposed project. The trial amount calculated for the tax credit may differ from the amount calculated by the authority. The amount calculated by the authority shall be the amount relied upon by the authority.

12.6(60) The applicant shall make an irrevocable election to follow the minimum set-aside requirements established by IRC Section 42. The minimum set-aside elections shall include one or more of the following:

a. At least 20 percent of the rental residential units in the project are rent-restricted and are to be occupied by individuals whose income is 50 percent or less of area gross median income;

b. At least 40 percent of the rental residential units in the project are rent-restricted and are to be occupied by individuals whose income is 60 percent or less of area gross median income;

c. In addition to the minimum set-aside requirement contained in this rule, the project shall meet the deep rent skewing option defined in IRC Section 142(d)(4); that is, 15 percent of the units are occupied by individuals whose income is 40 percent or less of area gross median income and other requirements included therein.

12.6(61) Indicate whether any of the low-income units receive or have been approved to receive rental assistance at the time the application for low-income tax credits was filed with the authority. If so, an applicant must list the type of rental assistance received, the number of units receiving rental assistance, the number of years of the rental assistance contract, the details of the rent restrictions including the actual rent for one month, the actual utilities paid by the tenant for one month and the total rent and utilities paid by the tenant for one month.

12.6(62) Based upon an applicant's response to the minimum set-aside election, the applicant shall indicate the maximum monthly rent that may be charged per unit based upon 40 percent of the area gross median income for one unit for one month, 50 percent of the area gross median income for one unit for one month, and 60 percent of the area gross median income for one unit for one month, using the information attached to the application to calculate these amounts.

12.6(63) For the low-income units in a project, an applicant must estimate the monthly income for the low-income units. The estimate must include an estimate of the annual percentage increase in the annual income from the project.

12.6(64) For market rate units, an applicant must estimate the monthly income for the market rate units. The estimate must include an estimate of the annual percentage increase in the annual income from the project.

12.6(65) An applicant must calculate the amount of the monthly utilities for the units in a project and identify whether the tenant or the owner is paying the cost. An applicant must indicate the source of information for the calculation.

12.6(66) Identify administrative expenses including advertising, management fees, legal fees, partnership fees, accounting and audit fees and other expenses.

12.6(67) Identify maintenance costs including decorating, repair, exterminating, grounds expense and any other cost items identified and detailed as to amount.

12.6(68) Identify operating expenses including elevator maintenance, water and sewer, electric, gas, trash removal costs and payroll and related employment costs, including taxes, insurance costs and other costs related to operating expenses.

12.6(69) Identify real estate tax costs or special assessments or any other fee levied by a local or state governmental unit.

12.6(70) Identify the annual replacement reserve for the units in the project and provide an estimate for the annual percentage increase in annual expenses.

12.6(71) Identify the project schedule including site preparation, ownership completion, financing for construction, permanent loan, other loans and grants, plans and specifications, closing and transfer information, construction start date, completion of construction, the date the building is placed in service and the date lease is completed.

12.6(72) Identify the name of the local jurisdiction in which the project will be located and include the name and address of the chief executive officer of the political jurisdiction. See IRC Section 42(m)(1)(A)(ii). If this information is not provided, the authority shall not be able to notify the local jurisdiction that an application has been filed. An award of tax credits may be invalid if this notification is not accomplished.

12.6(73) An applicant must indicate that the project shall be subject to the standard extended use agreement which requires that the project be used for affordable housing for at least 30 years. Pursuant to IRC Section 42, in certain circumstances, such an extended use period may be terminated. The applicant must indicate that the project will be subject to the standard extended use agreement which permits early termination (after the mandatory 15-year compliance period) of the extended use period or that the project shall be subject to an extended use agreement in which the owner's rights to an early termination of the extended use provision are waived for additional years after the 15-year compliance period.

12.6(74) An applicant must indicate whether:

a. The project is located in a community that is experiencing a shortage of low-income housing;

b. The project combines the tax credit with financial assistance from the local community, or other state or federal sources;

c. The project is in an official neighborhood preservation or other organized community revitalization program.

The applicant shall attach documentation to support the items identified in this subrule including, but not limited to, a current market study, written commitments of community or state support including financial commitments, neighborhood preservation or revitalization plans or other supporting documents. The information must be current. Current information is information dated within the last five years from October 1, 1998. The information is intended to satisfy the requirements of IRC Section 42(m)(1)(C) which requires that the QAP include the following criteria: (1) project location; (2) housing needs characteristics; (3) project characteristics; (4) sponsor characteristics; (5) participation of local tax-exempt organizations; (6) tenant populations with special needs; and (7) public housing waiting lists. Compliance with this provision shall be scored as described in rule 12.9(16).

12.6(75) Include a list of previous projects on a form prescribed by the authority. The applicant must make a full disclosure regarding all previous projects and participation history as a principal in any rental housing project including, but not limited to, the name and address of all principals in the projects, the name, location, governmental agency and number of units in the project, the role, interest, and year when participation began and ended, the year the project was placed in service, and whether there have been any sales, foreclosures, defaults, instances of IRS noncompliance and issuance of IRS Form 8823.

12.6(76) An applicant must sign the taxpayer certification and attach it to the application.

12.6(77) An applicant must sign a certification of ownership, disclosure, prior experience, and release relating to all previous projects.

12.6(78) The following exhibits must be included with the application if applicable:

1. Site control documentation.
2. Documentation of zoning as described in rule 12.7(16).
3. Evidence of availability of utilities at the site as described in rule 12.7(16).
4. Evidence of a conditional or final financing commitment from all sources as described in rule 12.7(16).
5. Evidence of rental assistance contracts or public hou uthority letter, if applicable.
6. A market study if the project contains more than 12 market study is not required for a project with 12 or fewer units.

7. A sketch plan of the site including plans and specifications or work write-ups.
8. A legible site location map.
9. A copy of the recorded deed showing that the owner or the taxpayer or both hold the title to the site must be provided before a carryover agreement can be signed or an IRS Form 8609 can be issued, whichever is applicable in the year in which the project receives a reservation.
10. A copy of the letter from the Internal Revenue Service indicating the federal identification number for a partnership and a copy of the executed partnership agreement or other evidence indicating that the federal identification number has been applied for.
11. A copy of the letter from the Internal Revenue Service indicating the federal identification number for a corporation, or other evidence indicating that the federal identification number has been applied for, an executed copy of the articles file-stamped by the secretary of state and an executed copy of the bylaws of the corporation.
12. A copy of the letter from the Internal Revenue Service indicating the federal identification number for a limited liability company, or other evidence that the federal identification number has been applied for, an executed copy of articles of organization file-stamped by the secretary of state and a copy of the executed operating agreement for the limited liability company.
13. If the applicant is seeking a portion of the nonprofit set-aside, the nonprofit organization must include a copy of its articles of incorporation, articles of organization or partnership agreement and the determination letter of tax-exempt status from the Internal Revenue Service.
14. If the applicant has obtained a waiver for its building or buildings, a copy of the waiver must be included with the application. An allocation cannot be made until the waiver has been received.
15. A copy of the agreement or contract relating to syndication or placement of partnership interests.
16. A copy of any rental assistance contract, agreements or approvals from a public housing authority.
17. Documentation of the utility calculations. The most recent public housing assistance, HUD or rental development utility calculation chart must be used for the calculations.
18. A legal description of the site.
19. A 15-year after-tax cash flow of the project.
20. A 15-year total benefit approximation that includes the after-tax cash flow plus benefits of the requested tax credit showing the estimated percentage of return on the owner's investment and limited partner's investment.
21. An AIA construction contract or other contract detailing the estimated construction costs for the project.
22. A list of previous projects for an applicant or a general partner who has not had previous tax credit allocations in Iowa.
23. A résumé of each member of the development team for projects of five or more units.
24. Documents supporting housing needs characteristics.
25. If the project is designed to serve tenants with special housing needs, documentation supporting the previous experience of the development team with the type of housing or service delivery proposed.
26. Other documentation as identified in the application or these rules.

265—12.7(16) Threshold requirements—all applicants. To be considered for a reservation of tax credits, a project described in an application must first demonstrate that it meets all of the following basic requirements. Any application that fails to meet any one of these requirements shall be rejected and shall not be scored.

12.7(1) The applicant has certified in writing that the project as proposed will qualify as a qualified residential rental project that is consistent with the requirements of IRC Section 42. The certification must be attached to the application.

12.7(2) The applicant is ready to proceed. Readiness includes but is not limited to a showing of the following:

a. The applicant has site control. Adequate evidence of site control is accomplished through one of the following (one of these items must be attached to the application as an exhibit):

(1) A copy of a recorded warranty deed in the name of the ownership entity or entities which comprise the project owner;

(2) A contract for sale or lease (the minimum term of the lease must be at least 45 years) in the name of the ownership entity or entities which comprise the project owner. The contract for sale or the lease must be valid for the entire period of development that is under consideration for tax credits or at least 90 days, whichever is greater.

(3) A copy of an exclusive option or a binding agreement to purchase in the name of the ownership entity or entities which comprise the applicant. The option must be valid for the entire period the project is under consideration for tax credits or at least 90 days from the date of the filing of the application, whichever is greater.

b. The applicant shall provide evidence of current and appropriate zoning in the form of a letter from the appropriate municipal authority. Adequate evidence attached as an exhibit to the application of zoning approval includes but is not limited to:

(1) A current copy of a letter from the city or town where the project will be located indicating that appropriate zoning approvals for the project have been or will be granted by the time the project commences construction. A current copy of a letter shall be a letter dated within six months before or after October 1, 1998, or six months before or after October 7, 1999.

(2) A copy of a letter or other written evidence that documents that a zoning request has been filed with the appropriate zoning authority and indicates when the zoning authority is expected to act on the zoning request.

c. The project site must have utilities presently available at the site or the applicant must describe in writing the action necessary to bring utilities to the site. Adequate evidence showing the existence of utilities or the actions necessary to bring the utilities to the site includes, but is not limited to:

(1) A copy of a letter from the appropriate municipal provider or local provider, or

(2) A copy of the last monthly utility bill which must clearly identify the project by its full address.

Either of these documents must be attached to the application as an exhibit.

d. The applicant must supply documentation of housing needs of the community. Adequate evidence of housing needs is a market study. The market study must be attached to the application as an exhibit. For the 1999 cycle of tax credit awards, a market study is current if it was completed between October 2, 1997, and October 1, 1998. The market study is not required for projects with 12 or fewer units.

e. The applicant must file a complete and timely application which includes applications for other public funding sources.

f. The applicant must exhibit a willingness to enter into a land use restrictive covenant (LURA) for the project with the authority, as required by IRC Section 42(h)(6). Adequate evidence of willingness to enter into an extended use agreement is a copy of the agreement or a certification that the applicant shall execute an extended use agreement with the authority.

12.7(3) The applicant must demonstrate that the project is financially feasible and viable using the least amount of housing credit dollar. See IRC Section 42(m)(2) and Iowa Code section 16.52(2). Adequate evidence of financial feasibility and continuing viability must include a detailed description of the following:

a. The sources and uses of all funds and the total financing planned for the project;

b. Any proceeds or receipts expected to be generated by reason of local, state or federal tax benefits;

c. The percentage of the housing credit dollar amount used for project costs other than the costs of intermediaries; and

d. The reasonableness of the development and operational costs of the project.

The authority shall use generally accepted underwriting criteria to assess the financial feasibility and continuing viability of a project. Based upon its own assessment as required by IRC Section 42 and the financial information submitted to support the project, the authority shall determine whether the applicant has requested the least amount of housing credit dollar necessary to ensure project feasibility.

12.7(4) An application shall be rejected outright for any of the following:

a. The authority determines that an applicant or any of its principals or affiliates who own at least 5 percent of the applicant or any of the officers or board members of the applicant have been convicted of, entered an agreement for immunity from prosecution, received a deferred conviction or sentence or suspended conviction, or pled guilty, including a plea of no contest, to a crime of dishonesty, fraud, tax fraud, embezzlement, bribery, payments of illegal gratuities, perjury, false statements, racketeering, blackmail, extortion, or falsification or destruction of records.

b. An applicant has been debarred from any program administered by the authority, any other state agency, or any federal agency.

c. An applicant has an identity of interest with any debarred entity.

d. An applicant includes developer fees and overhead and consultant fees that exceed 15 percent of the total eligible adjusted basis of the project in its application. The authority shall determine developer fees by subtracting the developer fees and overhead and consultant fees from the eligible basis before calculating the fees as a percentage of the adjusted eligible basis.

e. The application indicates that the contractor's profit exceeds 6 percent of the project costs.

f. The application indicates that the contractor's overhead exceeds 2 percent of the project costs.

g. The application indicates that the general requirements for a project exceed 6 percent of the project costs.

h. The application fails to disclose any direct or indirect financial or other interest a member of the project development team may have with another member of the project development team or with the project.

265—12.8(16) Threshold requirements for nonprofit applicants. To be considered for a reservation of tax credits, a project described in an application must first demonstrate that it meets all of the requirements of rule 12.7(16). In addition, nonprofit applicants must meet the requirements of rule 12.8(16). Any application that fails to meet any of the requirements of rule 12.7(16) or 12.8(16) shall not be scored and the application shall be rejected.

12.8(1) For applicants (project owners) seeking credits from the nonprofit set-aside, all of the following documents that confirm that the project owner is a qualified nonprofit organization pursuant to IRC Section 42(h)(5)(C) must be attached to the application:

a. An IRS determination letter which states that the qualified nonprofit organization is an IRC Section 501(c)(3) or (4) entity;

b. If the project involves a joint venture between a qualified nonprofit organization and a for-profit entity, an agreement which shows that the nonprofit organization controls the project (directly or indirectly) and shall materially participate (within the meaning of IRC Section 469(h)) in the development and operation of the project throughout the compliance period;

c. A current list of all directors and officers of the qualified nonprofit organization, including their names, addresses, and primary occupations. All directors and officers must disclose any relationship with an affiliate or otherwise with other members of the applicant or any members of an affiliate of the development team or any combination thereof; and

d. A copy of the articles of incorporation of the qualified nonprofit organization that specifically states that the fostering of affordable housing is one of the exempt purposes for the qualified nonprofit organization.

12.8(2) The applicant must show that the qualified nonprofit organization owns an interest in the project (directly or through a partnership) and must materially participate in the development and operation of the project throughout the compliance period. Adequate evidence of ownership includes but is not limited to a certified statement of ownership. Adequate evidence of material participation includes but is not limited to a description of the management and operational plan for the project demonstrating the material participation of the qualified nonprofit organization.

12.8(3) The authority reserves the right to conduct additional due diligence to determine whether or not an entity is a qualified nonprofit organization.

265—12.9(16) Selection criteria and scoring. The authority shall evaluate applications for tax credit allocations using the selection and point system described in this rule. Each subrule has either a specific point designation or a range of points an applicant may be awarded. Points shall be awarded based on the following selection criteria:

12.9(1) The project is located outside an MSA (5 points).

12.9(2) The project is located in a qualified census tract or a difficult development area and qualifies for up to a 30 percent increase in eligible basis, pursuant to IRC Section 42(d)(5)(C). A list of these areas is provided in the application package (5 points).

12.9(3) The sources of funding for the project combine the low-income housing tax credit with community-based financial assistance, such as tax abatements, tax increment financing, local CDBG or HOME funds, local housing trust funds, or other local financial assistance. A maximum total score of 15 points is possible for this item. Each source of local funding identified in the property budget in the application shall receive 5 points. In order to score in this category, the local funding contribution must be at least 3 percent of the total project costs.

12.9(4) The project includes the project owner's equity contribution in any amount. Adequate evidence of this item must be reflected in the application and evidenced by the identification of a commitment in the form of a letter specifying the amount and terms of the project owner's equity contribution (5 points).

12.9(5) The project utilizes conventional mortgage financing from a financial institution that is either domiciled in or has a branch office in Iowa as evidenced by a commitment letter from the local Iowa lending office of the financial institution (5 points).

12.9(6) The project must have local support. The project is supported by the local governmental entity as evidenced by a letter from a senior governmental entity official which states that the governmental entity supports or does not oppose the proposed project (5 points).

12.9(7) The project supports a specific neighborhood preservation or other organized community revitalization program as evidenced by a letter from a local government, housing authority, neighborhood-based nonprofit organization or other responsible party, which describes a specific plan for preservation or revitalization of the neighborhood (5 points).

12.9(8) The project utilizes only the amount of credit deemed necessary to reasonably meet the needs of low-income tenants likely to reside in the project, rather than the maximum amount of credit as required by IRC Section 42(m). The authority's analysis regarding this item shall compare the actual credit cost per unit in comparison with other proposed projects received for the current round of financing. A maximum of 15 points shall be awarded to this item on a sliding scale.

a. For projects that do not involve rehabilitation, the points shall be allocated as follows:

Credit Request Per Unit	Points
$4,900 or less	15
$4,901 to $6,000	10
$6,001 to $7,500	5
$7,501 to $10,000	3
Over $10,000	0

b. For projects involving rehabilitation of buildings, the points shall be allocated as follows:

Rehabilitation Cost Per Unit	Points
$30,000 or less	15
$30,001 to $60,000	10
$60,001 to $100,000	5
Over $100,000	0

12.9(9) The project preserves existing low-income housing as evidenced by one of the following items:

a. The project owner must show that the property in the project would be subject to foreclosure or default were no credit allowed, or is or shall be acquired from an insured depository institution in default or from a receiver or conservator of such institution. Adequate evidence of this item is a letter from the institution to which the project is in danger of being assigned (15 points); or

b. The project owner must show that the project owner is purchasing or has purchased a property owned by HUD or USDA, an insured depository institution in default, or a receiver or conservator of such an institution, or is an REO property. Adequate evidence of this item must be in the form of a binding contract to purchase from such federal or other entity as described in this rule, closing statements, or a copy of recorded warranty deed (15 points).

12.9(10) The project involves new construction in an area outside a metropolitan statistical area, or in a high-cost, difficult development or targeted area (15 points).

12.9(11) The project consists of "mixed-use" units; i.e., qualified tax credit and market rate units (5 points).

12.9(12) The project consists of 12 or fewer units (5 points).

12.9(13) A high percentage of the total costs of the project are allocated to actual construction costs as illustrated in the construction budget as opposed to the use of intermediary costs. The authority shall compare the construction costs per unit and award points on the following scale:

Construction Cost Per Unit	Points
$25,000 to $50,000	15
$50,001 to $80,000	10
$80,001 or higher	5

12.9(14) Local governmental or nonprofit organizations have evidenced support of the project and are committed to participating in supplying housing support services as evidenced by a letter of commitment to provide such services. The maximum number of points for this item is 10 points with 5 points awarded for each supportive service identified in the application package.

12.9(15) For an applicant of five or more units, the applicant has a successful track record as a developer or owner, or both, of completing and placing in service low-income housing in Iowa (10 points).

12.9(16) For an applicant of five or more units, the applicant has a successful track record as a developer or owner, or both, of providing housing under the LIHTC program as evidenced by having placed an LIHTC project in service prior to October 1, 1998 (5 points).

12.9(17) For an applicant with a management agent of five or more units, the applicant has signed a contract or a letter of intent with a management agent who has successful experience in the management of affordable housing, including LIHTC projects or other federally assisted projects, as evidenced by a copy of the contract or letter of intent and the résumé of the management agent (10 points).

12.9(18) The applicant has a construction contract for the project with a contractor who is domiciled in the state of Iowa. A copy of the construction contract detailing the estimated costs of construction must be provided with the application (10 points).

12.9(19) The applicant is providing housing support services for tenants. The applicant must provide written evidence that describes previous successful experience in addressing and delivering housing support services to tenants. The written evidence can be a summary of the applicant's experience, references, or other information the applicant deems supportive of this requirement. The applicant must also provide a written commitment to the authority indicating that the applicant shall provide appropriate services to meet these needs at the project. A total of 10 points is available for this category. A project shall receive 5 points for each service provided and a commitment to provide the service for the life of the project.

12.9(20) The applicant is a qualified Iowa nonprofit organization with previous successful experience in the development of housing similar to that proposed in the application. The project owner must provide a list of previous housing projects that the nonprofit organization has developed (10 points).

12.9(21) For housing projects for older persons only, the project must not contain any units with three or more bedrooms (5 points).

12.9(22) At least 10 percent of the units in the project have three or more bedrooms and are suitable for occupancy by families with children (5 points).

12.9(23) At least 10 percent of the units in the project are specifically designed for persons with disabilities (5 points).

12.9(24) The project is designed for transitional housing for the homeless as described in IRC Section 42 (5 points).

12.9(25) The project shall provide housing for persons on waiting lists for public housing. An applicant must submit a letter from the applicable public housing authority addressed to the project owner describing the public housing waiting list. The letter must indicate the number of persons on the list (5 points).

12.9(26) The project shall serve tenants with maximum household incomes lower than the AGMI requirements of IRC Section 42(g). The authority shall examine the elections made by the applicant in the application and the rents charged by the applicant to score this category. The rents shall be compared to the market rents included in the application as an exhibit to determine the percentage of market rate rents the applicant is charging. A maximum of 20 points shall be awarded for this item. A mixed-use project shall receive a percentage of the point total for this category based upon the percentage of low-income units included in the project. The following scale shall be used to award points:

Percentage of units at below market rates	Percentage of AGMI	Points
20	50	0[1]
40	60	0[1]
20 80	50 60	11[2]
40 60	50 60	11[2]
100	50	15
100	60	10
100	40	20

[1]This is a minimum requirement for federal law.

[2]This distribution of units and income amounts is required to qualify for HOME funds.

Additional points shall be awarded for deep rent skewing. If 15 percent of the units are occupied by individuals whose income is 40 percent or less of AGMI, a project shall be awarded 2 extra points. For example, a project that is proposing to build 35 units with HOME funds, and elects to rent 20 percent of the units to individuals with 50 percent AGMI and 65 percent of the units to individuals with 60 percent of AGMI and 15 percent of the units to persons with 40 percent of AGMI, the applicant is awarded 11 points for the 20 percent at 50 percent combination, 0 points for the minimum combination of 65 percent at 60 percent and 2 points for the deep rent skewing combination of 15 percent at 40 percent.

If an applicant proposes a project with market units and below market units, the total points available shall be multiplied by the percentage of the project dedicated to below market rates to obtain the rounded score for this category. For example, if a project has 75 percent of its units dedicated at below market rates and applied for HOME funds and the 20 percent at 50 percent and 80 percent at 60 percent combination is applied, the total rounded score would be 8 (75% × 11 = 8.25 or 8 rounded).

12.9(27) The project shall be obligated to serve qualified tenants for additional years beyond the minimum 15-year compliance period required by IRC Section 42(m)(1)(B)(i)(I) and 42(m)(1)(B)(ii)(I) and (II). A maximum of 35 points is possible for this item. Each additional year of compliance beyond the minimum 15-year requirement shall receive one additional point.

265—12.10(16) Other considerations to award tax credit reservations.

12.10(1) When the authority considers awarding tax credit reservations, at a minimum, it shall review during its public meeting, the relative scoring for each project, the sources and uses of funds, the location of the project and whether the applicant is a nonprofit owner or a for-profit owner. In addition and irrespective of scoring including a tie in the scoring, the authority may determine that a project shall not be funded for any of the reasons identified in this rule. In the event the authority elects not to award tax credits to a project for the reasons identified herein, the reasons must be clearly identified during the public meeting where the authority considers applications for tax credits.

a. The project does not further the stated purposes and objectives of the low-income housing tax credit program as described in rule 12.2(16).

b. The project is in a market that is saturated with low-income housing projects. The authority may rely on data gathered by the staff regarding the current number of low-income units in a specific part of the state, public housing waiting lists, vacancy rates or other information gathered regarding the concentration of projects and low-income persons.

c. The project is not preferred by other state or federal governmental units or political subdivisions with an interest in housing. The authority may consider the recommendations of the HART team where relevant or any other comments received from other state or federal agencies regarding a proposed project. The authority may consider whether funding commitments made by other governmental units have been received by a project.

d. The applicant has a history of noncompliance with IRC Section 42 and the Treasury regulations implementing IRC Section 42.

e. The applicant has failed to complete and place in service a previous allocation.

f. The project is in a county that has more than one project proposed for the county. The authority may consider the number of projects proposed for a certain county and decide to limit the number of projects on a local political subdivision basis, county basis or regional basis.

g. The project is one of several proposed by a single applicant. The authority may consider the number of projects an applicant is awarded during any one cycle and limit the total amount of credits or projects awarded for any annual ceiling cap.

12.10(2) In the event that projects remain tied after the board has considered the items contained in subrule 12.10(1), the board may award credits to a project on the following grounds in the following order:

a. The project serves the lowest-income tenants based on the weighted average of the percentage of the AGMI of the tenants served by the project.

b. The project serves low-income tenants for the longest period of time.

c. The project is located in a county that has not received a tax credit project in the last five years.

d. In the event a tie remains after all of the items in 12.10(1) and 12.10(2)"*a*" to "*c*" have been considered by the board, the board may in its discretion choose a project for the award of tax credits.

265—12.11(16) Notice of the tax credit award. Once the authority has reserved credits, a written notice of reservation shall be faxed and mailed to all approved applicants. The unsuccessful applicants shall be notified by fax and by mail that the authority did not select their projects and provide a brief explanation as to why the authority did not select the applicant's project. All notices shall be sent on the same day the awards are made. The board may establish a waiting list for unsuccessful projects. An applicant placed on the waiting list shall be required to reapply for tax credits if the applicant seeks funding in the next round of tax credit awards. Placement on the waiting list does not imply either directly or indirectly that the board will forward fund the applicant's project. The waiting list shall be based on financial feasibility, relative scoring, developer concentration, geographic distribution, or any of the remaining criteria described in rule 12.10(16). The board in its discretion may adjust the order on the waiting list for any reason, including but not limited to the result of a contested case proceeding.

265—12.12(16) Postreservation requirements.

12.12(1) An applicant may amend its application after an award of tax credits is made solely for the purpose of showing changes in the following:

a. Sources and uses of funds that do not change the amount of tax credits awarded or change the nature of the project; or

b. Changes in partnership members, shareholders, or limited liability members.

12.12(2) Each applicant receiving a reservation of credit is required to execute and record a declaration of land use restrictive covenants. The original recorded document must be recorded before an IRS Form 8609 shall be issued or a carryover agreement executed, whichever form of allocation is applicable.

12.12(3) All applicants receiving a carryover allocation must submit a carryover agreement and allocation and taxpayer's election statement and a certified public accountant's (CPA) cost certification evidencing that the taxpayer has accumulated at least 10 percent of its reasonably expected basis. In addition, all applicants receiving an IRS Form 8609 allocation must submit an IRS Form 8609 request package in its entirety, which includes a CPA cost certification evidencing final project costs, and pay the compliance monitoring fee before the IRS Form 8609 shall be issued. In addition to the carryover agreement, a tax credit reservation recipient shall provide the information and documents described in this subrule. The authority shall not execute a carryover agreement or issue an IRS Form 8609 until it has received these documents:

a. If the tax credit reservation recipient is a partnership, the partnership shall submit a copy of the letter from the Internal Revenue Service indicating the federal identification number for a partnership and a copy of the executed partnership agreement.

b. If a tax credit reservation recipient is a corporation, a copy of the letter from the Internal Revenue Service indicating the federal identification number for a corporation, an executed copy of the article of incorporation file-stamped by the secretary of state and an executed copy of the corporation's bylaws.

c. If a tax credit reservation recipient is a limited liability company, a copy of the letter from the Internal Revenue Service indicating the federal identification number for the company and an executed copy of the articles of organization file-stamped by the secretary of state and a copy of the executed operating agreement for the company.

12.12(4) If the applicant is a partnership or a limited partnership, the authority shall reserve tax credits to a partnership and the general partners. Reservations are not transferable. In the event there is a change in a general partner after an allocation of credits has been made, the authority shall be notified by the partnership to obtain approval of the change. The new general partner shall meet the requirements described in these rules before the authority shall consent to the change. If the requirements outlined in these rules are not met, the request for transfer shall not be approved.

12.12(5) If the applicant is a corporation, the authority shall reserve tax credits to a corporation. Reservations are not transferable. In the event there is a change in the majority shareholder after an allocation of credits has been made, the authority shall be notified by the corporation to obtain approval of the change. The new majority shareholder shall meet the requirements described in these rules before the authority shall consent to the change. If the requirements outlined in these rules are not met, the request for transfer shall not be approved.

12.12(6) If the applicant is a limited liability company, the authority shall reserve tax credits to the limited liability company. Reservations are not transferable. In the event there is a change in the majority membership after an allocation of credits has been made, the authority shall be notified by the limited liability company to obtain approval of the change. The new member(s) shall meet the requirements described in these rules before the authority shall consent to the change. If the requirements outlined in these rules are not met, the request for transfer shall not be approved.

265—12.13(16,17A) Applicant appeals. An applicant whose application has been timely filed, who is aggrieved by the award of the authority and desires to challenge the award shall appeal the decision by filing a written notice of appeal within seven days of the denial of an award before the Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. Filing a notice of appeal shall not stay the tax credit reservation awards made by the authority. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. A written notice of appeal may also be filed by fax transmission at (515)242-4957 within seven days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal shall state the grounds upon which the applicant challenges the authority's award. In order to prevent the award of credits by the authority, an aggrieved party shall request a stay of the authority's decision in conformance with rule 265—7.29(17A). In the event a request for stay is made, the request for stay will be heard before the contested case.

12.13(1) *Procedures for applicant appeal.* The aggrieved applicant shall file a contested case and follow the procedures set out in this rule.

12.13(2) *Hearing.* Upon receipt of a notice of an applicant appeal, the authority may contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved applicant or applicants. The authority shall select a presiding officer and hold a hearing on the applicant appeal in conformance with its rules on contested cases within 30 days of the date the notice of appeal was received by the authority.

12.13(3) *Discovery.* Any discovery requests shall be served simultaneously on the parties within 15 days of the notice of appeal.

12.13(4) *Witnesses and exhibits.* Within 15 days following the notice of appeal, the parties shall contact each other regarding witnesses and exhibits. There is no requirement for witness and exhibit lists. However, the parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials. The parties may request a prehearing conference to discuss witnesses, exhibits or other matters relating to the hearing.

12.13(5) *Settlements.*

a. A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case by the executive director, prosecuting attorney, or the aggrieved party. No party is required to participate in the informal settlement process.

b. The executive director shall have authority to negotiate on behalf of the board. No party shall communicate with any board member about settlement negotiations until a written proposed settlement is submitted to the full board for approval, unless all parties to the settlement negotiations waive this prohibition. No proposed settlement shall be presented to the full board for approval until it is in final, written form signed by the aggrieved party.

c. All proposed settlements are subject to approval of a majority of the full board. If the board fails to approve a proposed settlement, it shall be of no force or effect to either party and shall not be admitted into evidence during the hearing on the contested case. If the board approves a proposed settlement, it shall become binding when it is signed by both the chairperson or the chairperson's designee and the aggrieved party.

d. A board member who participates in settlement negotiations at the request of the parties pursuant to paragraph 12.13(5)*"b"* or is presented with a settlement proposal pursuant to paragraph 12.13(5)*"c"* that is rejected by the board shall not be disqualified from adjudicating the contested case due to that participation.

12.13(6) *Evidence for a telephone or network hearing.* If the hearing is conducted by telephone or on the fiberoptic network, all exhibits must be delivered to the office of the authority three days prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least seven days prior to the hearing.

12.13(7) *Remedies.* In the event an applicant is successful in demonstrating that the applicant should have been awarded tax credits, the board may place the project on a waiting list for unreserved or returned credits.

12.13(8) *Contents of decision.* The presiding officer shall issue a decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail.

12.13(9) *Record requirements.* The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

a. Oral proceedings in connection with an applicant appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by a certified shorthand reporter shall bear the costs of the reporter.

b. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Copies of tapes of oral proceedings may be obtained from the board at the requester's expense.

d. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the board for at least two years from the date of the proposed decision.

12.13(10) *Dismissal.* A ruling dismissing all of a party's claims or a voluntary dismissal is a decision under Iowa Code section 17A.15.

12.13(11) *Requests for rehearing.* Requests for rehearing shall be made to the authority within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision fails to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

12.13(12) *Judicial review.* Judicial review of the authority's final decisions may be sought in accordance with Iowa Code section 17A.19.

265—12.14(16) Monitoring procedures and record-keeping requirements.

12.14(1) The authority is required to establish procedures for monitoring compliance with the provisions of IRC Section 42 and for notifying the Internal Revenue Service of any noncompliance of which it becomes aware. In order to satisfy its monitoring and reporting obligations, the authority shall require each owner of a low-income housing project to comply with the requirements described in this rule.

12.14(2) For each year in the compliance period, the owner of a low-income housing project shall keep records for each qualified low-income building in the project that show the following:

a. The total number of residential rental units in the building including the number of bedrooms and the size in square feet of each residential rental unit;

b. The percentage of residential rental units in the building that are low-income units;

c. The rent charged on each residential rental unit in the building including any utility allowance;

d. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under IRC Section 42(g)(2) (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);

e. The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented;

f. The annual income certification of each low-income tenant per unit;

g. Documentation to support each low-income tenant's income certification (e.g., a copy of the tenant's federal income tax return, Form W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income shall be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this rule is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under IRC Section 42(g);

h. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

i. The character and use of the nonresidential portion of the building included in the building's eligible basis under IRC Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

12.14(3) The owner of a low-income housing tax credit project shall retain the records described in subrule 12.14(2) for each building in the project for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the initial taxable year must be retained for at least six years after the due date for filing the federal income tax return for the last year of the compliance period of the building.

12.14(4) The owner of a low-income housing project shall certify at least annually to the authority that, for the preceding 12-month period:

a. The project met the requirements of:

(1) The 20-50 test under IRC Section 42(g)(1)(A) or the 40-60 test under IRC Section 42(g)(1)(B), whichever minimum set-aside test is applicable to the project, and

(2) If applicable to the project, the 15-40 test under IRC Sections 42(g)(4) and 142(d)(4)(B) for deep rent skewed projects;

b. There was no change in the applicable fraction (as defined in IRC Section 42(c)(1)(B)) of any building in the project, or that there was a change and a description of such change;

c. The owner has received an annual income certification from each low-income tenant and documentation to support that certification or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority as described at 12.14(4)*"g"* shall satisfy the income verification requirement;

d. Each low-income unit in the project was rent-restricted under IRC Section 42(g)(2);

e. All units in the project were for use by the general public and used on a nontransient basis (except for transitional housing for the homeless provided under IRC Section 42(i)(3)(B)(iii));

f. Each building in the project was suitable for occupancy, taking into account local health, safety and building codes;

g. There was no change in the eligible basis (as defined in IRC Section 42(d)) of any building in the project, or if there was a change, the nature of the change;

h. All tenant facilities included in the eligible basis under IRC Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;

i. If a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or shall be rented to tenants not having a qualifying income;

j. If the income of tenants of a low-income unit in the project increased above the limit allowed in IRC Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

k. An extended affordable housing commitment as described in IRC Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989).

12.14(5) Review.

a. The authority shall review the certifications submitted under subrule 12.14(4) for compliance with the requirements of IRC Section 42.

b. The owners of all low-income housing projects shall submit to the authority each year general information on tenant income and rent for each low-income unit in the form and manner designated by the authority. Additionally, each year the authority shall select at least 20 percent of the tenants in at least 20 percent of the projects for whom the owners shall submit to the authority for compliance review a copy of the annual income certification, the documentation the owner has received to support that certification, and the rent records.

c. The authority may also inspect a reasonable number of projects each year, review on site the low-income tenant income certifications for that year, the documentation the owner has received to support those certifications, and the rent records for the project.

d. The authority shall determine which records are to be inspected or submitted by the owner for review. The records to be inspected pursuant to 12.14(5)*"c"* shall be chosen in a manner that shall not give owners of low-income housing tax credit projects advance notice that their records for a particular year are subject to inspection. However, the authority may give an owner reasonable notice that an inspection may occur so that the owner may assemble records.

12.14(6) The certifications and review of certifications described in subrules 12.14(4) and 12.14(5) shall be made at least annually covering each year of the 15-year compliance period under IRC Section 42(i)(1). The certifications shall be made under penalty of perjury. The authority may require that certifications and reviews be made more frequently, provided that all months within each 12-month period are subject to certification.

12.14(7) Exceptions for certain buildings.

a. If the authority has met the requirements of 12.14(7)*"b,"* owners are not required to submit, and the authority is not required to review, the tenant income certification, supporting documentation, and rent records for:

(1) Buildings financed by the USDA under the Section 515 program, or

(2) Buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with tax-exempt bonds.

b. The authority shall enter into an agreement with USDA or the tax-exempt bond issuer pursuant to which USDA or the tax-exempt bond issuer agrees to provide information to the authority concerning the income and rent of the tenants in the building. The authority may assume the accuracy of the information provided by USDA or the tax-exempt bond issuer without verification. The authority shall review the information and determine that the income limitation and rent restriction of IRC Section 42(g)(1) and (2) are met. However, if the information provided by the USDA or tax-exempt bond issuer is not sufficient for the authority to make this determination, the authority shall request the necessary additional income or rent information from the owner of the buildings.

12.14(8) Inspection provisions. The authority shall have the right to perform an on-site inspection of any project at least through the end of the compliance period of the buildings in the project. The inspection provision of this rule is separate from any review of low-income certifications, supporting documentation and rent records under subrule 12.14(5). The authority will provide 48 hours' advance notice to the project owner to inspect any individual units in a project. Otherwise, advance notice to the owner is not necessary for purposes of the inspection provisions set forth in this rule.

12.14(9) Notification of noncompliance provisions. The authority is required to give the notice described in subrule 12.14(10) to the owner of a low-income housing project and the notice described in subrule 12.14(11) to the Internal Revenue Service.

12.14(10) Notice to owner. The authority shall provide prompt written notice to the owner of a low-income housing project if the authority does not receive the certification described in subrule 12.14(4) or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subrule 12.14(5), or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of IRC Section 42.

12.14(11) Notice to Internal Revenue Service. The authority is required to file IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, with the Internal Revenue Service no later than 45 days after the end of the correction period (as described in subrule 12.14(13)), including extensions permitted under subrule 12.14(13), and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The authority must explain on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under subrule 12.14(4) that results in a decrease in the qualified basis of the project under IRC Section 42(c)(1)(A) is noncompliance that must be reported to the Internal Revenue Service under subrule 12.14(9). If the authority reports on IRS Form 8823 that a building is entirely out of compliance and shall not be in compliance at any time in the future, the authority need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

12.14(12) Authority retention of records. The authority shall retain records of noncompliance or failure to certify for six years beyond the authority's filing of the respective IRS Form 8823. In all other cases, the authority must retain the certifications and records described in this subrule for three years from the end of the calendar year in which the authority receives the certification and records.

12.14(13) Correction period. The correction period shall be a period not exceeding 90 days from the date of the notice to the owner described in subrule 12.14(10), during which the owner must supply any missing certifications and bring the project into compliance with the provisions of IRC Section 42. The authority may extend the correction period for up to six months, but only if the authority determines there is good cause for granting the extension.

12.14(14) Delegation of monitoring. The authority may retain an agent or other private contractor (the "authorized delegate") to perform compliance monitoring. The authorized delegate must be unrelated to the owner of any building that the authorized delegate monitors. The authorized delegate may be delegated all of the functions of the authority to monitor compliance, except for the responsibility of notifying the Internal Revenue Service under subrule 12.14(11). The authorized delegate must notify the authority of any noncompliance or failure to certify.

12.14(15) Limitations. The authority shall use reasonable diligence to ensure that any authorized delegate to whom compliance monitoring is delegated properly perform the delegated monitoring functions. Delegation of compliance monitoring functions by the authority to an authorized delegate does not relieve the authority of its obligation to notify the Internal Revenue Service of any noncompliance of which the authority becomes aware.

12.14(16) Liability. Compliance with the requirements of IRC Section 42 is the responsibility of the owner of the building for which the credit is allowable. The authority's obligation to monitor for compliance with the requirements of IRC Section 42 shall not make the authority liable for an owner's noncompliance.

12.14(17) Effective date. These procedures for monitoring for noncompliance became effective on January 1, 1992, were amended on February 3, 1993, and apply to buildings placed in service for which a low-income housing tax credit is, or has been, allowable at any time. Notwithstanding the effective date, if the authority becomes aware of noncompliance that occurred prior to January 1, 1992, it is required to notify the Internal Revenue Service of that noncompliance.

265—12.15(16) Tax-exempt bond financed projects. Pursuant to IRC Section 42(m)(2)(D), projects which do not receive an allocation from the state housing credit ceiling because they qualify pursuant to IRC Section 42(h)(4) and are financed with tax-exempt bond obligations issued after December 31, 1998, must satisfy the requirements for allocation of a housing dollar amount under the qualified allocation plan and these rules. These projects shall be subject to the threshold requirements and evaluation procedures of the qualified allocation plan as described in these rules. However, tax-exempt bond financed projects shall not participate in the competitive funding rounds. A project that qualifies for an allocation of tax credit pursuant to IRC Section 42(h)(4) shall be eligible only for an allocation at the 4 percent present value credit level.

These rules are intended to implement Iowa Code section 16.52.

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65.8(6) *Excluded payments.* A utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility reimbursements, shall not be deductible.

65.8(7) *Excess medical expense deduction.* Notwithstanding anything to the contrary in these rules or regulations, at certification, households having a member eligible for the excess medical expense deduction shall be allowed to provide a reasonable estimate of the member's medical expenses anticipated to occur during the household's certification period. The estimate may be based on available information about the member's medical condition, public or private medical insurance coverage, and current verified medical expenses. Households giving an estimate shall not be required to report or verify changes in medical expenses that were anticipated to occur during the certification period.

65.8(8) *Child support payment deduction.* Households shall be allowed a deduction for the amount of child support and child medical support payments made by a household member if the payments are legally obligated and paid to a person outside of the food stamp household. Households, including monthly reporting households, shall only be required to report and verify child support payments at certification and recertification and whenever the amount that is paid monthly changes by $50 or more. When a household has a medical insurance policy that provides coverage for persons in addition to the children outside of the food stamp household for which the household member is legally obligated to provide the coverage, the cost of the policy shall be prorated among the number of persons covered and the pro rata cost attributed to the children for whom the member is legally obligated to provide coverage shall be allowed as a deduction.

65.8(9) *Standard deduction.* Notwithstanding anything to the contrary in these rules or regulations, the standard deduction shall be $134 for calculation of food stamp benefits issued for December 1995 through September 30, 1996.

65.8(10) *Switching between actual utility expenses and the standard utility allowances.* Households shall be allowed to switch between the standard utility allowance and using actual utility expenses only at recertification.

65.8(11) *Excess shelter cap.* Notwithstanding anything to the contrary in these rules or regulations, the excess shelter cap shall be $250 effective January 1, 1997, to September 30, 1998. The excess shelter cap shall be $275 effective October 1, 1998, to September 30, 2000. The excess shelter cap shall be $300 effective October 1, 2000, and ongoing.

This rule is intended to implement Iowa Code section 234.12.

441—65.9(234) Treatment centers and group living arrangements. Alcoholic or drug treatment or rehabilitation centers and group living arrangements shall complete Form 470-2724, Monthly Facility Food Stamp Report for Drug or Alcohol Treatment Centers or Group Living Arrangements, on a monthly basis and return the form to an office in the administrative area in which the center is located.

Notwithstanding anything to the contrary in these rules or regulations, disabled persons as defined in 7 CFR 271.2, as amended to December 4, 1991, residing in certain group living arrangements are eligible to receive and use food stamps to purchase their prepared meals.

These group living arrangements are public or private nonprofit residential settings that serve no more than 16 residents that are certified by the appropriate agency or agencies of the state under regulations issued under Section 1616(e) of the Social Security Act or under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under Section 1616(e) of the Social Security Act.

441—65.10(234) Reporting changes. Households may report changes on the Change Report Form, 470-0321 or 470-0322 (Spanish). Households are supplied with this form at the time of initial certification, at the time of recertification whenever the household needs a new form, whenever a form is returned by the household, and upon request by the household.

Households which are exempt from filing a monthly report must report a change in total household gross earned income of more than $100 per month.

441—65.11(234) Discrimination complaint. Individuals who feel that they have been subject to discrimination may file a written complaint with the Affirmative Action Office, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319.

441—65.12(234) Appeals. Fair hearings and appeals are provided according to the department's rules, 441—Chapter 7.

441—65.13(234) Joint processing.

65.13(1) *SSI/food stamps.* The department will handle joint processing of supplemental security income and food stamp applications by having the social security administration complete and forward food stamp applications.

65.13(2) *Public assistance/food stamps.* In joint processing of public assistance and food stamps, the certification periods for public assistance households will be assigned to expire at the end of the month in which the public assistance redetermination is due to be processed.

441—65.14(234) Rescinded, effective 10/1/83.

441—65.15(234) Proration of benefits. Benefits shall be prorated using a 30-day month.

This rule is intended to implement Iowa Code section 234.12.

441—65.16(234) Complaint system. Clients wishing to file a formal written complaint concerning the food stamp program may submit Form FP-2238-0, or FP-2238-1, Food Stamp Complaint, to the office of field support. Department staff shall encourage clients to use the form.

441—65.17(234) Involvement in a strike. An individual is not involved in a strike at the individual's place of employment when the individual is not picketing and does not intend to picket during the course of the dispute, does not draw strike pay, and provides a signed statement that the individual is willing and ready to return to work but does not want to cross the picket line solely because of the risk of personal injury or death or trauma from harassment. The regional administrator shall determine whether such a risk to the individual's physical or emotional well-being exists.

441—65.18(234) Rescinded, effective 8/1/86.

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** Subrules 65.8(11) and 65.108(11) effective 1/1/97.

Full therapeutic dose levels and maintenance dose levels for the following drugs are those listed in the American Hospital Formulary Service Drug Information, United States Pharmacopeia-Drug Information, American Medical Association Drug Evaluations, and the peer-reviewed medical literature.

Prior authorization is required for prescriptions for all single-source histamine H2-receptor antagonists at all dose levels. Single source is defined as the brand-name drug or the innovator of a multiple-source drug. Payment for the single-source histamine H2-receptor antagonist will be authorized only for cases in which there is documentation of a previous trial and therapy failure with at least one multiple-source histamine H2-receptor antagonist.

Prior authorization is required for multiple-source histamine H2-receptor antagonists prescribed at full therapeutic dose levels for longer than a 90-day period or more frequently than one 90-day course of therapy per 12-month period per recipient. Payment for single- or multiple-source histamine H2-receptor antagonists at full therapeutic dose levels beyond the 90-day limit or more frequently than one 90-day course of therapy per patient per 12-month period will be authorized in cases where there is a diagnosis of:

1. Hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. Symptomatic gastroesophageal reflux.
3. Symptomatic relapses of duodenal or gastric ulcers not responding to maintenance therapy and with documentation of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.
4. Barrett's esophagus.
5. Erosive esophagitis.

Other conditions will be considered on an individual patient basis with submitted documentation of medical necessity.

Prior authorization is required for proton pump inhibitor usage longer than 60 days or more frequently than one 60-day course per 12-month period. Payment for proton pump inhibitors beyond the 60-day limit or more frequently than one 60-day course per recipient per 12-month period shall be authorized upon request for those cases in which there is a diagnosis of:

1. Hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. Barrett's esophagus.
3. Symptomatic gastroesophageal reflux after documentation of previous trials and therapy failure with at least one histamine H2-receptor antagonist at full therapeutic doses as defined by the histamine H2-receptor antagonist prior authorization guidelines.
4. Recurrent peptic ulcer disease after documentation of previous trials and therapy failure with at least one histamine H2-receptor antagonist at full therapeutic doses and with documentation of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.

Proton pump inhibitors prescribed concurrently with histamine H2-receptor antagonists shall be considered duplication of therapy. Payment for duplication of therapy will be considered on an individual basis after review of submitted documentation of medical necessity.

Prior authorization is not required for a cumulative 60 days of therapy with a proton pump inhibitor per 12-month period per recipient. The 12-month period is patient specific and begins 12 months prior to the requested date of prior authorization.

The medical condition of patients receiving continuous long-term treatment with proton pump inhibitors shall be reviewed yearly to determine the need for ongoing treatment.

Prior authorization is required for sucralfate at full therapeutic dose levels for longer than a 90-day period or more frequently than one 90-day course of therapy per patient per 12-month period. Payment for sucralfate at full therapeutic dose levels beyond the 90-day limit or more frequently than a 90-day course per patient per 12-month period will be authorized in cases where there is a diagnosis of:

1. Hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. Symptomatic gastroesophageal reflux.
3. Symptomatic relapses of duodenal or gastric ulcers not responding to maintenance therapy and with documentation of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.
4. Barrett's esophagus.
5. Erosive esophagitis.

Other conditions will be considered on an individual basis with submitted documentation.

Concurrent sucralfate therapy prescribed with histamine H2-receptor antagonists or proton pump inhibitors beyond a 30-day period is considered duplication of therapy. Concurrent sucralfate therapy prescribed with misoprostol is also considered duplication of therapy. Payment for duplication of therapy will be considered on an individual patient basis after review of submitted documentation of medical necessity.

Prior authorization is not required for misoprostol when prescribed concurrently with a nonsteroidal anti-inflammatory drug. Prior authorization is required for any other therapy with misoprostol beyond 90 days. Justification for other therapy will be considered on an individual patient basis. Misoprostol prescribed concurrently with histamine H2-receptor antagonists, sucralfate, or proton pump inhibitors will be considered duplication of therapy. Payment for duplication of therapy will be considered on an individual patient basis after review of submitted documentation of medical necessity. (Cross-reference 78.28(1)*"d"*(1))

Prior authorization is required for single-source nonsteroidal anti-inflammatory drugs. Requests must document previous trials and therapy failure with at least two multiple-source nonsteroidal anti-inflammatory drugs. Prior authorization for chronic conditions will be issued for a 12-month period. Once a prior authorization has been issued, the single-source nonsteroidal anti-inflammatory drug being prescribed may be changed to another single-source product without a new request within the approved time period of 12 months. Patients who have been established on proven therapy with a single-source product prior to October 1, 1992, will not require a prior authorization.

Prior authorization is not required for prescriptions for multiple-source nonsteroidal anti-inflammatory drugs. (Cross-reference 78.28(1)*"d"*(2))

Prior authorization is required for single-source benzodiazepines. Requests must document a previous trial and therapy failure with one multiple-source product. Prior authorization will be approved for 12 months for documented:

1. Generalized anxiety disorder.
2. Panic attack with or without agoraphobia.
3. Seizure.
4. Nonprogressive motor disorder.
5. Bipolar depression.
6. Dystonia.

Prior authorization requests will be approved for a three-month period for all other diagnoses related to the use of benzodiazepines. Justification will be considered on an individual patient basis. Patients who have been established on proven therapy with a single-source product prior to October 1, 1992, will not require a prior authorization. (Cross-reference 78.28(1)*"d"*(3))

Prior authorization is required for therapy with growth hormones. All of the following criteria must be met for approval for prescribing of growth hormones:

1. Standard deviation of 2.0 or more below mean height for chronological age.
2. No intracranial lesion or tumor diagnosed by MRI.
3. Growth rate below five centimeters per year.
4. Failure of any two stimuli tests to raise the serum growth hormone level above seven nanograms per milliliter.
5. Bone age 14 to 15 years or less in females and 15 to 16 years or less in males.
6. Epiphyses open.

Prior authorization will be granted for 12-month periods per recipient as needed. (Cross-reference 78.28(1)*"d"*(4))

Prior authorization is required for all prescription topical acne products for the treatment of mild to moderate acne vulgaris. An initial treatment failure of an over-the-counter benzoyl peroxide product, which is covered by the program, is required prior to the initiation of a prescription product, or evidence must be provided that use of these agents would be medically contraindicated. If the patient presents with a preponderance of comedonal acne, tretinoin products may be utilized as first line agents without prior authorization. (Cross-reference 78.28(1)*"d"*(5))

Prior authorization is required for all tretinoin prescription products for those patients over the age of 25 years. Alternatives such as topical benzoyl peroxide (OTC), and topical erythromycin, clindamycin, or oral tetracycline must first be tried (unless evidence is provided that use of these agents would be medically contraindicated) for the following conditions: endocrinopathy, mild to moderate acne (noninflammatory and inflammatory), and drug-induced acne. Prior authorization will not be required for those patients presenting with a preponderance of comedonal acne. Upon treatment failure with the above-mentioned products or if medically contraindicated, tretinoin products will be approved for three months. If tretinoin therapy is effective after the three-month period, approval will be granted for a one-year period. Skin cancer, lamellar ichthyosis, and Darier's disease diagnoses will receive automatic approval for lifetime use of tretinoin products. (Cross-reference 78.28(1)*"d"*(6))

Prior authorization is required for single-source antihistamines including single active ingredient and combination products. Prior authorization is not required for multiple-source antihistamines. Single source is defined as the brand-name drug or the innovator of a multiple-source drug. Patients 21 years of age and older must have received two unsuccessful trials with other covered multiple-source antihistamines unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of single-source antihistamines. Patients 20 years of age and younger must have one unsuccessful trial with another covered multiple-source antihistamine unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of single-source antihistamines. (Cross-reference 78.28(1)*"d"*(7))

Prior authorization is required for all dipyridamole prescriptions outside the hospital setting. Dipyridamole will only be approved if aspirin is medically contraindicated in a patient. (Cross-reference 78.28(1)*"d"*(8))

Prior authorization is required for all cephalexin hydrochloride monohydrate prescriptions. Treatment failure with cephalexin monohydrate will be required prior to the initiation of a cephalexin hydrochloride monohydrate prescription. (Cross-reference 78.28(1)*"d"*(9))

Prior authorization is required for epoetin prescribed for outpatients for the treatment of anemia. Patients who meet the following criteria may receive prior authorization for the use of epoetin:

1. Hematocrit less than 30 percent.
2. Transferrin saturation greater than 20 percent (transferrin saturation is calculated by dividing serum iron by the total iron binding capacity), or ferritin levels greater than 100 mg/ml.
3. Laboratory values must be current to within three months of the prior authorization request.
4. For AZT-treated patients, endogenous serum erythropoetin level needs to be greater than 500 mU/ml.
5. Patient should not have a demonstrated gastrointestinal bleed.
6. Exceptions may be made if the patient does not meet criteria "2," but is on aggressive oral iron therapy (i.e., twice or three times per day dosing). The prior authorization for this exception would be for a limited time. (Cross-reference 78.28(1)*"d"*(10))

Prior authorization is required for filgrastim prescribed for outpatients whose conditions meet the following indications for use:

1. Decrease the incidence of infection due to severe neutropenia caused by myelosuppressive anticancer therapy. For this indication, the following criteria apply: Filgrastim therapy can continue until the postnadir, absolute neutrophil count is greater than 10,000 cells per cubic millimeter and routine CBC and platelet counts are required twice per week.
2. Decrease the incidence of infection due to severe neutropenia in AIDS patients on zidovudine. For this indication, the following criteria apply: Evidence of neutropenic infection exists or absolute neutrophil count is below 750 cells per cubic millimeter, filgrastim is adjusted to maintain absolute neutrophil count of approximately 1000 cells per cubic millimeter, and routine CBC and platelet counts are required once per week. (Cross-reference 78.28(1)*"d"*(11))

Prior authorization is required for drugs used for the treatment of male sexual dysfunction. For prior authorization to be granted, the patient must:

1. Be 21 years of age or older.
2. Have a confirmed diagnosis of impotence of organic origin or psychosexual dysfunction.
3. Not be taking any medications which are contraindicated for concurrent use with the drug prescribed for treatment of male sexual dysfunction.

Approval for these drugs, with the exception of yohimbine, will be limited to four doses in a 30-day period.

The 72-hour emergency supply rule found below and at paragraph 78.28(1)*"d"* does not apply for drugs used for the treatment of male sexual dysfunction. (Cross-reference 78.28(1)*"d"*(13))

Prior authorization is required for ergotamine derivatives used for migraine headache treatment for quantities exceeding 18 unit doses of tablets, injections, or sprays per 30 days. Payment for ergotamine derivatives for migraine headache treatment beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the following information must be supplied:

1. The diagnosis requiring therapy.
2. Documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications. (Cross-reference 78.28(1)*"d"*(14))

Prior authorization is required for narcotic agonist-antagonist nasal sprays for quantities exceeding 10 milliliters (approximately 60 doses) per 30 days. Payment for narcotic agonist-antagonist nasal spray beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the diagnosis must be supplied. If the use is for the treatment of migraine headaches, documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications must be provided. (Cross-reference 78.28(1)*"d"*(15))

Prior authorization is required for isotretinoin therapy.

Payment will be approved for isotretinoin therapy for acne under the following conditions:

1. There are documented trials and therapy failures of systemic antibiotic therapy and topical tretinoin therapy. Documented trials and therapy failures of systemic antibiotic therapy and topical tretinoin therapy are not required for approval for treatment of acne conglobata.
2. There is a confirmed negative serum pregnancy test, if appropriate.
3. There is a plan for contraception in place, if appropriate.

Initial authorization will be granted for up to 20 weeks. A minimum of two months without therapy is required to consider subsequent authorizations.

Prior authorization of isotretinoin therapy for treatment of conditions other than acne will be considered on an individual basis after review of submitted documentation. (Cross-reference 78.28(1)*"d"*(16))

Prior authorization is required for oral antifungal therapy beyond a cumulative 90 days of therapy per 12-month period per patient. Payment for oral antifungal therapy beyond this limit will be authorized in cases where the patient has a diagnosis of an immunocompromised condition or a systemic fungal infection. Other conditions will be considered on an individual basis after review of submitted documentation. This prior authorization requirement does not apply to nystatin. (Cross-reference 78.28(1)*"d"*(17))

Prior authorization is required for nonparenteral vasopressin derivatives of posterior pituitary hormone products. Payment for nonparenteral vasopressin derivatives of posterior pituitary hormone products will be authorized for the following diagnoses:

1. Diabetes insipidus.
2. Hemophilia A.
3. Von Willebrand's disease.

Payment for nonparenteral vasopressin derivatives of posterior pituitary hormone products used in the treatment of primary nocturnal enuresis will be authorized for patients who are six years of age or older for periods of six months. Approvals will be granted for subsequent six-month periods only after a drug-free interval to assess the need for continued therapy. (Cross-reference 78.28(1)*"d"*(18))

Prior authorization is required for serotonin 5-HT1-receptor agonists for quantities exceeding 18 unit doses of tablets, syringes or sprays per 30 days. Payment for serotonin 5-HT1-receptor agonists beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the following information must be supplied:

1. The diagnosis requiring therapy.
2. Documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications. (Cross-reference 78.28(1)*"d"*(19))

For all drugs requiring prior authorization, in the event of an emergency situation when a prior authorization request cannot be submitted and a response received within 24 hours such as after regular working hours or on weekends, a 72-hour supply of the drug may be dispensed and reimbursement will be made.

Prior authorization is required for selected brand-name drugs as determined by the department for which there is available an "A" rated bioequivalent generic product as determined by the federal Food and Drug Administration. For prior authorization to be considered, evidence of a treatment failure with the bioequivalent generic drug must be provided. A copy of a completed Med Watch form, FDA Form 3500, as submitted to the federal Food and Drug Administration shall be considered as evidence of a treatment failure. Brand-name drugs selected by the department shall be obtained from those recommended by the Iowa Medicaid drug utilization review commission after consultation with the state associations representing physicians. The list of selected brand-name drugs shall be published in the Medicaid Prescribed Drug Manual and the Physician Manual.

b. Medical and sickroom supplies are payable when ordered by a legally qualified practitioner for a specific rather than incidental use. No payment will be approved for medical and sickroom supplies for a recipient receiving care in a Medicare-certified skilled nursing facility. When a recipient is receiving care in a nursing facility or residential care facility which is not a Medicare-certified skilled nursing facility, payment will be approved only for the following supplies when prescribed by a legally qualified practitioner:

(1) Colostomy and ileostomy appliances.
(2) Colostomy and ileostomy care dressings, liquid adhesive and adhesive tape.
(3) Disposable irrigation trays or sets.
(4) Disposable catheterization trays or sets.
(5) Indwelling Foley catheter.
(6) Disposable saline enemas.
(7) Diabetic supplies including needles and syringes, blood glucose test strips, and diabetic urine test supplies.

c. Prescription records are required for all drugs as specified in Iowa Code sections 155.33, 155.34 and 204.308. For the purposes of the medical assistance program, prescriptions for medical supplies are required and shall be subject to the same provisions.

d. When it is not therapeutically contraindicated, the legally qualified practitioner shall prescribe a quantity of medication sufficient for a 30-day supply. Maintenance drugs in the following therapeutic classifications for use in prolonged therapy may be prescribed in 90-day quantities:

(1) Oral contraceptives
(2) Cardiac drugs
(3) Hypotensive agents
(4) Vasodilating agents
(5) Anticonvulsants
(6) Diuretics
(7) Anticoagulants
(8) Thyroid and antithyroid agents
(9) Antidiabetic agents

3. Documentation of the medical necessity for an enteral pump, if the request includes an enteral pump. The information submitted must identify the medical reasons for not using a gravity feeding set.

(2) Examples of conditions that will not justify approval of enteral nutrition therapy are: weight-loss diets, wired-shut jaws, diabetic diets, milk or food allergies, the use of enteral products for convenience reasons when regular food in pureed form would meet the medical need of the recipient, or nutritional supplementation to boost calorie or protein intake in the absence of severe pathology of the body as stated in 78.10(3)*"b."*

Basis of payment for nutritional therapy supplies will be the least expensive method of delivery that is reasonable and medically necessary based on the documentation submitted.

d. The following drugs require prior approval. For all drugs requiring prior authorization, in the event of an emergency situation when a prior authorization request cannot be submitted and a response received within 24 hours such as after regular working hours or on weekends, a 72-hour supply of the drug may be dispensed and reimbursement will be made. Full therapeutic dose levels and maintenance dose levels for the following drugs are those listed in the American Hospital Formulary Service Drug Information, United States Pharmacopeia-Drug Information, American Medical Association Drug Evaluations, and the peer-reviewed medical literature. Prior authorization will be granted for 12-month periods per recipient as needed unless otherwise specified. (Cross-reference 78.1(2)*"a"*(3))

(1) Antiulcer drugs. Prior authorization is required for prescriptions for all single-source histamine H2-receptor antagonists at all dose levels. Single source is defined as the brand-name drug or the innovator of a multiple-source drug. Payment for the single-source histamine H2-receptor antagonist will be authorized only for cases in which there is documentation of a previous trial and therapy failure with at least one multiple-source histamine H2-receptor antagonist.

Prior authorization is required for multiple-source histamine H2-receptor antagonists prescribed at full therapeutic dose levels for longer than a 90-day period or more frequently than one 90-day course of therapy per 12-month period per recipient. Payment for single- or multiple-source histamine H2-receptor antagonists at full therapeutic dose levels beyond the 90-day limit or more frequently than one 90-day course of therapy per patient per 12-month period will be authorized in cases where there is a diagnosis of:

1. Hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. Symptomatic gastroesophageal reflux.
3. Symptomatic relapses of duodenal or gastric ulcers not responding to maintenance therapy and with documentation of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.
4. Barrett's esophagus.
5. Erosive esophagitis.

Other conditions will be considered on an individual patient basis with submitted documentation of medical necessity.

Prior authorization is required for proton pump inhibitor usage longer than 60 days or more frequently than one 60-day course per 12-month period. Payment for proton pump inhibitors beyond the 60-day limit or more frequently than one 60-day course per recipient per 12-month period shall be authorized upon request for those cases in which there is a diagnosis of:

1. Specific hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. Barrett's esophagus.
3. Symptomatic gastroesophageal reflux after documentation of previous trials and therapy failure with at least one histamine H2-receptor antagonist at full therapeutic doses as defined by the histamine H2-receptor antagonist prior authorization guidelines.

4. Recurrent peptic ulcer disease after documentation of previous trials and therapy failure with at least one histamine H2-receptor antagonist at full therapeutic doses and with documentation of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.

Proton pump inhibitors prescribed concurrently with histamine H2-receptor antagonists shall be considered duplication of therapy. Payment for duplication of therapy will be considered on an individual basis after review of submitted documentation of medical necessity.

Prior authorization is not required for a cumulative 60 days of therapy with a proton pump inhibitor per 12-month period per recipient. The 12-month period is patient specific and begins 12 months prior to the requested date of prior authorization.

The medical condition of patients receiving continuous long-term treatment with proton pump inhibitors shall be reviewed yearly to determine the need for ongoing treatment.

Prior authorization is required for sucralfate at full therapeutic dose levels for longer than a 90-day period or more frequently than one 90-day course of therapy per patient per 12-month period. Payment for sucralfate at full therapeutic dose levels beyond the 90-day limit or more frequently than a 90-day course per patient per 12-month period will be authorized in cases where there is a diagnosis of:

1. Hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. Symptomatic gastroesophageal reflux.
3. Symptomatic relapses of duodenal or gastric ulcers not responding to maintenance therapy and with documentation of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.
4. Barrett's esophagus.
5. Erosive esophagitis.

Other conditions will be considered on an individual basis with submitted documentation.

Concurrent sucralfate therapy prescribed with histamine H2-receptor antagonists or proton pump inhibitors beyond a 30-day period is considered duplication of therapy. Concurrent sucralfate therapy prescribed with misoprostol is also considered duplication of therapy. Payment for duplication of therapy will be considered on an individual patient basis after review of submitted documentation of medical necessity.

Prior authorization is not required for misoprostol when prescribed concurrently with a nonsteroidal anti-inflammatory drug. Prior authorization is required for any other therapy with misoprostol beyond 90 days. Justification for other therapy will be considered on an individual patient basis. Misoprostol prescribed concurrently with histamine H2-receptor antagonists, sucralfate, or proton pump inhibitors will be considered duplication of therapy. Payment for duplication of therapy will be considered on an individual patient basis after review of submitted documentation of medical necessity.

(2) Antiarthritis drugs. Prior authorization is required for single-source nonsteroidal anti-inflammatory drugs. Requests must document previous trials and therapy failure with at least two multiple-source nonsteroidal anti-inflammatory drugs. Prior authorization for chronic conditions will be issued for a 12-month period. Once a prior authorization has been issued the single-source nonsteroidal anti-inflammatory drug being prescribed may be changed to another single-source product without a new request within the approved time period of 12 months. Patients who have been established on proven therapy with a single-source product prior to October 1, 1992, will not require a prior authorization.

Prior authorization is not required for prescriptions for multiple-source nonsteroidal anti-inflammatory drugs.

(3) Prior authorization is required for single-source benzodiazepines. Requests must document a previous trial and therapy failure with one multiple-source product. Prior authorization will be approved for 12 months for documented:

1. Generalized anxiety disorder.
2. Panic attack with or without agoraphobia.
3. Seizure.
4. Nonprogressive motor disorder.
5. Bipolar depression.
6. Dystonia.

Prior authorization requests will be approved for a three-month period for all other diagnoses related to the use of benzodiazepines. Justification will be considered on an individual patient basis. Patients who have been established on proven therapy with a single-source product prior to October 1, 1992, will not require a prior authorization.

(4) Prior authorization is required for therapy with growth hormones. All of the following criteria must be met for approval for prescribing of growth hormones:

1. Standard deviation of 2.0 or more below mean height for chronological age.
2. No intracranial lesion or tumor diagnosed by MRI.
3. Growth rate below five centimeters per year.
4. Failure of any two stimuli tests to raise the serum growth hormone level above seven nanograms per milliliter.
5. Bone age 14 to 15 years or less in females and 15 to 16 years or less in males.
6. Epiphyses open.

Prior authorization will be granted for 12-month periods per recipient as needed. (Cross-reference 78.1(2)*"a"*(3))

(5) Prior authorization is required for all prescription topical acne products for the treatment of mild to moderate acne vulgaris. An initial treatment failure of an over-the-counter benzoyl peroxide product, which is covered by the program, is required prior to the initiation of a prescription product, or evidence must be provided that use of these agents would be medically contraindicated. If the patient presents with a preponderance of comedonal acne, tretinoin products may be utilized as first-line agents without prior authorization.

(6) Prior authorization is required for all tretinoin prescription products for those patients over the age of 25 years. Alternatives such as topical benzoyl peroxide (OTC), and topical erythromycin, clindamycin, or oral tetracycline must first be tried (unless evidence is provided that use of these agents would be medically contraindicated) for the following conditions: endocrinopathy, mild to moderate acne (noninflammatory and inflammatory), and drug-induced acne. Prior authorization will not be required for those patients presenting with a preponderance of comedonal acne. Upon treatment failure with the above-mentioned products or if medically contraindicated, tretinoin products will be approved for three months. If tretinoin therapy is effective after the three-month period, approval will be granted for a one-year period. Skin cancer, lamellar ichthyosis, and Darier's Disease diagnoses will receive automatic approval for lifetime use of tretinoin products.

(7) Prior authorization is required for single-source antihistamines including single active ingredient and combination products. Prior authorization is not required for multiple-source antihistamines. Single source is defined as the brand-name drug or the innovator of a multiple-source drug. Patients 21 years of age and older must have received two unsuccessful trials with other covered multiple-source antihistamines unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of single-source antihistamines. Patients 20 years of age and younger must have one unsuccessful trial with another covered multiple-source antihistamine unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of single-source antihistamines.

(8) Prior authorization is required for all dipyridamole prescriptions outside the hospital setting. Dipyridamole will only be approved if aspirin is medically contraindicated in a patient.

(9) Prior authorization is required for all cephalexin hydrochloride monohydrate prescriptions. Treatment failure with cephalexin monohydrate will be required prior to the initiation of a cephalexin hydrochloride monohydrate prescription.

(10) Prior authorization is required for epoetin prescribed for outpatients for the treatment of anemia. Patients who meet the following criteria may receive prior authorization for the use of epoetin:

1. Hematocrit less than 30 percent.
2. Transferrin saturation greater than 20 percent (transferrin saturation is calculated by dividing serum iron by the total iron binding capacity), or ferritin levels greater than 100 mg/ml.
3. Laboratory values must be current to within three months of the prior authorization request.
4. For AZT treated patients endogenous serum erythropoetin level needs to be greater than 500 mU/ml.
5. Patient should not have a demonstrated gastrointestinal bleed.
6. Exceptions may be made if the patient does not meet criteria "2," but is on aggressive oral iron therapy (i.e., twice or three times per day dosing). The prior authorization for this exception would be for a limited time.

(11) Prior authorization is required for filgrastim prescribed for outpatients whose conditions meet the following indications for use:

1. Decrease the incidence of infection due to severe neutropenia caused by myelosuppressive anticancer therapy. For this indication the following criteria apply: Filgrastim therapy can continue until the postnadir, absolute neutrophil count is greater than 10,000 cells per cubic millimeter and routine CBC and platelet counts are required twice per week.
2. Decrease the incidence of infection due to severe neutropenia in AIDS patients on zidovudine. For this indication, the following criteria apply: Evidence of neutropenic infection exists or absolute neutrophil count is below 750 cells per cubic millimeter, filgrastim is adjusted to maintain absolute neutrophil count of approximately 1000 cells per cubic millimeter, and routine CBC and platelet counts are required once per week.

(12) Prior authorization is required for selected brand-name drugs as determined by the department for which there is available an "A" rated bioequivalent generic product as determined by the federal Food and Drug Administration. For prior authorization to be considered, evidence of a treatment failure with the bioequivalent generic drug must be provided. A copy of a completed Med Watch form, FDA Form 3500, as submitted to the federal Food and Drug Administration shall be considered as evidence of a treatment failure. Brand-name drugs selected by the department shall be obtained from those recommended by the Iowa Medicaid drug utilization review commission after consultation with the state associations representing physicians. The list of selected brand-name drugs shall be published in the Medicaid Prescribed Drug Manual and the Physician Manual.

(13) Prior authorization is required for drugs used for the treatment of male sexual dysfunction. For prior authorization to be granted, the patient must:

1. Be 21 years of age or older.
2. Have a confirmed diagnosis of impotence of organic origin or psychosexual dysfunction.
3. Not be taking any medications which are contraindicated for concurrent use with the drug prescribed for treatment of male sexual dysfunction.

Approval for these drugs, with the exception of yohimbine, will be limited to four doses in a 30-day period.

The 72-hour emergency supply rule found above and at 78.1(2)*"a"*(3) does not apply for drugs used for the treatment of male sexual dysfunction. (Cross-reference 78.1(2)*"a"*(3))

(14) Prior authorization is required for ergotamine derivatives used for migraine headache treatment for quantities exceeding 18 unit doses of tablets, injections, or sprays per 30 days. Payment for ergotamine derivatives for migraine headache treatment beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the following information must be supplied:

1. The diagnosis requiring therapy.
2. Documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications.

(15) Prior authorization is required for narcotic agonist-antagonist nasal sprays for quantities exceeding 10 milliliters (approximately 60 doses) per 30 days. Payment for narcotic agonist-antagonist nasal spray beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the diagnosis must be supplied. If the use is for the treatment of migraine headaches, documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications must be provided.

(16) Prior authorization is required for isotretinoin therapy.

Payment will be approved for isotretinoin therapy for acne under the following conditions:

1. There are documented trials and therapy failures of systemic antibiotic therapy and topical tretinoin therapy. Documented trials and therapy failures are not required for approval for treatment of acne conglobata.
2. There is a confirmed negative serum pregnancy test, if appropriate.
3. There is a plan for contraception in place, if appropriate.

Initial authorization will be granted for up to 20 weeks. A minimum of two months without therapy is required to consider subsequent authorizations.

Prior authorization of isotretinoin therapy for treatment of conditions other than acne will be considered on an individual basis after review of submitted documentation.

(17) Prior authorization is required for oral antifungal therapy beyond a cumulative 90 days of therapy per 12-month period per patient. Payment for oral antifungal therapy beyond this limit will be authorized in cases where the patient has a diagnosis of an immunocompromised condition or a systemic fungal infection. Other conditions will be considered on an individual basis after review of submitted documentation. This prior authorization requirement does not apply to nystatin.

(18) Prior authorization is required for nonparenteral vasopressin derivatives of posterior pituitary hormone products. Payment for nonparenteral vasopressin derivatives of posterior pituitary hormone products will be authorized for the following diagnoses:

1. Diabetes insipidus.
2. Hemophilia A.
3. Von Willebrand's disease.

Payment for nonparenteral vasopressin derivatives of posterior pituitary hormone products used in the treatment of primary nocturnal enuresis will be authorized for patients who are six years of age or older for periods of six months. Approvals will be granted for subsequent six-month periods only after a drug-free interval to assess the need for continued therapy.

(19) Prior authorization is required for serotonin 5-HT1-receptor agonists for quantities exceeding 18 unit doses of tablets, syringes or sprays per 30 days. Payment for serotonin 5-HT1-receptor agonists beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the following information must be supplied:

1. The diagnosis requiring therapy.
2. Documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications.

e. Augmentative communication systems, which are provided to persons unable to communicate their basic needs through oral speech or manual sign language, require prior approval. Form 470-2145, Augmentative Communication System Selection, completed by a speech pathologist and a physician's prescription for a particular device shall be submitted to request prior approval. (Cross-reference 78.10(3)*"c"*(1))

(1) Information requested on the prior authorization form includes a medical history, diagnosis, and prognosis completed by a physician. In addition, a speech or language pathologist needs to describe current functional abilities in the following areas: communication skills, motor status, sensory status, cognitive status, social and emotional status, and language status.

(2) Also needed from the speech or language pathologist is information on educational ability and needs, vocational potential, anticipated duration of need, prognosis regarding oral communication skills, prognosis with a particular device, and recommendations.

(3) The department's consultants with an expertise in speech pathology will evaluate the prior approval requests and make recommendations to the department.

f. Preprocedure review by the Iowa Foundation for Medical Care (IFMC) will be required if payment under Medicaid is to be made for certain frequently performed surgical procedures which have a wide variation in the relative frequency the procedures are performed. Preprocedure surgical review applies to surgeries performed in hospitals (outpatient and inpatient) and ambulatory surgical centers. Approval by IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and on the published criteria established by the department and the IFMC. If not so approved by the IFMC, payment will not be made under the program to the physician or to the facility in which the surgery is performed. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.

The "Preprocedure Surgical Review List" shall be published by the department in the provider manuals for physicians, hospitals, and ambulatory surgical centers. (Cross-reference 78.1(19))

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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.

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"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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a. Agencies shall be reimbursed for any units of service provided in excess of the six-month utilization factor on a six-month basis. The six-month utilization factor is computed by multiplying the utilization factor by the number of days in the six-month period. The six-month periods shall end December 31 and June 30. The amount of reimbursement shall be determined by multiplying the agency's unit cost by the number of excess units provided.

EXCEPTION: For the first period of fiscal year 1996, the number of months will be four, rather than six, beginning September 1, 1995, and ending December 31, 1995. Calculations shall be made as above, adjusted for the four-month period.

b. The total reimbursement to the agency shall not exceed the agency's allowable costs as defined in 441—subrule 150.3(5). Agencies shall refund any payments which have been made in excess of the agencies' allowable costs.

c. Rescinded IAB 8/2/95, effective 9/1/95.

This rule is intended to implement Iowa Code section 234.38.

441—156.12(234) Independent living.

156.12(1) *Maintenance.* When a child at least aged 16 but under the age of 20 is living in an independent living situation, the maximum monthly maintenance payment for the child shall be made pursuant to the basic daily maintenance rate for a child aged 16 and over in subrule 156.6(1). The maximum monthly payment shall be computed by multiplying the daily rate in subrule 156.6(1) by 365 and dividing by 12. This payment may be paid to the child or another payee, other than a department employee, for the child's care.

156.12(2) *Service.* When services for a child in independent living are purchased, the service components and number of hours purchased shall be specified by the service worker in the child's case permanency plan. When services for a child aged 18 or older in independent living are purchased, the total number of hours purchased shall not exceed 40 hours for the first month of placement into independent living and 20 hours for any month thereafter.

This rule is intended to implement Iowa Code section 234.35.

441—156.13(234) Excessive rates. Rescinded IAB 6/9/93, effective 8/1/93.

441—156.14(234,252C) Voluntary placements. When placement is made on a voluntary basis the parent or guardian shall complete and sign Form SS-2604, Voluntary Placement Agreement.

441—156.15(234) Child's earnings. Earned income of a child who is not in an independent living arrangement and who is a full-time student or engaged in an educational or training program shall be reported to the department and its use shall be a part of a plan for service, but the income shall not be used towards the cost of the child's care as established by the department. When the earned income of children in independent living arrangements or of other children exceeds the foster care standard, the income in excess of the standard shall be applied to meet the cost of the child's care. When the income of the child exceeds twice the cost of maintenance, the child shall be discontinued from foster care.

441—156.16(234) Trust funds and investments.

156.16(1) When the child is a beneficiary of a trust and the proceeds therefrom are not currently available, or are not sufficient to meet the child's needs, the worker shall assist the child in having a petition presented to the court requesting release of funds to help meet current requirements. When the child and responsible adult cooperate in necessary action to obtain a ruling of the court, income shall not be considered available until the decision of the court has been rendered and implemented. When the child and responsible adult do not cooperate in the action necessary to obtain a ruling of the court, the trust fund or investments shall be considered as available to meet the child's needs immediately. When the child or responsible adult does not cooperate within 90 days in making the income available the maintenance payment shall be terminated.

156.16(2) The Iowa department of human services shall be payee for income from any trust funds or investments unless limited by the trust.

156.16(3) Savings accounts from any income and proceeds from the liquidation of securities shall be placed in the child's account maintained by the department and any amount in excess of $1,500 shall be applied towards cost of the child's maintenance.

This rule is intended to implement Iowa Code section 234.39.

441—156.17(234) Adoptive homes. Payment for foster care for a child placed in an adoptive home will only be made when the placement is made in anticipation of a subsidized adoption. The payment shall be limited to the amount anticipated for subsidy, and shall terminate when the adoption decree is granted.

This rule is intended to implement Iowa Code section 234.38.

441—156.18(237) Foster parent training expenses.

156.18(1) *Preservice training and orientation.* Each prospective foster family and provisionally licensed foster family who completes the required preservice training program and is issued a foster home license shall receive a $100 stipend from the department. The stipend shall be issued on or after the date that the license is issued. No expense stipend is provided for orientation.

156.18(2) *Required orientation.* Rescinded IAB 1/5/94, effective 3/1/94.

156.18(3) *Foster parent trainers.* Foster parents who serve as trainers for approved 12-hour preservice training programs shall each be paid a contract fee of $14 per class hour.

156.18(4) *In-service training.* Each licensed foster family who completes the in-service training requirement shall receive a $100 stipend from the department when the family's license is renewed, for per diem expenses related to meeting the in-service training requirement.

156.18(5) *Funds to association.* The department may provide funds to the Iowa foster and adoptive parent association for the following purposes:

a. Publication of educational articles in the association newsletter.

b. Financial assistance for foster parents who attend the National Foster Parent Association's annual conference.

c. Financial assistance for foster parents who attend the state association's annual conference.

156.18(6) *Foster parent training enhancement.* The department shall allocate a portion of the foster parent training funds to the regions based on the number of foster family home licenses on file. From these funds, the regional administrator or designee may authorize expenses to enhance the training provided to foster parents, based on the recommendations of the regional foster parent training advisory group. Eligible expenses include those related to speaker fees, child care, training materials, facilities, registration fees, and funds to local foster parent organizations for the purpose of publishing a newsletter.

156.18(7) *Transition.* Rescinded IAB 10/31/90, effective 1/1/91.

This rule is intended to implement Iowa Code section 237.5A.

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CHAPTER 1
PURPOSE AND ORGANIZATION
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 9]

657—1.1(17A) Description and organization.

1.1(1) *Description of agency.* The board derives its authority for regulating the practice of pharmacy and for regulating the legal distribution and dispensing of prescription drugs and precursor substances throughout the state from Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, 205, and 272C.

1.1(2) *Organization of agency.* The board is comprised of five pharmacist members and two representatives of the general public, all appointed by the governor; they are assisted by an administrative staff headed by an executive secretary appointed by the board.

1.1(3) *Purpose.* The responsibilities of the board include but are not limited to:

a. Licensing of qualified applicants to the practice of pharmacy by examination, renewal, and reciprocity under the provisions of Iowa Code chapters 147 and 155A.

b. Development and administration of a program of continuing education to ensure continued competency of individuals licensed by the board. Authority for this function comes from Iowa Code chapter 272C.

c. Regulating the legal distribution of prescription drugs through the licensing of pharmacies and wholesalers under the authority of Iowa Code chapter 155A.

d. Regulating the legal distribution of controlled substances through the registration of pharmacies, physicians, physician assistants, advanced registered nurse practitioners, dentists, podiatric physicians, veterinarians, optometrists, hospitals, health care facilities, researchers, analytical laboratories, teaching institutions, and controlled substance manufacturers and distributors throughout the state under the authority of Iowa Code chapter 124.

e. Perform compliance investigations and audits of all persons registered pursuant to Iowa Code chapter 124. These investigations and audits are conducted to ensure accountability for all controlled substances covered under this chapter.

f. Regulating the legal distribution of precursor substances through the issuance of permits to vendors and recipients of precursor substances throughout the state under the authority of Iowa Code chapter 124B.

1.1(4) *Information.* Members of the general public may obtain information or submit requests relative to the practice of pharmacy, continuing education for pharmacists, or the legal distribution and dispensing of prescription drugs, or any other matters relating to the function of the board, to the Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Procedures for obtaining this information may be found in 657—Chapter 14.

1.1(5) *Public meetings.* All meetings of the board shall be open and public and all citizens of Iowa shall be permitted to attend any meeting except, as provided by statute, for some exceptional reason so compelling as to override the general public policy in favor of public meetings and as permitted by Iowa Code section 21.5. Closed meetings shall only be by affirmative public vote of either two-thirds of the members of the board or all of the members present at the meeting.

a. Meetings of the board shall be held in Des Moines, Iowa, except as designated otherwise by the chairperson.

b. The board shall set the dates of its meetings at the first meeting following May 1 of each fiscal year. Notices of meetings shall be routinely posted in the space set aside for that purpose in the governor's office and in the office of the board.

c. Special meetings of the board may be called by the chairperson or upon written request of four of its members.

(1) The reason for calling a special meeting shall be recorded in the minutes.

(2) Special meetings, although advance notice cannot be published, shall be open to the citizens of Iowa except as otherwise provided in statute.

d. The executive secretary shall keep a record of all minutes of the board and these minutes shall be open to the public for inspection.

e. Members of the general public may obtain the date, time, and location of board meetings by submitting a request to the Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

f. A majority of the members of the board shall constitute a quorum.

657—1.2(17A,124,124A,124B,126,147,155A,205) Disciplinary action.

1.2(1) *License denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may deny, restrict, revoke or suspend a license to practice pharmacy for grounds stated in Iowa Code sections 147.55 and 155A.12. Pursuant to 657—Chapters 35 and 36, the board may deny, revoke or suspend a license to operate a pharmacy for grounds stated in Iowa Code section 155A.13A or 155A.15, as appropriate. Pursuant to 657—Chapters 35 and 36, the board may deny, revoke or suspend a license to operate a wholesale drug distribution facility doing business in Iowa for grounds stated in Iowa Code section 155A.17.

1.2(2) *Controlled substance registration denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may deny, restrict, revoke or suspend registration for grounds stated in Iowa Code sections 124.303 and 124.304.

1.2(3) *Permit denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may refuse, suspend, or revoke a permit to handle precursor substances for grounds stated in Iowa Code section 124B.12.

1.2(4) *Pharmacy technician registration denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, or revoke a pharmacy technician registration for grounds stated in Iowa Code section 155A.6.

1.2(5) *Pharmacist-intern registration denial, revocation or suspension.* Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, or revoke a pharmacist-intern registration for grounds stated in Iowa Code section 155A.6.

657—1.3(17A,124,126,147,155A,205,272C) Waivers or variances from rules.

1.3(1) *Applicability.* This rule governs waivers or variances from board rules in the following circumstances: The board has exclusive rule-making authority to promulgate the rule from which the waiver or variance is requested or has final decision-making authority over a contested case in which the waiver or variance is requested; and no statute or rule otherwise controls the grant of a waiver or variance from the rule from which the waiver or variance is requested.

a. The board may grant a waiver of, or variance from, all or part of a rule.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with state and federal statutes.

1.3(2) *Criteria.* A waiver or variance under this rule may be granted only upon showing that:

a. Substantially equal protection of health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the variance or waiver is requested;

b. Because of special circumstances, either the requester is unable to comply with the particular rule without undue hardship or compliance with the particular rule would be unnecessarily and unreasonably costly and would serve no public benefit; and

c. Provision of a waiver or variance under the circumstances would not adversely impact an overall goal of uniform treatment of all licensees.

1.3(3) *Request.* A request for a waiver or variance shall be submitted in writing to the board as follows:

a. License, registration, or permit application. If the request relates to an application for, or limitation on, a license, registration, or permit, the request shall be made in accordance with the filing requirements for the license, registration, or permit in question.

b. Contested case. If the request relates to a pending contested case, the request shall be filed in the contested case proceeding.

c. Other. If the request does not relate to a particular license, registration, or permit and is not related to a pending contested case, the request may be submitted to the executive secretary/director of the board.

1.3(4) *Elements.* A request for waiver or variance shall include the following information where applicable:

a. The name, address, and telephone number of the person requesting the waiver or variance and the person's representative, if any.

b. The specific rule or portion of a rule from which a waiver or variance is requested.

c. The nature of the waiver or variance requested, including any alternative means or other condition or modification proposed to achieve the purpose of the rule.

d. An explanation of the reason for the waiver or variance, including all material facts relevant to grant the waiver or variance in question.

e. Any necessary releases of information authorizing persons with knowledge to disclose relevant information to the board.

1.3(5) *Ruling.* The board shall respond in writing to all requests. The ruling shall include the reason for granting or denying the request and, if approved, the time period during which the waiver or variance is effective. The board may condition the grant of waiver or variance on such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

1.3(6) *Public availability.* All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the board office.

1.3(7) *Voiding or cancellation.* A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver or variance upon appropriate notice and hearing if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with conditions set forth in the waiver or variance approval.

1.3(8) *Violations.* Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

1.3(9) *Appeals.* Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

This rule is intended to implement Iowa Code sections 17A.22, 124.301, 126.17, 147.76, 155A.2, 205.11, 205.13, 272C.3, and 272C.4.

657—1.4(155A) Voluntary surrender of a license. Rescinded IAB 2/19/92, effective 3/25/92.

These rules are intended to implement Iowa Code sections 17A.3, 17A.7, 17A.9, 124.303, 124.304, and 147.14.

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◊Two ARCs

657—10.19(124) Excluded substances. The following substances are classified as products exempted from classification as controlled substances:

Company	Trade name	NDC code	Form	Controlled substance	(mg or mg/ml)
Bioline Laboratories	Theophed	00719-1945	TB	Phenobarbital	8.00
Goldline Laboratories	Guiaphed Elixir	00182-1377	EL	Phenobarbital	4.00
Goldline Laboratories	Tedrigen Tablets	00182-0134	TB	Phenobarbital	8.00
Hawthorne Products Inc.	Choate's Leg Freeze		LQ	Chloral hydrate	246.67
Parke-Davis & Co.	Tedral	00071-0230	TB	Phenobarbital	8.00
Parke-Davis & Co.	Tedral Elixir	00071-0242	EX	Phenobarbital	40.00
Parke-Davis & Co.	Tedral S.A.	00071-0231	TB	Phenobarbital	8.00
Parke-Davis & Co.	Tedral Suspension	00071-0237	SU	Phenobarbital	80.00
Parmed Pharmacy	Asma-Ese	00349-2018	TB	Phenobarbital	8.10
Rondex Labs	Azma-Aids	00367-3153	TB	Phenobarbital	8.00
Smith Kline Consumer	Benzedrex	49692-0928	IN	Propylhexedrine	250.00
Sterling Drug, Inc.	Bronkolixir	00057-1004	EL	Phenobarbital	0.80
Sterling Drug, Inc.	Bronkotabs	00057-1005	TB	Phenobarbital	8.00
Vicks Chemical Co.	Vicks Inhaler	23900-0010	IN	l-Desoxyephedrine	113.00
White Hall Labs	Primatene (P-tablets)	00573-2940	TB	Phenobarbital	8.00

This rule is intended to implement Iowa Code sections 124.210(4) and 124.211.

657—10.20(124) Temporary designation of controlled substances.

10.20(1) Amend Iowa Code subsection 124.206(7) by rescinding paragraph *"b"* and relettering paragraph *"c"* as *"b."*

10.20(2) Amend Iowa Code section 124.208 by adopting the following new subsection:

8. Hallucinogenic substances. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved product. Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

657—10.21(205) Purpose of issue of prescription. Any order purporting to be a prescription for a Schedule III dronabinol product not issued for indications approved by the Food and Drug Administration is not a prescription within the meaning and intent of the federal law (21 U.S.C. 829) or of Iowa Code section 205.3. Any person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances. Nothing in this rule shall be deemed to prohibit the prescribing of dronabinol products approved by the Food and Drug Administration for other than indications for use approved by the Food and Drug Administration by a researcher or registered practitioner conducting research, provided that the research is conducted in accordance with research protocol provisions approved by the board or federal law (21 CFR 1301.18 as of April 1, 1999).

This rule is intended to implement Iowa Code section 205.3.

657—10.22(205) Requirement of prescription. An individual practitioner as defined in Iowa Code subsection 124.101(23) may not administer or dispense Schedule III dronabinol products unless such administering or dispensing is for indications for use approved by the Food and Drug Administration. Any person knowingly administering or dispensing Schedule III dronabinol products contrary to this rule shall be subject to the penalties provided for violation of the provisions of law relating to controlled substances. Nothing in this rule shall be deemed to prohibit the administering or dispensing of Schedule III dronabinol products for other indications for use approved by the Food and Drug Administration by a researcher or registered practitioner conducting research provided that the research is conducted in accordance with research protocol provisions approved by the board or federal law (21 CFR 1301.18 as of April 1, 1999).

This rule is intended to implement Iowa Code section 205.3.

657—10.23(124) Exempt anabolic steroid products. The Iowa board of pharmacy examiners hereby adopts the table of "Exempt Anabolic Steroid Products" contained in Title 21 CFR, Part 1308, Section 34, as published in the Federal Register dated November 24, 1992, Vol. 57, No. 227, page 55091, and as amended by the addition of two new entries to the table as published in the Federal Register dated June 29, 1993, Vol. 58, No. 123, page 34707. Copies of the table may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

These rules are intended to implement Iowa Code sections 124.201, 124.202, 124.208, 124.306, 124.501, 124.506, and 205.3.

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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, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. 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, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. 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, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

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 14
PUBLIC INFORMATION AND INSPECTION OF RECORDS

The Iowa board of pharmacy examiners hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

657—14.1(155A,124,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "Iowa Board of Pharmacy Examiners."

657—14.3(155A,124,22) Requests for access to records.

14.3(1) *Location of record.* In lieu of the words "(insert agency name and address)", insert "Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688".

14.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8:00 a.m. to 4:30 p.m. daily excluding Saturdays, Sundays, and legal holidays".

14.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "fifteen minutes".

657—14.6(155A,124,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the executive secretary/director".

657—14.9(155A,124,22) Disclosures without the consent of the subject.

14.9(1) Open records are routinely disclosed without the consent of the subject.

14.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 14.10(155A,124,22) or in the notice for a particular record system.

b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

657—14.10(155A,124,22) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all board records:

a. Disclosure to those officers, employees, investigators, members, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer, employee, investigator, or member, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the attorney general's office for use in performing its official function.

d. Transfers of information within the board office and among board members; to other state agencies, boards, and departments; to federal agencies; to agencies in other states; to the National Association of Boards of Pharmacy; or to local units of government as appropriate to carry out the board's statutory authority.

e. Information released to the staff of federal or state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

657—14.11(155A,124,22) Consensual disclosure of confidential records.

14.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 14.7(155A,124,22).

14.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

14.11(3) *Obtaining information from a third party.* The board is required to obtain information to verify and investigate complaints concerning licensees and registrants. Requests to third parties for this information may involve the release of confidential records requiring special procedures.

a. Where necessary, the board shall obtain from the subject individual an authorization for the release of specially protected information on a form that meets the requirements of the law.

b. To obtain alcohol and drug abuse patient information, the board shall obtain special authorization from the subject individual on a "Consent to Release Alcohol and Drug Abuse Patient Information" form or other appropriate form.

657—14.12(155A,124,22) Release to subject.

14.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 14.6(155A,124,22). However, the board need not release the following records to the subject:

a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

657—14.17(155A,124,22) Purpose and scope. This chapter implements Iowa Code section 22.11 by establishing board policies and procedures for the maintenance of records.

This chapter does not:

1. Require the board to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the board which are governed by regulations of another board or agency.
4. Apply to grantees, including local governments or subdivisions, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of the records to the general public or to any subject individual or party to litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 17
WHOLESALE DRUG LICENSES

657—17.1(155A) Definitions.

"Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

"Blood component" means that part of blood separated by physical or mechanical means.

"Board" means the Iowa board of pharmacy examiners.

"Distribute" means the delivery of a prescription drug or device.

"Drug sample" means a drug that is distributed without consideration to a pharmacist or practitioner.

"Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging or labeling of a prescription drug.

"Prescription drug" means any of the following:

1. A substance for which federal or state law requires a prescription before it may be legally dispensed to the public.
2. A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:
   - Caution: Federal law prohibits dispensing without a prescription.
   - Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.
3. A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

"Proprietary medicine" means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law.

"Reverse distribution" means the receipt of prescription drugs including controlled substances, whether received from Iowa locations or shipped to Iowa locations, for the purposes of destroying the drugs or returning the drugs to their original manufacturers or distributors.

"Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

1. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this chapter, "emergency medical reasons" includes transfers of prescription drugs by a pharmacy to another pharmacy to alleviate a temporary shortage;
2. The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;
3. The lawful distribution of drug samples by manufacturers' representatives or wholesale salespersons;
4. The sale, purchase, or trade of blood and blood components intended for transfusion; or
5. Intracompany sales.

"Wholesale distributor" means anyone engaged in wholesale distribution of prescription drugs including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; reverse distributors; and pharmacies that conduct wholesale distributions exceeding 5 percent of gross annual sales of prescription drugs.

"Wholesaler" means a person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business, or any other business in which prescription drugs, medicinal chemicals, medicines, or poisons are sold, manufactured, compounded, dispensed, stocked, exposed, or offered for sale at wholesale in this state. "Wholesaler" does not include those wholesalers who sell only proprietary medicines.

"Wholesale salesperson" or *"manufacturer's representative"* means an individual who takes purchase orders on behalf of a wholesaler for prescription drugs, medicinal chemicals, medicines, or poisons. "Wholesale salesperson" or "manufacturer's representative" does not include an individual who sells only proprietary medicines.

657—17.2(155A) Wholesale drug distributor licensing requirements.

17.2(1) Every wholesale distributor, wherever located, who engages in wholesale distribution into, out of, or within this state must be licensed by the board in accordance with the laws and regulations of Iowa before engaging in wholesale distribution of prescription drugs.

17.2(2) Where operations are conducted at more than one location by a single wholesale distributor, each such location shall be licensed by the board.

17.2(3) An Iowa wholesale drug license shall expire on December 31 of each year. The fee for a new or renewal license shall be $100. A wholesale drug license form shall be issued upon receipt of the license application information required in subrule 17.3(1) 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.

657—17.3(155A) Minimum required information for licensure.

17.3(1) The board requires the following from each wholesale drug distributor as part of the initial licensing procedure and as part of any renewal of such license:

a. The name, full business address, and telephone number of the licensee;

b. All trade or business names used by the licensee;

c. Addresses, telephone numbers, and the names of contact persons for the facility used by the licensee for the storage, handling, and distribution of prescription drugs;

d. The type of ownership or operation (i.e., partnership, corporation, or sole proprietorship); and

e. The name(s) of the owner and operator of the license, including:

(1) If a person, the name and address of the person;

(2) If a partnership, the name of each partner, and the name and address of the partnership;

(3) If a corporation, the name and title of each corporate officer and director, the corporate names and the name of the state of incorporation, and the name and address of the parent company, if any;

(4) If a sole proprietorship, the full name of the sole proprietor and the name and address of the business entity.

17.3(2) Changes in any information in this rule shall be submitted in written form within 30 days after such change to Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

657—17.4(155A) Minimum qualifications.

17.4(1) The board will consider the following factors in determining eligibility for licensure of persons who engage in the wholesale distribution of prescription drugs:

a. Any convictions of the applicant under any federal, state, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

b. Any felony convictions of the applicant under federal, state, or local laws;

17.11(3) Records described in this rule that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized official of any governmental agency charged with enforcement of these rules.

657—17.12(155A) Written policies and procedures. Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories. Wholesale drug distributors shall include in their written policies and procedures the following:

17.12(1) A procedure whereby the oldest approved stock of a prescription drug product is distributed first. The procedure may permit deviation from this requirement if such deviation is temporary and appropriate.

17.12(2) A procedure to be followed for handling recalls and withdrawals of prescription drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to:

a. Any action initiated at the request of the Food and Drug Administration or other federal, state, or local law enforcement or other government agency, including the Iowa board of pharmacy examiners;

b. Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

c. Any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design.

17.12(3) A procedure to ensure that wholesale drug distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

17.12(4) A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs. This documentation shall be maintained for two years after disposition of the outdated drugs.

17.12(5) The procedures required by subrules 17.12(1) and 17.12(2) do not apply to reverse distributors. All other procedures addressed in this rule are required of reverse distributors.

657—17.13(155A) Responsible persons. Wholesale drug distributors shall establish and maintain lists of officers, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

657—17.14(155A) Compliance with federal, state, and local laws. Wholesale drug distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

17.14(1) Wholesale drug distributors shall permit the board and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law. Such officials shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

17.14(2) Wholesale drug distributors that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local, and DEA regulations.

657—17.15(155A) Salvaging and reprocessing. Wholesale drug distributors shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing, including Chapter 21, Parts 207, 210d and 211 of the Code of Federal Regulations, April 1, 1991.

657—17.16(155A) Discipline. Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, or revoke a wholesale drug license for any violation of Iowa Code chapters 155A, 126, 124, 124A, 124B, and 205, or a rule of the board promulgated thereunder.

These rules are intended to implement Iowa Code section 155A.17.

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CHAPTER 26
PETITIONS FOR RULE MAKING

Adopt, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to petitions for rule making which are printed in the first volume of the Iowa Administrative Code.

657—26.1(17A) Petition for rule making. In lieu of the words "(designate office)" insert "400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688". In lieu of the words "(AGENCY NAME)" insert "IOWA BOARD OF PHARMACY EXAMINERS". In paragraph 6 in lieu of "rule X.4(17A)", insert "rule 657—26.4(17A)".

657—26.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)" insert "Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688".

These rules are intended to implement Iowa Code section 17A.7.

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CHAPTER 27
DECLARATORY ORDERS

657—27.1(17A) Petition for declaratory order. Any person may file a petition with the board of pharmacy examiners, hereinafter referred to as "the board," for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Iowa Board of Pharmacy Examiners at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

IOWA BOARD OF PHARMACY EXAMINERS

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

The petition shall provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 657—27.7(17A).

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

657—27.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 657—27.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

657—27.3(17A) Intervention.

27.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

27.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

27.3(3) A petition for intervention shall be filed at the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

IOWA BOARD OF PHARMACY EXAMINERS

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

The petition for intervention shall provide the following information:

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

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

657—27.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

657—27.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

657—27.6(17A) Service and filing of petitions and other papers.

27.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

27.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

27.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 657—35.11(17A,272C).

657—27.7(17A) Consideration. Upon request by petitioner, the board shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

657—27.8(17A) Action on petition.

27.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive secretary/director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

27.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 657—35.2(17A,272C).

657—27.9(17A) Refusal to issue order.

27.9(1) The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

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

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

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

27.9(2) A refusal to issue a declaratory order shall indicate the specific grounds for the refusal and constitutes final board action on the petition.

27.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

657—27.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order shall contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

657—27.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

657—27.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202, section 13.

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CHAPTER 28
AGENCY PROCEDURE FOR RULE MAKING

657—28.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board of pharmacy examiners, hereinafter referred to as "board," are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

657—28.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

657—28.3(17A) Public rule-making docket.

28.3(1) *Docket maintained.* The board shall maintain a current public rule-making docket.

28.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the board. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of board personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects upon which public comment is desired.

28.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)*"a,"* to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin, or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule;

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

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

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

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

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

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

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

i. The date of the rule's adoption;

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

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

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

657—28.4(17A) Notice of proposed rule making.

28.4(1) *Contents.* At least 35 days before the adoption of a rule the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

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

b. The specific legal authority for the proposed rule;

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

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

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

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

28.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 28.12(2) of this chapter.

28.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription shall file with the board a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the board for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

657—28.5(17A) Public participation.

28.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions shall identify the proposed rule to which they relate and shall be submitted to the Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or the person designated in the Notice of Intended Action.

28.5(2) *Oral proceedings.* The board may, at any time, schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request shall also contain the following additional information:

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

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

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

28.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, section 8, or subrule 28.5(2).

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

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

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

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

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

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

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

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

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

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

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

28.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

28.5(5) *Accessibility.* The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board of pharmacy examiners, telephone (515)281-5944, in advance to arrange access or other needed services.

657—28.6(17A) Regulatory analysis.

28.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

28.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the board's small business impact list by making a written application addressed to the Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. The application for registration shall state:

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

b. Its address;

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

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

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

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

28.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the board shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

28.6(4) *Qualified requesters for regulatory analysis—economic impact.* The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

a. The administrative rules coordinator or

b. The administrative rules review committee.

28.6(5) *Qualified requesters for regulatory analysis—business impact.* The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

a. The administrative rules review committee;

b. The administrative rules coordinator;

28.10(3) *Public proceedings on rules adopted without them.* The board may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 28.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 28.10(1). Such a petition shall be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule shall be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 28.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

657—28.11(17A) Concise statement of reasons.

28.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement shall be in writing and be delivered to the Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. The request shall indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

28.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

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

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

28.11(3) *Time of issuance.* After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

657—28.12(17A) Contents, style, and form of rule.

28.12(1) *Contents.* Each rule adopted by the board shall contain the text of the rule and, in addition:

a. The date the board adopted the rule;

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

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

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

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

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

g. The effective date of the rule.

28.12(2) *Incorporation by reference.* The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the board, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

If the board adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

28.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board will provide a copy of that full text, at actual cost upon request, and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

28.12(4) *Style and form.* In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

657—28.13(17A) Board rule-making record.

28.13(1) *Requirement.* The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

28.13(2) *Contents.* The board rule-making record shall contain:

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

b. Copies of any portions of the board's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

These rules are intended to implement Iowa Code sections 17A.3 to 17A.7 as amended by 1998 Iowa Acts, chapter 1202.

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657—35.7(17A,124B,147,155A,272C) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

657—35.8(17A,272C) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

657—35.9(17A) Disqualification.

35.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

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

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

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

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

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

f. Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

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

35.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 35.9(3) and 35.22(9).

35.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

35.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 35.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion shall be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 657—35.24(17A) and seek a stay under rule 657—35.28(17A,272C).

657—35.10(17A,272C) Consolidation—severance.

35.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

35.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

657—35.11(17A,272C) Service and filing of pleadings and other papers.

35.11(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the board, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

35.11(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

35.11(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board of pharmacy examiners.

35.11(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board of pharmacy examiners, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

35.11(5) *Proof of mailing.* Proof of mailing includes one of the following:

a. A legible United States Postal Service postmark on the envelope;

b. A certificate of service;

c. A notarized affidavit; or

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

Date Signature

657—35.12(17A,272C) Discovery.

35.12(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

35.12(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 35.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

35.12(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

657—35.13(17A,272C) Subpoenas.

35.13(1) *Issuance of investigatory subpoenas.*

a. The board's executive secretary/director or designee may, upon the written request of a board investigator or on the executive secretary/director's own initiative, subpoena books, papers, records, and other real evidence which the executive secretary/director determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

(1) The nature of the complaint reasonably justifies the issuance of a subpoena;

(2) Adequate safeguards have been established to prevent unauthorized disclosure;

(3) An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

(4) The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

b. A written request for a subpoena or the executive secretary/director's written memorandum in support of the issuance of a subpoena shall contain the following:

(1) The name and address of the person to whom the subpoena will be directed;

(2) A specific description of the books, papers, records or other real evidence requested;

(3) An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

(4) In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 35.13(1), paragraph *"a,"* have been satisfied.

c. Each subpoena shall contain:

(1) The name and address of the person to whom the subpoena is directed;

(2) A description of the books, papers, records or other real evidence requested;

(3) The date, time, and location for production or inspection and copying;

(4) The time within which a motion to quash or modify the subpoena must be filed;
(5) The signature, address and telephone number of the executive secretary/director or designee;
(6) The date of issuance;
(7) A return of service.

d. Any person who is aggrieved or adversely affected by compliance with the subpoena who desires to challenge the subpoena shall, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

e. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold an argument and issue a decision, or the board may hold the argument and issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

f. A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rule 657—35.26(17A,124B,126,147,155A,205,272C), provided that all of the time frames are reduced by one-half.

g. If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either the person is notified the investigation has been concluded with no formal action or there is a final decision in the contested case.

35.13(2) *Issuance of subpoenas in a contested case.*

a. Subpoenas issued in a contested case may compel the attendance of witnesses at depositions or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Subpoenas shall be issued by the executive secretary/director or designee upon written request. A request for a subpoena of patient records must confirm the conditions described in subrule 35.13(1), paragraph *"a,"* prior to the issuance of the subpoena.

b. A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

(1) The name, address, and telephone number of the person requesting the subpoena;
(2) The name and address of the person to whom the subpoena shall be directed;
(3) The date, time, and location at which the person shall be commanded to attend and give testimony;
(4) Whether the testimony is requested in connection with a deposition or hearing;
(5) A description of the books, papers, records, or other real evidence requested;
(6) The date, time, and location for production or inspection and copying; and
(7) In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 35.13(1), paragraph *"a,"* have been satisfied.

c. Each subpoena shall contain, as applicable:

(1) The caption of the case;
(2) The name, address, and telephone number of the person who requested the subpoena;
(3) The name and address of the person to whom the subpoena is directed;
(4) The date, time, and location at which the person is commanded to appear;

35.28(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

657—35.29(17A,272C) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

657—35.30 (17A,124B,126,147,155A,205,272C) Emergency adjudicative proceedings.

35.30(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license, registration, or permit in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

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

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

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

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

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

35.30(2) *Issuance of order.*

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

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

(1) Personal delivery;

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

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

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

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

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

35.30(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

35.30(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23 as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 124.304, 124B.12, 126.17, 147.96, 155A.6, 155A.12, 155A.13A, 155A.15 to 155A.18, 155A.26, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

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CHAPTER 65
SPECIAL FUEL

CHAPTER 66
Reserved

CHAPTER 67
ADMINISTRATION

CHAPTER 68
MOTOR FUEL AND UNDYED SPECIAL FUEL

CHAPTER 69
LIQUEFIED PETROLEUM GAS—COMPRESSED NATURAL GAS

CHAPTER 67*
ADMINISTRATION

701—67.1(452A) Definitions. For purposes of this chapter, 701—Chapter 68, and 701—Chapter 69, the following definitions shall govern:

"Appropriate state agency" or *"state agency"* means the department of revenue and finance or the state department of transportation, whichever is responsible for control, maintenance, or supervision of the power, requirement, or duty referred to in Iowa Code chapter 452A.

"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.

"Blender" means a person who owns and blends alcohol with gasoline to produce ethanol-blended gasoline and blends the product at a nonterminal location. The blender is not restricted to blending alcohol with gasoline. Products blended with gasoline other than grain alcohol are taxed as gasoline. "Blender" also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. The blend is taxed as a special fuel.

"Carrier" means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state.

"Common carrier" or *"contract carrier"* means a person involved in the movement of motor fuel or special fuel from the terminal or movement of the motor fuel or special fuel imported into this state, who is not an owner of the motor fuel or special fuel.

"Commercial motor vehicle" means a passenger vehicle that has seats for more than nine passengers in addition to the driver, any road tractor, any truck tractor, or any truck having two or more axles which passenger vehicle, road tractor, truck tractor, or truck is propelled on the public highways by either motor fuel or special fuel. "Commercial motor vehicle" does not include a motor truck with a combined gross weight of less than 26,000 pounds, operated as a part of an identifiable one-way fleet and which is leased for less than 30 days to a lessee for the purpose of moving property which is not owned by the lessor.

"Dealer" means a person, other than a distributor, who engages in the business of selling or distributing motor fuel or special fuel to the end user in this state.

"Department" means the department of revenue and finance.

"Director" means the director of the Iowa department of revenue and finance or the director's authorized representative.

"Distributor" means a person who acquires tax-paid motor fuel, special fuel, or alcohol from a supplier, restrictive supplier, or importer, or another distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both. The department may require that the distributor be registered to have terminal purchase rights.

"Eligible purchaser" means a distributor of motor fuel or special fuel who elects to make delayed payments to a licensed supplier and must use electronic funds transfer.

"End user" of special fuel means a person who has purchased a minimum of 240,000 gallons of special fuel each year in the two preceding years who elects to make delayed payments to a licensed supplier and must use electronic funds transfer.

*This chapter effective 1/1/96; see 701—Ch 63, effective through 12/31/95.

"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.

"Export" means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

"Exporter" means a person or other entity who acquires fuel in this state for export to another state.

"Foreign supplier" means a person licensed as a supplier to collect and report the tax, but who does not have jurisdictional connections with this state.

"Fuel(s)" means and includes both motor fuel and special fuel as defined in Iowa Code chapter 452A.

"Fuel taxes" means the per gallon excise taxes imposed under division I of Iowa Code chapter 452A with respect to motor fuel and undyed special fuel.

"Import" means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

"Importer" means a person who imports motor fuel or undyed special fuel in bulk or transport load into the state by truck, rail, or barge.

"Invoiced gallons" means gross gallons as shown on the bill of lading or manifest.

"Iowa urban transit system" means a system whereby motor buses are operated primarily upon the streets of cities for the transportation of passengers for an established fare and which accepts passengers who present themselves for transportation without discrimination up to the limit of the capacity of each motor bus. "Iowa urban transit system" also includes motor buses operated upon the streets of adjoining cities, whether interstate or intrastate, for the transportation of passengers without discrimination up to the limit of the capacity of the motor bus.

Privately chartered bus services, motor carriers and interurban carriers subject to the jurisdiction of the state department of transportation, school bus services, and taxicabs shall not be construed to be an urban transit system nor a part of any such system.

"Licensee" means a person holding an uncanceled supplier's, restrictive supplier's, importer's, exporter's, or blender's license issued by the department or any other person who possesses fuel for which the tax has not been paid.

"Mobile machinery and equipment" means vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a highway including, but not limited to, corn shellers, truck-mounted feed grinders, roller mills, ditch-digging apparatus, power shovels, draglines, earth-moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, and earth-moving scrapers. However, "mobile machinery and equipment" does not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus or lime spreaders, has been attached.

"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, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

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.

The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

This rule is intended to implement Iowa Code section 452A.67 as amended by 1999 Iowa Acts, Senate File 136.

b. ADP records must provide an opportunity to trace any transaction back to the original source or to a final total. If detailed 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 designed so that the supporting documents, such as sales invoices and purchase invoices, are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source, such as invoice or check, to a financial statement or tax return or report; 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.

67.3(11) *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 must 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 67.5(452A), estimate gallonage, applies.

This rule is intended to implement Iowa Code sections 452A.8, 452A.9, 452A.15, 452A.17, and 452A.60 as amended by 1999 Iowa Acts, Senate File 136, and Iowa Code sections 452A.10, 452A.59, 452A.62, and 452A.69.

701—67.4(452A) Audit—costs. The department has 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 are at the taxpayer's expense when the records are kept at an out-of-state location. Cost will include meals, lodging, and travel expenses, but will not include salaries of department personnel. (See 1976 O.A.G. 611.)

This rule is intended to implement Iowa Code section 452A.10 and 452A.62 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code sections 452A.55 and 452A.69.

701—67.5(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 return filed by the taxpayer, or to determine the taxpayer's liability, the department has the power to estimate the gallonage upon which tax is due. This estimation will 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—67.6(452A) Timely filing of returns, reports, remittances, or application requests. The returns, 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 return that is not signed and any return which does not contain substantially all of the pertinent information is not considered "filed" until such time as the taxpayer 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). The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts, unless remittance is required to be transmitted electronically; and if either condition is not met, a penalty will be assessed. Remittances transmitted electronically are considered to have been made on the date the remittance is added to the bank account designated by the treasurer of the state of Iowa. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date.

All returns, reports, remittances, applications, or requests should be addressed to: Iowa Department of Revenue and Finance, Hoover State Office Building, Des Moines, Iowa 50319, unless electronic transmission is required.

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 rule 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—67.7(452A) Extension of time to file. The department may grant an extension for the filing of any required return or tax payment or both.

In order for an extension to be granted, the application requesting the extension must be filed, in writing, with the department prior to the due date of the return or remittance. In determining whether an application for extension is timely filed, the provisions of rule 67.6(452A) shall apply. The application for extension must be accompanied by an explanation of the circumstances justifying such extension, and in no event will 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 returns or remittances will not accrue until the expiration of the extension period, but the interest on tax due under the same section will accrue as of the original filing date.

This rule is intended to implement Iowa Code section 452A.61.

701—67.8(452A) Penalty and interest. See rules 701—10.6(421) and 701—10.2(421) for failure to timely file a return or for failure to timely pay the tax. See rule 701—10.8(421) for penalty exceptions. See rule 701—10.72(452A) for interest on refunds.

701—67.9(452A) Penalty and enforcement provisions. See rule 701—10.71(421).

701—67.10(452A) Application of remittance. All payments are to 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 applies to the tax, and the penalty and interest are 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 section 452A.59 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code sections 452A.65 and 452A.66.

701—67.11(452A) Reports, returns, records—variations. The department will prescribe and furnish forms upon which reports, returns, and applications are to be made to the department under Iowa Code chapter 452A. Claims for refund will be made on forms provided by the department or in any other manner as prescribed by the director. Licensees may substitute forms for their use, other than official forms, if all the requirements in department rule 701—8.3(17A) are met.

If the information required in these documents is presented to the department on forms or in a manner other than the prescribed form, or approved substitute form, the return, application, or claim for refund or credit shall not be deemed "filed." The forms may be furnished by the department (except those pertaining to 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 is not an excuse for failure to file.

The department may also prescribe the form of the records which the reporting parties are required to keep in support of the reports/returns 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 contains all of the information on the prescribed form, the information is compiled in such a manner as to make it easily ascertainable by department personnel, and substantially complies with the prescribed form.

This rule is intended to implement Iowa Code section 452A.60 as amended by 1999 Iowa Acts, Senate File 136.

701—67.12(452A) Form of invoice. Whenever an invoice is required to be kept or prepared by Iowa Code chapter 452A, the invoice must:

1. Be prepared by someone other than the purchaser and include the seller's name, address, and identification number.
2. Include the purchaser's name and address.
3. Contain a serial number of three or more digits.
4. Include the calendar date of purchase.
5. Indicate the type of fuel purchased. Diesel fuel must be designated as dyed or undyed.

6. Indicate the quantity of fuel purchased in gross gallons.

7. Indicate the total purchase price and show separately the amount of state and federal fuel tax included in the purchase price or include a statement that all state and applicable federal taxes are included in the purchase price.

8. Be prepared on paper which will prevent erasure or alteration or on another form approved by the department.

This rule is intended to implement Iowa Code sections 452A.10 and 452A.60 as amended by 1995 Iowa Acts, chapter 155.

701—67.13(452A) Credit card invoices. Credit card invoices are acceptable if they meet substantially all the requirements of rule 67.12(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 as amended by 1995 Iowa Acts, chapter 155.

701—67.14(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 and 452A.60 as amended by 1995 Iowa Acts, chapter 155.

701—67.15(452A) Taxes erroneously or illegally collected. Any licensee, including licensed suppliers, restrictive suppliers, importers, and blenders, 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) accompanied by documentation supporting the claim for refund. 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 refunded and a written request will not be necessary. If the request 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 requested under Iowa Code section 452A.72 will be reduced by sales tax if applicable. There is no minimum refund amount for refunds claimed under the provisions of Iowa Code section 452A.72. See sales tax rule 701—18.37(422,423).

67.15(1) Motor fuel and undyed special fuel suppliers must inform the department upon which bill(s) of lading, by number, and upon which monthly return(s) the tax was erroneously paid. The gallonage upon which a refund is requested on motor fuel or undyed special fuel must be reduced by the distribution allowance provided in Iowa Code section 452A.5. An amended return must be filed for the tax period in which the error occurred.

67.15(2) Restrictive suppliers, importers, and blenders must inform the department upon which bill(s) of lading or invoice, by number, and upon which monthly or semimonthly return(s) the tax was erroneously paid and an explanation of the erroneous payment. An amended return must be filed for the tax period in which the error occurred.

This rule is intended to implement Iowa Code section 452A.72.

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, returns, 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 1999 Iowa Acts, Senate File 136.

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 reports, 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.

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.

(4) L.P.G. and C.N.G. dealers and users 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 or $500, whichever is greater.

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 license 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 return, or who fails to file a return (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 returns, 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 report or 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 return (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 as amended by 1999 Iowa Acts, Senate File 136.

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.

701—67.26(452A) Excess tax collected. If a licensee collects tax on exempt fuel or collects more tax than is due, the licensee must return the excess tax paid to the purchaser if the tax has not been paid to the department. If the tax has been paid to the department, the department will return the excess tax paid to the consumer upon appropriate documentation.

This rule is intended to implement 1999 Iowa Acts, Senate File 136, section 66.

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CHAPTER 68*
MOTOR FUEL AND UNDYED SPECIAL FUEL

701—68.1(452A) Definitions. See 701—67.1(452A).

701—68.2(452A) Tax rates—time tax attaches—responsible party.

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20¢ per gallon
LPG	20¢ per gallon
Ethanol-blended gasoline	19¢ per gallon
Aviation gasoline	8¢ per gallon
Special fuel (diesel)	22½¢ per gallon
Special fuel (aircraft)	3¢ per gallon
CNG	16¢ per 100 cu. ft.

68.2(2) The tax attaches when the fuel is withdrawn from a terminal or imported into Iowa. The tax is payable to the department by the supplier, restrictive supplier, importer, blender, or any person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer or any other person who possesses taxable fuel upon which the tax has not been paid. The tax is to be remitted to the department by a supplier, restrictive supplier, or blender by the last day of the month following the month in which the fuel is withdrawn from a terminal or imported. The tax is to be remitted by an importer by the last day of the month for fuel imported in the first 15 days of the month and by the fifteenth day of the following month for fuel imported after the fifteenth day of the previous month. Nonlicensees who possess taxable fuel upon which the tax has not been paid must file returns and pay the tax the same as a restrictive supplier (monthly). All licensees must make payment by electronic funds transfer (see publication 90-201 for EFT requirements).

This rule is intended to implement Iowa Code section 452A.3 as amended by 1999 Iowa Acts, Senate File 136, and Iowa Code section 452A.8.

701—68.3(452A) Exemption. Motor fuel or undyed special fuel sold for export or exported from this state to another state, territory, or foreign country is exempt from the excise tax. The fuel is deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the fuel withdrawn from the terminal is outside the state of Iowa. The mode of transportation is not of consequence. In the event fuel is taxed and then subsequently exported, an amount equal to the tax previously paid will be allowable as a refund, upon receipt by the department of the appropriate documents, to the party who originally paid the tax. If the sale of exported 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 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).

This rule is intended to implement Iowa Code section 452A.3 as amended by 1995 Iowa Acts, chapter 155.

*This chapter effective 1/1/96; see 701—Ch 64, effective through 12/31/95.

701—68.4(452A) Ethanol-blended gasoline taxation—nonterminal location.

68.4(1) Blenders who own the alcohol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier (20¢ per gallon). The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due.

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline (7,200 × .20) =	$1,440.00
Blender adds 800 gallons untaxed alcohol	.00
Total tax paid on products	$1,440.00
Total tax due on 8,000 gallons blended product (8,000 × .19) =	$1,520.00
Additional Amount Due	$ 80.00

68.4(2) Blenders who purchase alcohol and gasoline from a supplier must pay tax of $.19 per gallon on the alcohol purchased and $.20 per gallon on the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline (7,200 × .20) =	$1,440.00
Blender purchases 800 gallons tax-paid alcohol (800 × .19) =	152.00
Total Tax Paid on Products	$1,592.00
Total tax due on 8,000 gallons blended product (8,000 × .19) =	$1,520.00
Amount of Refund Allowable	$ 72.00

68.4(3) 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(6), 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 is to be considered ethanol-blended gasoline and there will 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 must be divided for tax purposes into ethanol-blended gasoline and motor fuel containing no alcohol as follows.

That portion of alcohol must 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 are to be considered taxable motor fuel subject to tax at the prevailing rate.

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 tolerance

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 $.19 per gallon; motor fuel taxed at $.20 per gallon. 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. alcohol tolerance
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 gal. of alcohol × $.19	=	$1520 tax on ethanol-blended gasoline
800 gal. of motor fuel × $.20	=	$ 160
TOTAL		$1680 ($1520 + $160)

EXAMPLE 2.

Motor fuel	=	8,000 gal.
Alcohol	=	795 gal.
8,000 + 9	=	889 gal. required alcohol
8,795 × .0101	=	89 gal. alcohol tolerance
889 – 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 × $.20	=	$1759.00

EXAMPLE 3.

Motor fuel	=	8,000 gal.
Alcohol	=	885 gal.
8,000 + 9	=	889 gal. required alcohol
889 gal. – 885 gal.	=	4 gal. short of alcohol

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 gal. × $.19	=	$1688.15

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.5(452A) Tax returns—computations.

68.5(1) Supplier—nexus.

a. The fuel tax liability for a supplier is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the supplier within the state or by the supplier with an Iowa nexus from a terminal outside the state during the preceding calendar month, less deductions for fuel exported in the case of in-state withdrawals and the distribution allowance provided for in Iowa Code section 452A.5.

b. If fuel is withdrawn by a supplier with no nexus in Iowa, but who voluntarily agrees to collect and report the tax, from a terminal outside of Iowa for importation into Iowa, the tax liability is computed in the same manner as in paragraph *"a"* with the exception that no deduction is allowable for exports.

68.5(2) The fuel tax liability for a restrictive supplier is to be computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the preceding calendar month.

68.5(3) The fuel tax liability for an importer is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the applicable reporting period.

68.5(4) The tax liability for a nonlicensee is computed the same as a restrictive supplier. If motor fuel or undyed special fuel is exported from this state with no tax paid and subsequently returned to this state because all or a portion of it was not delivered where destined, the tax must be paid to the department by the nonlicensee.

All entries on the return for determining the tax liability must be rounded to the nearest whole number.

This rule is intended to implement Iowa Code sections 452A.3, 452A.8, and 452A.9 as amended by 1999 Iowa Acts, Senate File 136, and Iowa Code section 452A.5.

701—68.6(452A) Distribution allowance. The tax computation for a supplier includes a distribution allowance of 1.6 percent of the motor fuel gallonage and 0.7 percent of the undyed special fuel gallonage removed from the terminal during the reporting period. The distributor purchasing the fuel from the supplier is entitled to 1.2 percent of the motor fuel distribution allowance. The distributor or dealer purchasing fuel from a supplier is entitled to 0.35 percent of the undyed special fuel distribution allowance. The distribution allowance does not apply to fuel exported.

This rule is intended to implement Iowa Code sections 452A.5 and 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.7(452A) Supplier credit—uncollectible account. A licensed supplier who is unable to recover the tax from an eligible purchaser or end user is not liable for the tax and may credit the amount of unpaid tax against a later remittance of tax.

68.7(1) To qualify for the credit, the supplier must notify the department in writing of the uncollectible account no later than ten calendar days after the due date for payment of the tax

Notification is to be sent to the Iowa Department of Revenue and Finance, Examination Section, Compliance Division, P. O. Box 10456, Des Moines, Iowa 50306-0456.

68.7(2) A supplier does not qualify for the credit if the purchaser did not elect to apply for the eligible purchaser or end user status or did not qualify to be an eligible purchaser. Likewise, the credit does not apply if the supplier sells additional fuel to a delinquent eligible purchaser or end user after notifying the department that the supplier has an uncollectible debt with an eligible purchaser.

68.7(3) Upon notification from the supplier that an eligible purchaser is in default of the tax payment, that person's eligible purchaser or end user status will be canceled by the department. The eligible purchaser or end user status will not be reinstated until such time as the purchaser posts securities to guarantee future tax payments as provided in 701—paragraph 67.21(1)*"d."*

68.7(4) Eligible purchaser. Any distributor of motor fuel or special fuel or end user of special fuel who requests authorization to make delayed payments of the motor vehicle fuel tax must first register with the department to obtain the eligible purchaser status.

The eligible purchaser must pay the tax to the supplier by electronic funds transfer one business day prior to the date the tax is to be paid by the supplier.

Once approved, the eligible purchaser status is valid until voluntarily canceled by the eligible purchaser or canceled by the department of revenue and finance. See 701—subrule 67.23(4).

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.8(452A) Refunds. Refunds are allowable for the tax paid on motor fuel and undyed special fuel in the following situations:

68.8(1) Federal government. Fuel sold to the United States or to any agency or instrumentality of the United States. The tax is subject to refund regardless of how the fuel is used. The following factors, among others, will be considered in determining if any organization is an instrumentality of the United States government: (a) whether it was created by the federal government, (b) whether it is wholly owned by the federal government, (c) whether it is operated for profit, (d) whether it is "primarily" engaged in the performance of some "essential" government function, and (e) 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).

The refund is not available to employees of the federal government who purchase fuel individually and are later reimbursed by the federal government. The name of the federal agency must appear on the invoice as the purchaser of the fuel or the refund will not be allowed.

68.8(2) Transit systems. Fuel sold to an Iowa urban transit system as defined in 701—67.1(452A) which is used for a purpose specified in Iowa Code section 452A.57(6) and fuel sold to a regional transit system as defined in 701—67.1(452A) which is used for a purpose specified in Iowa Code section 452A.57(11).

68.8(3) The state and political subdivisions. Fuel sold to the state of Iowa or any political subdivision of the state which is used for public purposes.

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: (a) the entity has a specific geographic area, (b) the entity has public officials elected at public elections, (c) the entity has taxing power, (d) the entity has a general public purpose or benefit, and (e) 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 a governmental unit who purchase fuel individually and are later reimbursed by the governmental unit. The name of the governmental unit must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

68.8(4) Contract carriers. Motor fuel and undyed special fuel sold 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 is refundable. If the contract carrier also uses fuel for purposes other than the transportation of pupils, the refund will be based on that percentage of the total amount of fuel purchased which reflects the pupil transportation usage.

A refund requested by contract carriers will be reduced by the applicable sales tax unless otherwise exempt. 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 & Boozer*, 314 U.S. 1 (1941).

68.8(5) Fuel used in unlicensed vehicles, stationary engines, machinery and equipment used for nonhighway purposes, implements used in agricultural production, and fuel used for home heating.

68.8(6) Fuel used for producing denatured alcohol.

68.8(7) 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 482.4.

68.8(8) Fuel placed in motor vehicles, not operated on public highways, and used in the extraction and processing of natural deposits.

68.8(9) Idle time. Persons who wish to claim a refund for idle time (the engine is running but not propelling the vehicle) must first apply to the department and provide statistical information on how the refund amount will be calculated. Normally, to qualify for a refund the vehicle must be equipped with an on-board monitoring device which will record the actual time the engine is idling and the amount of fuel consumed while idling. If the device only records the idle time and not fuel used, the refund amount will be calculated at one gallon of fuel consumed per one hour of idle time. The computation must also consider the miles driven in Iowa versus total miles driven. The department will require a review of interstate carrier reports before approval of the computation method.

68.8(10) Power takeoff. Persons operating vehicles which have auxiliary equipment that is powered by the power takeoff may apply for a refund for that portion of the fuel used for powering the auxiliary equipment.

The person requesting the refund must furnish the department with statistical information on how the exempt percentage is established. The percentage can be established by using the following noninclusive methods.

- Determine the actual fuel usage by the hour while the auxiliary equipment is in use compared to total hours the engine is running.
- Establish total miles per gallon for the vehicle when auxiliary equipment is not in use compared to miles per gallon while the equipment is in use.
- Other computation methods to be reviewed by the department prior to approval.

It has been predetermined that tax on fuel used in the mixing of cement into concrete, the off-loading of the concrete, and the loading and off-loading of solid waste will be refunded 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 tax-paid 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 the use of separate meters which operate to measure the fuel when the vehicle is stationary or the use of separate tanks which fuel the vehicle only when the vehicle is stationary that the actual nonhighway fuel usage exceeds 30 percent.

68.8(11) Refrigeration units (reefers). Tax paid on motor fuel and undyed special fuel is subject to refund. The person must maintain records of fuel purchases to substantiate the tax-paid purchases. Invoices must meet the criteria set forth in rule 701—67.12(452A). In addition, the invoices must separately state fuel purchased and placed in the reefer unit. Liquefied petroleum gas may be purchased tax-free for use in reefer units. See rule 701—69.10(452A).

68.8(12) Pumping credits. A refund 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 be retained. The claims for refund, unless a different amount can be proven, will be (a) one-half gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using motor fuel or special fuel (diesel) to power the motor and (b) one gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using special fuel (LPG) to power the motor.

68.8(13) Transport diversions. When a transport load of motor fuel or undyed special fuel is sold tax-paid with a destination in this state and later diverted to a destination outside the state, the person who actually paid the Iowa tax is entitled to a refund. To secure a refund, the person must file a completed claim form provided by the department with supporting documentation including a copy of the bill of lading, invoices or document showing where and to whom the fuel was delivered, a copy of the reporting form and evidence of payment to the state where the fuel was actually delivered.

68.8(14) Casualty loss. In the event fuel is lost or destroyed through fire, explosion, lightning, flood, storm, leakage, or other casualty, the taxpayer must inform the department in writing of such loss within 10 days of the loss; and the notification must contain the amount of gallonage lost or destroyed which must be in excess of 100 gallons. An application for refund must be submitted to the department within 60 days of the notification and contain 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 and the number of gallons. If the fuel was in storage where several fuel purchases were commingled, it is a rebuttable presumption that the fuel lost through casualty was a part of the last delivery into the storage just prior to the loss. No refund is allowable for fuel lost through evaporation or unknown causes.

68.8(15) Exports by eligible purchasers (distributors). Distributors who have purchased tax-paid motor fuel or undyed special fuel and sell the fuel to consumers outside the state may apply for a refund of the Iowa tax paid. The distributor must retain records as provided in rule 701—67.3(452A) to support the request for refund.

68.8(16) Blending errors for special fuel. Dyed special fuel commingled with undyed special fuel and motor fuel commingled with special fuel. If dyed special fuel is inadvertently mixed with tax-paid undyed special fuel to the extent that the undyed fuel must have additional dye added to meet federal dying requirements to qualify as exempt dyed fuel, the tax is refundable on the undyed special fuel. The refund request must contain the number of gallons of undyed fuel lost through the mixing error and documentation as to how the gallonage was determined. If motor fuel is blended in error with dyed special fuel to produce a commingled product that must be destroyed or refined for subsequent use, the tax-paid fuel is subject to refund. The request for refund must contain documentation that the commingled product was destroyed or sold for purposes of refinement at a terminal.

68.8(17) Watercraft. Special fuel used in watercraft. This subrule is retroactive to July 1, 1996.

This rule is intended to implement Iowa Code section 452A.17 as amended by 1999 Iowa Acts, Senate File 136, and Iowa Code section 452A.71.

701—68.9(452A) Claim for refund—payment of claim. In order to receive a refund, the claimant must hold a refund permit.

68.9(1) Persons requesting a refund for fuel used for any exempt purpose will do so by providing all or a portion of the following: (a) refund permit number, (b) type of fuel, (c) total number of gallons/tons of fuel used to calculate the refund amount, (d) the beginning and ending dates of the tax period, (e) net cost of fuel, (f) Iowa sales tax due (net cost of fuel times sales tax rate), (g) other items depending on the type of permit and claim type, (h) the total amount of refund claimed, and (i) additional information as required.

Persons requesting a refund for casualty loss, transport diversions, blending errors of motor fuel and alcohol, and blending errors of special fuel must file in writing on the forms provided by the department and must attach supporting documents explaining why a refund is due.

68.9(2) Refunds are made and the amount of the refund is paid to the person who actually paid the tax with the following exception: Persons requesting a refund for idle time, power takeoff, reefer units, pumping credits, or transport diversions may designate another person as an agent to file the claim and receive the refund. The person acting as an agent for others must provide the department with the following information including, but not limited to, the name, address, and federal identification number or social security number of the person on whose behalf they are requesting the refund. Once a person is designated as an agent, this designation remains in force until the department is notified in writing the agency agreement no longer exists. A governmental agency may designate another governmental agency as an agent for filing and receiving any tax refund authorized in Iowa Code section 452A.17.

68.9(3) Deposit of refund. If the person so designates on the application, the department will direct deposit the refund in the person's designated bank account. If this option is selected on the application, additional forms will be provided to secure the needed information for direct deposit. In lieu of direct deposit, the permit holder will receive a state warrant.

68.9(4) A claim for refund will not be allowed unless the claimant has accumulated $60 in credits for one calendar year. A claim for refund may be filed anytime the $60 minimum has been met within the calendar year. If the $60 minimum has not been met in the calendar year, the credit must be claimed on the claimant's income tax return unless the claimant is not required to file an income tax return in which case a refund will be allowed. An income tax credit may not be claimed for any year in which a claim for refund was filed. Once the $60 minimum has been met, the claim for refund must be filed within one year.

EXAMPLE: A claim for refund in the amount of $200 is filed in March of 1996. During the remainder of 1996 an additional $50 in credits is accumulated. The claimant cannot claim this $50 credit on the claimant's 1996 income tax return because an income tax credit cannot be filed for any year in which a claim for refund was filed. The claimant must file a claim for refund of the $50 even though it is below the $60 minimum.

EXAMPLE: The claimant does not have a refund permit. The claimant accumulates $40 in credits during January of 1996 and $50 in credits during December of 1996. The claimant may claim a $90 credit on the claimant's 1996 income tax return or apply for a refund permit and claim a refund within one year of December 1996 which is the date the $60 minimum was met.

68.9(5) A refund will not be paid with respect to any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or any undyed special fuel taken out of this state in aircraft or motor vehicles.

68.9(6) Rescinded IAB 11/3/99, effective 12/8/99.

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, blending errors, idle time, power takeoffs, reefer units, exports by distributors, and excess tax paid on ethanol blended gasoline.

This rule is intended to implement Iowa Code sections 422.110, 452A.17(2), and 452A.21 as amended by 1999 Iowa Acts, Senate File 136.

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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CHAPTER 69*
LIQUEFIED PETROLEUM GAS— COMPRESSED NATURAL GAS

701—69.1(452A) Definitions. For the purpose of this chapter, the following definitions shall govern:

"C.N.G." shall mean compressed natural gas.

"Department" means the department of revenue and finance.

"Director" means the director of the Iowa department of revenue and finance or the director's authorized representative.

"Distributor" means any person who sells compressed natural gas or liquefied petroleum gas in bulk for highway use.

"Invoiced gallons" means gross gallons as shown on the bill of lading or invoice. A temperature-adjusted method may be used as it applies to liquefied petroleum gas.

"Licensed compressed natural gas and liquefied petroleum gas dealer" means a person in the business of handling untaxed compressed natural gas or liquefied petroleum gas who delivers any part of the fuel into a fuel supply tank of any motor vehicle.

"Licensed compressed natural gas and liquefied petroleum gas user" means a person licensed by the department who dispenses compressed natural gas or liquefied petroleum gas, upon which the special fuel tax has not been previously paid, for highway use from fuel sources owned and controlled by the person into the fuel supply tank of a motor vehicle, or commercial vehicle owned or controlled by the person.

"Licensed metered pumps or metered pumps" shall mean pumps which have been metered, inspected, tested for accuracy, sealed and licensed by the state department of agriculture pursuant to Iowa Code section 452A.8(2)*"e."*

"Licensed metered storage or metered storage" shall mean storage facilities which are fixed with "licensed metered pumps."

"L.P.G." shall mean liquefied petroleum gas.

"Owner" shall mean and include the owner or the employees, agents, or persons under the control of the owner.

"Special fuel" means liquefied petroleum gas or compressed natural gas.

"Use" means the receipt, delivery, or placing of liquefied petroleum gas by a licensed liquefied petroleum gas user into a fuel supply tank of a motor vehicle while the vehicle is in the state, except that with respect to natural gas used as a special fuel, "use" means the receipt, delivery, or placing of the natural gas into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

In addition to the preceding definitions, applicable definitions contained in Iowa Code section 452A.2 and rule 701—67.1(452A) shall govern the rules in this chapter where applicable.

This rule is intended to implement Iowa Code chapter 452A.

701—69.2(452A) Tax rates—time tax attaches—responsible party—payment of the tax. See 701—subrule 68.2(1) for tax rates. The excise tax on L.P.G. attaches when the special fuel is placed in a fuel supply tank of a motor vehicle. The excise tax on C.N.G. attaches at the time of delivery into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle. The person responsible for the tax must collect the tax from the purchaser and remit the tax to the department. The person responsible for the tax is:

1. The licensed L.P.G. or C.N.G. dealer, or
2. The licensed L.P.G. or C.N.G. user.

*This chapter effective 1/1/96; see 701—Ch 65, effective through 12/31/95.

The person responsible for placing L.P.G. into the fuel supply tank of a vehicle and the person responsible for placing C.N.G. into compressing equipment must hold a license as a dealer or user as defined in Iowa Code section 452A.4.

The return and tax are due no later than the last day of the month following the month the L.P.G. was placed in a vehicle or C.N.G. was placed into compressing equipment. The tax must be remitted by means of electronic funds transfer, unless the licensee can show that this method of payment would cause undue hardship on the licensee and must be rounded to the nearest whole number.

This rule is intended to implement Iowa Code section 452A.8.

701—69.3(452A) Penalty and interest. See rules 701—10.6(421) and 701—10.2(421) for failure to timely file a return or for failure to timely pay the tax. See rule 701—10.8(421) for penalty exceptions. See rule 701—10.72(452A) for interest on refunds.

701—69.4(452A) Bonding procedure.

69.4(1) When required, classes of business and new applications for fuel tax permit. See 701—subrule 67.21(1), paragraphs *"a"* and *"b."*

69.4(2) 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 returns timely during the past 12 months when filing returns on a monthly basis. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or $500, whichever is greater. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or 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). For waiver of bond see 701—paragraph 67.21(1)*"e."*

69.4(3) Type of security. See 701—subrule 62.21(2).

701—69.5(452A) Persons authorized to place L.P.G. or C.N.G. in the fuel supply tank of a motor vehicle. The only persons authorized to place L.P.G. or C.N.G. into the fuel supply tank of a motor vehicle are: licensed L.P.G. or C.N.G. dealers, or licensed L.P.G. or C.N.G. users.

69.5(1) *L.P.G. or C.N.G. dealer's license.* Anyone who delivers L.P.G. into the fuel supply tank of a motor vehicle or places C.N.G. into compression equipment which tank is owned by some other person must be licensed as an L.P.G. or C.N.G. dealer. A dealer may also fuel the dealer's own vehicles under this license.

69.5(2) *L.P.G. or C.N.G. user's license.* Anyone who delivers L.P.G. or C.N.G. into the fuel supply tank of a motor vehicle, which tank is owned or leased by the person delivering it, must be licensed as an L.P.G. or C.N.G. user. If that same person delivers the fuel into tanks owned by others, that person must be licensed as a dealer in lieu of being licensed as a user.

69.5(3) *L.P.G. "mobile" tank exemption.* When a person has an L.P.G. storage tank which is "mobile" and the storage is moved from location to location, that person may be issued an L.P.G. user's license. This licensee will be allowed to move the storage tank to a new location without procuring a new license for each new location. The issuance of this license is discretionary with the director, and the license will be issued only when the person requesting the license shows a need for mobile storage. The license will be issued to the licensee at the licensee's principal place of business, and each mobile storage tank is deemed a separate pump at that location.

The operation of such licensed mobile storage shall be subject to the following conditions:

a. Each mobile storage tank must be fixed with licensed, metered pumps.

b. Each mobile storage tank shall be assigned a separate number, and the gallonage shall be reported on a per-tank basis.

c. Each mobile storage tank shall have printed thereon, in strokes not less than six inches in height and three-fourths inches in width, the unit number and licensee's license number.

d. There may be a total of only nine mobile storage tanks operated under a single license. If the licensee operates more than nine such storage tanks, the licensee must obtain a separate license for each multiple of nine or fraction thereof.

e. When a licensee changes the licensee's principal place of business, the license shall be canceled and the person must apply for a new license.

f. All records required to be kept shall be maintained at the licensee's principal place of business.

g. Except for the requirement of having a separate license for each location where L.P.G. is used, the licensee shall be subject to all the requirements of other licensed L.P.G. users.

69.5(4) *Exemption for emergency filling by distributors.* Upon request from a stranded motorist, an L.P.G. distributor may place up to 20 gallons of L.P.G. into the fuel supply tank of the stranded vehicle without being considered by the department in violation of Iowa Code section 452A.74(5) (acting as an L.P.G. dealer without a license); however, the distributor must remit the tax thereon on a licensed dealer form and pay the tax before the last day of the month following the month of the emergency fill.

This rule is intended to implement Iowa Code section 452A.8.

701—69.6(452A) Requirements to be licensed. To become licensed as an L.P.G. or C.N.G. user or dealer, a person must file with the department a completed application form for the appropriate license. A separate license is required for each place of business or location where L.P.G. or C.N.G. is regularly delivered or placed into the fuel supply tank of motor vehicles. See Iowa Code section 452A.4 and 701—subrule 67.23(1) for licensing requirements.

This rule is intended to implement Iowa Code section 452A.8.

701—69.7(452A) Licensed metered pumps. Before an L.P.G. or C.N.G. dealer's or user's license can be issued, all pumps designed to fuel motor vehicles at the location to be licensed must be (1) metered, (2) inspected, (3) tested for accuracy, (4) sealed, and (5) licensed by the department of agriculture and land stewardship. (See 1970 O.A.G. 2.) If there is more than one pump at a location to be licensed, each pump will be assigned a separate pump number, and the licensee shall report the gallonage each month with reference to such number.

Each special fuel L.P.G. distributor, dealer, or user may elect to measure L.P.G. for the tax purposes either temperature compensated to 60° F, or without temperature compensation. If the special fuel L.P.G. distributor, dealer or user elects to measure L.P.G. temperature compensated to 60° F for tax purposes, the L.P.G. distributor, dealer or user must use meters which are of an automatic temperature compensating type which shall compute gross gallons corrected to 60° F.

This rule is intended to implement Iowa Code section 452A.8.

701—69.8(452A) Single license for each location. A single license is required for each separate place of business or location where L.P.G. or C.N.G. is delivered into the fuel supply tank of a motor vehicle. For reporting purposes (see rule 69.2(452A)) a licensee may file a separate return for each license; or, if arrangements have been made with the department, the licensee may file a consolidated return reporting all sales made at all locations for which a license is held. However, a consolidated return may not be used to combine dealer and user operations. All working papers used in the preparation of the information required must be available for examination by the department. All dealer or user operations at that location will be conducted under that license. A licensee may have a different type of license (dealer, user) for each separate location where L.P.G. or C.N.G. is dispensed. For instance, if a licensee holds an L.P.G. or C.N.G. dealer's license for location A and an L.P.G. or C.N.G. user's license for location B, the licensee may sell fuel to others or fuel the licensee's own vehicles at location A, but may only fuel the licensee's own vehicles at location B.

This rule is intended to implement Iowa Code section 452A.8.

701—69.9(452A) Dealer's and user's license nonassignable. An L.P.G. or C.N.G. dealer's license or user's license cannot be assigned. The following nonexclusive situations will be considered an assignment:

1. A change in the name under which the licensee conducts business.
2. A change in the location where the business is conducted.
3. A sale of the business (even if the new owner(s) operates under the same business name).
4. A merger or other business combination which results in a new or different entity.

This rule is intended to implement Iowa Code section 452A.8.

701—69.10(452A) Separate storage—bulk sales—highway use. If a person is operating as an L.P.G. dealer's or user's licensee and also makes bulk sales for nonhighway use, there must be separate storage for bulk sales and sales for highway. If any amount of L.P.G. in a storage facility is to be used directly from that storage for highway purposes or if the storage is connected to a device which is designed in such a way as to be able to fuel motor vehicles, all fuel dispensed from the storage shall be dispensed through licensed metered pumps. Tax will be paid on the fuel dispensed which is not exempt as evidenced by exemption certificates.

This rule is intended to implement Iowa Code section 452A.8.

701—69.11(452A) Combined storage—bulk sales—highway sales or use. If a person is operating as an L.P.G. dealer's or user's licensee, L.P.G. may be dispensed for bulk nontaxable sales and for taxable highway sales from the same storage if, and only if, the following requirements are complied with:

1. All pumps which are of such a design to be able to fuel motor vehicles must be licensed, sealed, metered, and inspected as provided in rule 69.5(452A).
2. All fuel passing through the pumps is taxed unless supported by exemption certificates.
3. All pumps which are not licensed, sealed, metered, and inspected must be of such a design that it is impossible to use them to place fuel into the fuel supply tank of a motor vehicle.
4. Accurate records must be kept showing all purchases of fuel and all nontaxable bulk sales of fuel.

All L.P.G. which is placed in this combined storage is presumed to be for highway use and taxable unless supported by exemption certificates (for fuel passing through the licensed pumps) or detailed records showing bulk sales for nonhighway use or to other users or dealers (for fuel passing through the nonlicensed pumps). (See 1968 O.A.G. 592.) If at any time the licensee fails to comply with the requirements of this rule, separate storage for taxable sales and nontaxable bulk sales will be required under rule 69.10(452A).

This rule is intended to implement Iowa Code section 452A.8.

701—69.12(452A) Exemption certificates. If L.P.G. is dispensed from metered highway storage for other than highway purposes, an exemption certificate must be completed by the seller and signed by the purchaser. The certificate is to be retained by the dealer or user. The exemption certificate must include, but not be limited to, the following information: the date, the seller's name, the seller's dealer (user) license number, the invoice number covering the fuel sold (if sold by a dealer), an indication of the use to which the fuel will be put, and the name, address, and signature of the purchaser (user). The exemption certificate will be provided by the department or a dealer or user may provide the exemption certificate provided it contains all information required by the director.

These exempt sales of L.P.G. from metered highway storage shall be limited to the following uses:

1. Placed directly into a fuel supply tank which is connected to the heating or cooling unit installed on a highway "reefer" unit, provided the fuel supply tank is not connected nor has provisions for connection directly or indirectly to the power source of the highway motor vehicle.
2. Placed directly into the fuel supply tank of a nonhighway motor vehicle.
3. L.P.G. placed into carry-out containers.

All other sales for other than highway use must be from bulk storage and not from metered highway storage. (See rule 701—68.13(452A), sales tax.)

This rule is intended to implement Iowa Code section 452A.8.

701—69.13(452A) L.P.G. sold to the state of Iowa, its political subdivisions, contract carriers under contract with public schools to transport pupils or regional transit systems.

69.13(1) If L.P.G. is sold to the state of Iowa, its agencies, a political subdivision of the state, or a regional transit system for public use, or a use specified in Iowa Code section 452A.57(11), and placed in storage, it may be sold tax-free. Fuel sold by a dealer and delivered directly into the fuel supply tank of a motor vehicle must be sold tax-paid. Since the L.P.G. delivered into storage is not subject to tax, the governmental unit or regional transit system need not be licensed as a special fuel user. However, if the L.P.G. is used by a governmental unit or regional transit system for other than "public purposes," or a purpose specified in Iowa Code section 452A.57(11), it must obtain a user's license and pay the tax on all highway L.P.G. used from the storage.

69.13(2) L.P.G. sold to a contract carrier under contract with public schools to transport pupils. When special fuel is sold directly to contract carriers who 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, the fuel shall be sold tax-paid.

If the contract carrier is licensed as an L.P.G. fuel dealer or user, the licensee may buy the fuel tax-free, but the tax must be remitted on the monthly dealer or user return.

Any contract carrier who has paid the tax is entitled to a refund. A refund requested by contract carriers will be reduced by the applicable sales tax, unless otherwise exempt. All contract carriers must apply to the department for a refund registration even if they currently hold a motor fuel tax license.

The refund will be allowed pursuant to the provisions of 701—subrule 68.8(4).

This rule is intended to implement Iowa Code sections 452A.3 and 452A.17.

701—69.14(452A) Refunds. Refunds of taxes paid on L.P.G. used for other than highway use are available. See rule 701—68.8(452A). The refunds are available if the tax has been paid, the L.P.G. is used other than to propel motor vehicles, the person requesting the refund has a refund permit, and the claim is filed within the appropriate time and in the appropriate manner. The income tax credit set forth in rule 701—68.12(452A) shall apply equally to special fuel.

This rule is intended to implement Iowa Code section 452A.17.

701—69.15(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, (C.N.G. or L.P.G. dealer and user meters) the department must be notified within 24 hours of the breaking of the seal for any reason. 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 return. 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 return schedule.

This rule is intended to implement Iowa Code sections 452A.3 and 452A.8 as amended by 1999 Iowa Acts, Senate File 136, and Iowa Code sections 452A.59 and 452A.62.

701—69.16(452A) Location of records—L.P.G. or C.N.G. users and dealers. The records required to be prepared and kept by L.P.G. or C.N.G. dealers and users under Iowa Code section 452A.10 and 701—subrule 67.3(5) must be maintained at the location that appears on the license unless the following conditions are met:

69.16(1) If the licensee has more than one license, all of the records for each separate license may be kept at a central location so long as the records for each license are kept separated.

69.16(2) The central location where the records are kept is within the state unless:

a. The licensee agrees to bring the records back into the state when requested to do so by the department for purposes of audit, or

b. The licensee agrees to pay the cost (as defined in rule 701—67.4(452A)) of an out-of-state audit.

This rule is intended to implement Iowa Code sections 452A.10 and 452A.74(2).

All rules in 701—Chapters 67 and 68 apply if not specifically stated in this chapter.

The rules in 701—Chapters 67, 68, and 69 are effective for periods beginning on or after January 1, 1996.

See 701—Chapters 63, 64 and 65 for rules in effect on or prior to December 31, 1995.

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CHAPTER 400
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400.2(7) *Special mobile equipment.* Rescinded IAB 3/7/90, effective 4/11/90.

400.2(8) *Private school buses, fire trucks, and transit buses.* In accordance with Iowa Code sections 321.18, 321.19 and 321.22, private school buses, fire trucks not owned or operated for a pecuniary profit, and urban and regional transit system buses are exempted from the payment of registration fees. However, these vehicles are not exempted from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321, including payment of the appropriate certificate of title fee.

400.2(9) Rescinded, effective 12/1/83.

400.2(10) Rescinded, effective 12/1/83.

400.2(11) Rescinded, IAB 7/13/88, effective 7/1/88.

This rule is intended to implement Iowa Code sections 321.18 to 321.22, 321.24 and 321.123.

761—400.3(321) Application for certificate of title or registration for a vehicle.

400.3(1) *Application form.* To apply for a certificate of title or registration for a vehicle, Form 411007 shall be completed by the applicant. Application shall be made in accordance with Iowa Code sections 321.20, 321.23, 321.46, and 321.71, this rule, and other applicable provisions of law.

400.3(2) *Motor vehicle control number.*

a. If the applicant is an individual:

(1) The individual's driver's license number and social security number shall be listed on the application form. If the individual does not have a social security number but has a passport, the passport number shall be listed. If the individual does not have a driver's license, a social security number or a passport, the department shall assign a unique, temporary motor vehicle control number valid for two months. Before the expiration of two months, the individual shall return to the county treasurer's office and report the newly acquired driver's license, social security or passport number.

(2) The individual's Iowa driver's license number is the motor vehicle control number. If the individual does not have an Iowa driver's license, the individual's social security number is the motor vehicle control number.

b. If the applicant is a partnership, corporation, association, or governmental subdivision, the federal employer's identification number shall be listed on the application form. This number is the entity's motor vehicle control number. If the organization does not have a federal employer's identification number, the department shall assign a unique motor vehicle control number.

c. Motor vehicle control numbers are coded and listed on the title and registration as follows:

1 - Iowa driver's license number

2 - Social security number

3 - Federal employer's identification number

If an individual has neither an Iowa driver's license number nor a social security number, a motor vehicle control number shall not be listed on the title and registration.

400.3(3) *Plate number and validation number.* If the applicant has registration plates that have been assigned to the applicant and affixed to the vehicle, the applicant shall list the plate number on the application form. The validation number from the validation sticker shall also be listed.

400.3(4) *Birth or registration month.* If the applicant is an individual, the individual's month of birth shall be listed on the application form and shall determine the registration year. If the vehicle is owned by two or more individuals, the month of birth of one of the individuals shall be listed and shall determine the registration year. If the vehicle is owned by a partnership, corporation, association, governmental subdivision, etc., the birth or registration month shall be left blank by the applicant; the county treasurer shall determine the month of registration.

400.3(5) *Model year.* The applicant shall list on the application form the model year of the vehicle.

400.3(6) *Seller and date of purchase.* The applicant shall state on the application form the name and address of the seller and the date of purchase or acquisition.

400.3(7) *Vehicle color.* The applicant shall list the vehicle color on the application form.

400.3(8) *Foreign registered vehicle.* If the vehicle is registered in a foreign jurisdiction, the applicant shall list on the application form the date the vehicle was brought into Iowa.

400.3(9) *Signature of applicant.* The applicant shall sign the application form in ink.

400.3(10) *Dealer certification.*

a. If the vehicle is a new vehicle which has been sold to the applicant by a dealer, as defined in Iowa Code section 321.1, the dealer shall certify the following on the application form: sale price of the vehicle, the amount allowed for property traded-in, the tax price of the vehicle, the date that a "Registration Applied For" card was issued, and the registration fee collected.

b. The certification shall include the dealer's number and name and shall be signed in ink by the dealer or an authorized representative of the dealer.

400.3(11) *Weigh ticket.* If application is being made to lower the tonnage on any motor truck or truck tractor, the county treasurer may require a copy of a stamped weigh ticket issued by any public scale.

400.3(12) *Credit for unexpired registration fee.* See 400.60(1).

400.3(13) *Credit for transfer to spouse, parent or child.* See 400.60(2).

400.3(14) *Credit from/to proportional registration.* See 400.60(3).

400.3(15) *Assignment of credit and registration plates from lessor to lessee.* See 400.60(4).

400.3(16) *Leased vehicle.* As required by Iowa Code section 423.7A, the lessor shall list the lease price of the vehicle on the application form.

400.3(17) *Registration fee credit.* See rule 400.60(321).

400.3(18) to **400.3(19)** Reserved.

400.3(20) *Transfer of ownership with Iowa title.* When transferring ownership of a vehicle with an Iowa title, the application provided with the certificate of title may be used in lieu of Form 411007.

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23 to 321.26, 321.31, 321.34, 321.46, 321.122 and 423.7A.

761—400.4(321) Supporting documents required. This rule describes the basic supporting documents to be submitted by an applicant for a certificate of title or registration.

400.4(1) *New vehicle.* If application is made for a new vehicle, a manufacturer's certificate of origin, properly assigned to the applicant, shall be submitted. A manufacturer's certificate of origin shall not be accepted if the assignment to the applicant is made by any person other than the manufacturer, importer, distributor or a licensed motor vehicle dealer franchised to sell that line make of vehicle.

a. The first person, including a dealer not franchised to sell that line make of vehicle, who is assigned the manufacturer's certificate of origin shall obtain a certificate of title and register the vehicle.

b. An uncanceled security interest noted on the reverse side of a manufacturer's certificate of origin (MCO) shall be noted as a separate security interest on the certificate of title, in addition to any security interest acknowledged by the applicant, unless the applicant indicates in the security interest area on the title application that the security interest is the same as the one noted on the reverse side of the MCO.

c. If a 1980 or subsequent model year vehicle is manufactured by a person other than the original manufacturer, both the original manufacturer's certificate of origin and the final manufacturer's certificate of origin shall be submitted. All assignments or reassignments of ownership of the vehicle shall be made on the final manufacturer's certificate of origin. The face of the original manufacturer's certificate of origin shall be stamped in bold type with the statement: "Final manufacturer's MSO has been issued on this vehicle." The original manufacturer's vehicle identification number shall be listed on the final manufacturer's certificate of origin.

400.4(2) *Used vehicle registered or titled in this state.* The last issued certificate of title, properly assigned to the applicant, shall be submitted. An uncanceled security interest noted on the face of the certificate of title shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant. If the vehicle is not subject to titling provisions, the last issued registration receipt, properly assigned to the applicant, shall be submitted.

400.4(3) *Used vehicle from a foreign jurisdiction.* If the vehicle was subject to the issuance of a certificate of title in the foreign jurisdiction, the certificate of title issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted.

a. A security interest, noted on the face of the foreign certificate of title, which has not been canceled, shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant.

b. A certificate of title issued in a foreign jurisdiction may be assigned to a motor vehicle dealer in another jurisdiction, and the dealer may reassign the certificate of title to the applicant. An assignment or reassignment form issued by a foreign jurisdiction may be used with a foreign title to complete an assignment or reassignment of ownership from a foreign motor vehicle dealer to the applicant, provided the ownership chain is complete.

c. An Iowa licensed motor vehicle dealer who acquires a vehicle registered in another state or country may reassign the foreign certificate of title to the applicant, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321,322).

d. A person who registers a foreign vehicle under Iowa Code subsection 321.23(3) shall be issued a nontransferable-nonnegotiable registration. To transfer ownership of the vehicle, the owner must first obtain an Iowa certificate of title except as follows: If ownership is transferred to an Iowa licensed motor vehicle dealer as provided in Iowa Code subsection 321.23(3), the foreign certificate of title may be assigned to the dealer; the owner is not required to obtain an Iowa title. The dealer may then reassign the foreign title, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321,322).

e. If the vehicle was not subject to the issuance of a certificate of title in the foreign jurisdiction, the registration document issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted.

(1) If the foreign registration document is not issued in the applicant's name and does not contain an assignment of ownership form, a bill of sale conveying ownership from the owner as listed on the foreign registration document to the applicant shall be submitted with the foreign registration document.

(2) Upon receipt of the foreign registration document, the county treasurer shall issue a nontransferable—nonnegotiable registration unless the foreign registration document has been approved by the department.

(3) Acceptance of the foreign registration document shall be determined by the department on an individual basis, if the county treasurer of the county where the certificate of title is to be issued cannot determine whether the document is acceptable.

f. If a trailer weighing 2000 lbs. or less is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, a bill of sale conveying ownership to the applicant, if acquired by a resident from a nonresident, or an affidavit of ownership signed by the applicant, if the applicant is establishing residence in this state, shall be submitted.

g. If a motor vehicle is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, the bonding procedures as provided in Iowa Code section 321.24 shall be followed.

400.4(4) *Used vehicle acquired by a resident of this state from a government agency.* If the vehicle was acquired from an agency of the federal government, the applicant shall surrender the government bill of sale, Form 97 or 97A, properly assigned to the applicant. If the vehicle was acquired from the state of Iowa or a subdivision of government the applicant shall surrender the Iowa certificate of title issued in the name of the agency, properly assigned to the applicant.

400.4(5) *Mobile home.* If the vehicle described on the application is a mobile home with an Iowa title, the applicant shall submit a tax clearance form to show that no taxes are owing, unless the title has been issued to a dealer licensed under Iowa Code chapter 322B. The form may be obtained by any owner of record of the mobile home from the county treasurer.

400.4(6) *Vehicle acquired by a resident of this state by operation of law.* If the vehicle was acquired by the applicant by operation of law as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, foreclosure or execution sale, under the laws of descent and distribution, artisan's lien sale, storage lien sale or abandoned vehicle sale, the last issued certificate of title shall be submitted by the applicant, or when that is not possible, presentation of satisfactory proof of the applicant's ownership and right of possession to the vehicle shall be submitted by the applicant. Proof of ownership may consist of a foreclosure sale affidavit, artisan's or storage lien affidavit, affidavit of death intestate, abandoned vehicle sales receipt, peace officers bill of sale or court order.

400.4(7) *Foreign ownership document issued in a language other than English.* A foreign ownership document issued in a language other than English may be required to be reproduced in writing in English and certified to be a correct translation by a person qualified to translate that particular language. The English translation and certification shall be submitted with the foreign ownership document.

400.4(8) *Titles from foreign jurisdictions.*

a. Except as provided in paragraph *"b"* of this subrule, a certificate of title issued by a foreign jurisdiction shall not be accepted if the title contains an alteration or erasure.

b. An affidavit of correction form issued by a foreign jurisdiction that corrects the certificate of title issued by the foreign jurisdiction shall be accepted only for the reason listed on the affidavit of correction form. However, acceptance of an affidavit of correction form that corrects an odometer statement or a designation shall be determined by the department on an individual basis.

400.4(9) *Supporting document retained by county treasurer.* All supporting documents shall be retained by the county treasurer.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.30, 321.31, 321.45 to 321.50, 321.67, and 321.71.

761—400.5(321) Where to apply for registration or certificate of title. Application for the registration of a vehicle or a certificate of title for a vehicle, or transfers thereof, shall be made to the county treasurer as described in Iowa Code chapter 321. Exceptions:

400.5(1) Application shall be made to the department's office of vehicle services for the following:

a. Titling and registration of vehicles owned by the government. This requirement does not apply to mobile homes subject to a scavenger sale pursuant to Iowa Code subsection 321.46(2).

b. Registration of vehicles leased by the government for a period of 60 days or more.

c. Registration of urban and regional transit system buses.

d. Registration of fire trucks not owned and operated for a pecuniary profit.

e. Registration of private school buses.

f. Registration of vehicles under the provisions of Iowa Code subsection 321.23(4), relating to restricted use vehicles.

400.5(2) Rescinded IAB 11/3/99, effective 12/8/99.

400.5(3) Application for a certificate of title for a vehicle subject to proportional registration under Iowa Code chapter 326 may be made to either the county treasurer or to the office of motor carrier services.

400.5(4) Application for proportional registration shall be made to the office of motor carrier services. See 761—Chapter 500.

This rule is intended to implement Iowa Code sections 321.18 to 321.23, 321.46(2), and 321.170.

761—400.6(17A) Addresses, information and forms. Information and forms for vehicle registration, certificate of title, or other procedures covered under Iowa Code sections 321.18 to 321.173 may be obtained from the county treasurer or these department offices:

400.6(1) Office of vehicle services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines.

400.6(2) Office of Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines.

This rule is intended to implement Iowa Code section 17A.3.

761—400.7(321) Information shown on title and registration. In addition to the requirements of Iowa Code sections 321.24, 321.52 and 321.71 and rules 761—Chapter 405, the following information shall be shown on a certificate of title or registration receipt when applicable:

400.7(1) Registration expiration date.

400.7(2) Owner's motor vehicle control number and code, as explained in subrule 400.3(2), and registration month, as explained in subrule 400.3(4).

400.7(3) Name and address of last titled owner.

400.7(4) Description of the vehicle, including the following items. These items may be represented on the title and registration by code letters or numbers.

a. Vehicle identification number.

b. Type, such as automobile, trailer, truck, etc.

c. Style.

d. Make, model, and model year.

e. Series.

(1) The series of a motor home shall be the letters "MH" followed by the class designation of the motor home—"A," "B" or "C."

(2) Reserved.

f. The designation required by 761—Chapter 405.

g. Number of engine cylinders.

h. Color.

i. Weight and registered gross weight.

j. The square footage of floor space of a mobile home or travel trailer, as determined by measuring the exterior.

k. The odometer mileage and whether the mileage is "actual," "not actual," or "exceeds mechanical limits."

400.7(5) Previous Iowa title number or the name of the foreign jurisdiction if the previous title is a foreign title.

400.7(6) Plate number and previous registration number.

400.7(7) List price or value.

400.7(8) Fee code, penalties, and security interest receipt number.

400.7(9) The following phrase stamped on the reassignment portion of a mobile home title or a salvage title: "Dealer reassignment not authorized on this certificate of title."

This rule is intended to implement Iowa Code sections 321.24, 321.31, 321.40, 321.45, 321.48, 321.52, 321.71, and 321.124.

761—400.8(321) Release form for cancellation of security interest.

400.8(1) A secured party may use Form 411168 to note the cancellation of a security interest.

400.8(2) The secured party may also note the cancellation in a statement written on the secured party's letterhead if the statement contains the following information: county that issued the title; title number; security interest number; vehicle identification number; vehicle owner's name; secured party's name, street address, city, state and ZIP code; date the security interest was canceled; and signature of an authorized representative of the secured party.

400.8(3) The secured party shall forward the original release form (Form 411168 or the signed statement) to the department or to the county treasurer of the county where the title was issued. Facsimiles and photocopies are not acceptable.

400.8(4) The secured party shall note the cancellation on the face of the title, attach a copy of the release form to the title as evidence of cancellation, and forward the title to the next secured party or, if there is no other secured party, to the person designated by the owner or, if there is no person designated, to the owner.

This rule is intended to implement Iowa Code subsection 321.50(4) as amended by 1999 Iowa Acts, Senate File 203, section 9.

761—400.9(321) Security interest notation, 30-day limit. The presumption that a purported security interest holder received a certificate of title on the date of creation of the purported security interest in the vehicle or the date of the issuance of the certificate of title, whichever is the latter, as provided for in Iowa Code subsection 321.50(6), may be overcome if the purported security interest holder did not actually come into possession of the certificate of title at that time. This may be accomplished by filing with the county treasurer a statement in writing, indicating the date that the certificate of title did come into the possession of the purported secured party. If the time listed in the statement is within 30 days of the date the certificate of title is delivered to the county treasurer, the county treasurer shall note the security interest on the certificate of title.

This rule is intended to implement Iowa Code subsection 321.50(6).

761—400.10(321) Assignment of security interest. A security interest noted on a certificate of title may be assigned to another secured party without losing the seniority of the security interest by complying with the procedure in Iowa Code section 321.50 or with the following procedure:

400.10(1) *Notice of assignment.* The secured party listed on the title certificate shall make the following notation in the cancellation portion of the certificate of title where security interest is noted "Assigned to (name of assignee)." The date, name of secured party and signature of the person noting the assignment shall be completed in the cancellation portion pertaining to the security interest.

400.10(2) *Application for notation of security interest.* The assignee shall complete an application for notation of a security interest on the form provided by the department. The application form shall be signed by the assignee in the space where the signature of the owner is ordinarily required. The signature of the owner shall not be required on an assignment of a security interest.

400.10(3) *Submission of documents to county treasurer.* The certificate of title, application for notation of security interest and appropriate notation fee shall be submitted to the county treasurer of the county where the certificate of title was issued.

a. The county treasurer shall not be required to cancel the security interest previously noted and shall note the security interest of the assignee in the second security interest portion of the face of the certificate of title, or on a subsequent security interest form if the security interest that has been assigned is a second security interest.

b. In the event there are additional security interests noted on the certificate of title, the seniority of the assignee's security interest may be preserved by issuance of a certificate of title in lieu of the original, on which the assignee's security interest shall be noted in the same seniority as the assignor's.

c. In either event, a receipt for notation of security interest form shall be processed and the new receipt number shall be listed in the appropriate space provided. The original notation date shall also be listed and the words "by assignment" shall be listed following the name of the assignee.

This rule is intended to implement Iowa Code section 321.50.

761—400.11(321) Sheriff's levy noted as a security interest. A sheriff's levy may be noted as a security interest on a certificate of title if the sheriff so desires.

Form 411046, "Application for Notation of Security Interest," shall be completed and shall be signed by the sheriff or the sheriff's deputy in the space where the signature of the owner is ordinarily required. The signature of the owner shall not be required. The appropriate notation fee shall be submitted with the application form to the county treasurer of the county where the certificate of title was issued. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.

This rule is intended to implement Iowa Code section 321.50.

761—400.12(321) Duplicate certificate of title.

400.12(1) When a certificate of title is lost, destroyed or altered, the owner or lienholder shall apply for a duplicate certificate of title. If a security interest noted on the certificate of title was released by the secured party on a separate form, but the secured party has not delivered the original certificate of title to the appropriate party, the owner may apply for a duplicate certificate of title as provided in Iowa Code section 321.42.

400.12(2) Application for a duplicate certificate of title shall be made on Form 411033, Application for Duplicate of Iowa Certificate of Title to a Motor Vehicle. All owners of the vehicle as listed on the certificate of title shall sign the application form. If an owner is deceased, the signatures and documents specified in subrules 400.14(4) and 400.14(5) shall be required in lieu of the deceased owner's signature. A person entitled to vehicle ownership under the laws of descent and distribution shall sign the required forms and shall insert the words "heir at law" following the signature.

This rule is intended to implement Iowa Code section 321.42.

761—400.13(321) Bond required before title issued. If an applicant for a certificate of title cannot provide the supporting documents required in rule 400.4(321), the following shall apply:

400.13(1) *Application.* Form 411008, "Application for Registration and Certificate of Title for a Vehicle upon which the County Treasurer or Department of Transportation is not Satisfied as to the Ownership Thereof," shall be completed by the applicant and submitted to the department.

400.13(2) *Exhibits.* The following exhibits shall be submitted with the application:

a. A photograph of the vehicle which shows the front and one side of the vehicle.

b. The written ownership document received at the time the vehicle was acquired.

c. A pencil tracing of the vehicle identification number. If the vehicle identification number is missing or has been defaced or altered, the applicant shall complete and submit Form 411041, "Application for Assigned Vehicle Identification Number Plate."

400.13(3) *Examination.*

a. After a properly completed application and the required exhibits have been submitted, the department shall search the state files to determine if there is an owner of record for the vehicle and if the vehicle has been reported stolen or embezzled.

b. If a record is found, the applicant shall be advised to send a certified letter return receipt requested to the owner of record at the last known address stating that the applicant is the present owner of the vehicle and requesting a duplicate title with an assignment to the applicant on the reverse side. The applicant shall submit the returned receipt to the department.

c. If a record of a junking certificate is found, the applicant may request reinstatement of the certificate of title to the vehicle if the junking certificate was issued in error, as explained in rule 400.23(321). If the department determines that the vehicle was not junked in error and denies the request, the applicant may complete application for a certificate of title by submitting a copy of the denial letter, resubmitting Form 411008 with the required exhibits, and filing the required bond.

400.13(4) *Approval.*

a. If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department shall:

(1) Determine the current value of the vehicle.

(2) Notify the applicant to deposit cash or file a surety bond with the department in an amount equal to one and one-half times the current value of the vehicle.

b. After the cash deposit or surety bond has been received, the department shall:

(1) If applicable, affix an assigned identification number plate to the vehicle.

(2) Notify the county treasurer in writing that a certificate of title and registration receipt may be issued for the vehicle.

c. Rescinded, effective 3/6/85.

d. The applicant shall submit to the county treasurer a completed Form 411007, "Application for Certificate of Title and/or Registration for a Vehicle."

e. The applicant shall submit to the county treasurer an odometer statement completed by the seller; if the seller cannot be located, Form 411099, "Odometer Certification and Statement of Fact," shall be submitted in accordance with rule 400.52(321).

f. The county treasurer shall then issue a certificate of title and registration receipt for the vehicle upon payment of the appropriate fees.

400.13(5) *Disapproval.* If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, or that there is an unsatisfied security interest, then the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

This rule is intended to implement Iowa Code sections 321.24 and 321.52.

761—400.14(321) Transfer of ownership. The following procedures shall apply for all titling and registration purposes:

400.14(1) *Transfer of vehicle owned by more than one person.*

a. If the names of the owners of a vehicle on the certificate of title or on the manufacturer's certificate of origin are joined by the word "or," as in "John Doe or Mary Doe," then the signature of either owner is sufficient to transfer title or to junk the vehicle.

b. If ownership of a vehicle is stated as a name or names followed by the words "Doing Business As" or the initials "DBA" and another name, only the name of an owner followed by the signature of an authorized representative of an owner is required to transfer title or to junk the vehicle.

EXAMPLE: Ownership is stated as "John Smith and Mary Smith DBA Smith Repair." Jane Doe is an authorized representative of John Smith and Mary Smith. To transfer ownership, Jane Doe may sign as "John Smith and Mary Smith DBA Smith Repair, by Jane Doe," "John Smith and Mary Smith by Jane Doe," or Smith Repair by Jane Doe."

c. In all other cases the signature of each named owner is required.

400.14(2) *Assignment of title to two or more persons.* If a certificate of title or a manufacturer's certificate of origin is assigned to two or more persons with their names joined by the word "or," as in "John Doe or Mary Doe," then a certificate of title may be issued to either person or to both persons with their names joined by the word "or." However, a certificate of title shall only be issued to persons who have signed the application for title.

400.14(3) *Organizational ownership.* When a vehicle is owned by a partnership, corporation, association, governmental unit, or private organization, the name of the owner and the signature of its authorized representative shall be required.

400.14(4) *Death with a will.* When ownership is transferred according to a decedent's will, a certified copy of the court order or the letter of appointment appointing the person assigning the title as executor of the will shall be required.

400.14(5) *Death without a will.* When ownership is transferred from a decedent without a will and there is no administration of the estate, a certificate of death intestate form signed by the clerk of court shall be required. When ownership is transferred from a decedent without a will but there is an administration of the estate, a copy of the court order or the letter of appointment appointing the person assigning the title as administrator shall be required.

400.14(6) *Power of attorney.* An attorney in fact may act for the owner(s) if the appointment is shown on a power of attorney form. Power of attorney forms are available from the department but other forms may be accepted if they contain all necessary information. The power of attorney form or a certified true copy shall be kept by the county treasurer and attached to the document to which it applies.

This rule is intended to implement Iowa Code sections 321.45, 321.49, and 321.67.

761—400.15(321) Cancellation of a certificate of title. The department shall cancel a certificate of title when authorized by any other provision of law or when it has reasonable grounds to believe that the title has not been surrendered to the country treasurer as provided in Iowa Code section 321.52 or that the vehicle has been stolen or embezzled from the rightful owner or seized under the provisions of Iowa Code section 321.84, and the person holding the certificate of title, purportedly issued for the vehicle, has no immediate right to possession of the vehicle.

This rule is intended to implement Iowa Code section 321.101.

761—400.16(321) Application for certificate of title or original registration for a specially constructed, reconstructed, or kit vehicle.

400.16(1) *Forms and definitions applicable to this rule.*

a. Forms.

(1) Form 411007, "Application for Certificate of Title and/or Registration for a Vehicle."

(2) Form 417050, "Application for Registration and Certificate of Title for a Specially Constructed or Reconstructed Vehicle."

(3) Form 411041, "Application for Assigned Vehicle Identification Number Plate."

761—400.24(321) New vehicle registration fee. The registration fee shall be computed on the month of purchase of a new vehicle, except that the registration fee on a new vehicle acquired outside of this state shall be based on the month that the vehicle was brought into Iowa.

This rule is intended to implement Iowa Code sections 321.105 and 321.135.

761—400.25(321) Fees established by the department.

400.25(1) If a manufacturer or importer fails to provide a sworn statement of the retail list price and weight for a particular motor vehicle model registered under Iowa Code subsection 321.109(1) and sold or offered for sale in Iowa, the department shall determine a list price and weight. This subrule does not apply to multipurpose vehicles.

400.25(2) Beginning with the 1993 model year, if the manufacturer or importer fails to provide a list price and weight for a multipurpose vehicle, the department shall use the fee specified in Iowa Code paragraph 321.124(3)*"h"* to determine the annual registration fee due.

This rule is intended to implement Iowa Code sections 321.109, 321.124 and 321.159.

761—400.26(321) Anatomical gift. Voluntary contributions collected by the county treasurer or the department to the anatomical gift public awareness and transplantation fund shall be in whole dollar amounts. The county treasurer and the department shall remit contributions collected to the department of public health by the tenth day of the month following the month the contributions were collected.

This rule is intended to implement Iowa Code section 321.44A.

761—400.27(321,322) Vehicles held for resale or trade by dealers. A motor vehicle dealer, as defined in Iowa Code section 321.1, is authorized to hold a motor vehicle for resale or trade under the following conditions.

400.27(1) *Assignment to dealer.* The certificate of title or manufacturer's certificate of origin for the vehicle shall be assigned to the dealer by the seller. The seller shall complete the assignment portion of the form, including the date of sale or trade and the name and address of the dealer, and shall sign the form. The date of the sale or trade shown in the assignment portion of the form shall be the date the dealer acquired the vehicle.

400.27(2) *New certificate of title and registration not required.*

a. A motor vehicle currently registered in Iowa may be held by a dealer without obtaining a new certificate of title or a new registration if the dealer holds for that vehicle a certificate of title or a manufacturer's certificate of origin properly assigned to the dealer.

b. A motor vehicle may also be held by a dealer without obtaining a new certificate of title or a new registration if the dealer has a title from a state that permits its titles to be reassigned by Iowa dealers and if a vacant reassignment space is available on the title.

400.27(3) *New certificate of title required.* A dealer shall obtain a new certificate of title, but is not required to pay registration fees for a vehicle if:

a. The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers.

b. Rescinded IAB 12/26/90, effective 1/30/91.

c. The reassignment area of the certificate of title has been used.

d. Rescinded IAB 12/26/90, effective 1/30/91.

e. The vehicle is not currently registered in Iowa at the time of sale. The delinquent fees and penalty shall be paid by the dealer from the first day the registration was due to the month the application for title is submitted.

f. In accordance with rules 761—Chapter 405, the dealer is required to obtain a salvage certificate of title.

400.27(4) *New certificate of title and registration fee required.* A dealer shall obtain both a new certificate of title and pay a registration fee for a vehicle if:

a. The vehicle has a foreign certificate of title but has never been registered and the dealer is not licensed under Iowa Code chapter 322 to sell that line make of vehicle. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

b. The vehicle was placed in storage by the previous owner. The registration fee due shall be a full registration year fee.

c. The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers or all reassignment spaces on the title are full and the application for a new certificate of title is submitted more than 15 days after the date the vehicle entered Iowa. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

400.27(5) *Registration fee required.* A vehicle owned by a dealer and used as a work or service vehicle, or offered for lease, rent or hire, shall become subject to a registration fee in the month that the vehicle is first used for that purpose. The registration fee shall be due annually unless the vehicle is transferred to the dealer's inventory. To transfer the vehicle, the dealer shall surrender the registration plates that were issued for the vehicle and assign the certificate of title to the dealership name, as provided in subrule 400.27(1).

400.27(6) *Violations.*

a. Failure to comply with this rule is a violation of Iowa Code subsection 321.104(2).

b. Failure to obtain a certificate of title when required shall result in a title penalty of $10, as specified in Iowa Code subsection 321.49(1).

This rule is intended to implement Iowa Code sections 321.45, 321.46, 321.48, 321.49, 321.67, 321.70, 321.104 and chapter 322.

761—400.28(321) Special trucks. The owner of a truck tractor registered as a special truck shall certify to the owner's county treasurer annually at the time of renewal that the truck tractor is not operated more than 15,000 miles annually.

This rule is intended to implement Iowa Code subsection 321.1(76) and section 321.121 and 1999 Iowa Acts, Senate File 203, section 3.

761—400.29(321) Vehicles previously registered under Iowa Code chapter 326. The registration fee for a vehicle whose registration under Iowa Code chapter 326 has ended shall be based on the month that the vehicle was last registered under that chapter.

This rule is intended to implement Iowa Code sections 321.70 and 321.106.

761—400.30(321) Registration of vehicles registered in another state or country.

400.30(1) The registration fee for a vehicle from another state or country shall be due in the month that the vehicle becomes subject to registration in Iowa.

400.30(2) A vehicle registered in another state or country shall become subject to registration in Iowa and payment of the Iowa registration fee in:

a. The month of sale or transfer to an Iowa resident, or

b. The month that a nonresident owner establishes Iowa residency or accepts employment in Iowa of 90 days duration or longer. The county treasurer or the department may require from the applicant a written statement giving the date that the applicant established residency in Iowa.

400.60(2) *Credit for transfer to spouse, parent or child.* Credit shall be allowed toward a new registration for a vehicle being transferred to the applicant from the applicant's spouse, parent or child, or from a former spouse pursuant to a dissolution of marriage decree, if application for the certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) is made within 15 days after the date of transfer. The registration receipt, showing assignment to the applicant, shall be submitted with the application. If the owner is deceased, credit may be transferred under rule 400.14(321) of this chapter.

400.60(3) *Credit from/to proportional registration.*

a. Pursuant to Iowa Code section 321.46A, an owner may claim credit toward the registration fees due when changing a vehicle's registration from proportional registration under Iowa Code chapter 326 to registration under Iowa Code chapter 321. The owner shall surrender proof of proportional registration to the county treasurer. Credit shall be allowed for the unexpired complete calendar months remaining in the registration year from the date the application is filed with the county treasurer.

b. Pursuant to Iowa Code sections 321.126 and 321.127, the owner or lessee of a motor vehicle may claim credit for the proportional registration fees due when changing the vehicle's registration from registration by the county treasurer to proportional registration. Application for proportional registration shall be submitted to the department's office of motor carrier services; see 761—Chapter 500.

400.60(4) *Assignment of credit and registration plates from lessor to lessee.* When a lessee purchases the leased vehicle and within 15 days requests the assignment of the vehicle's fee credit and registration plates, the lessor shall assign the registration fee credit and registration plates for the purchased vehicle to the lessee. The lessor shall fill in the blanks on the reverse side of the registration receipt at the bottom and shall enter the date that the lessee requested the assignment of the registration fee credit and registration plates.

This rule is intended to implement Iowa Code sections 321.46, 321.46A, 321.48, 321.126 and 321.127.

761—400.61(321) Reassignment of registration plates.

400.61(1) Registration plates may be reassigned if one of the owners listed on the registration receipt before the transfer is also a listed owner following the transfer.

400.61(2) Registration plates may be reassigned when credit is allowed toward a new registration for a vehicle being transferred to the owner's spouse, parent, or child, or to a former spouse pursuant to a dissolution of marriage decree. The owner's copy of the registration receipt, showing assignment to the transferee, shall be submitted. If the owner is deceased, plates may be transferred under rule 400.14(321).

400.61(3) Registration plates shall not be reassigned between a natural person or persons and a corporation, association, copartnership, company, or firm.

400.61(4) Registration plates may be reassigned and credit allowed if two or more corporations, associations, partnerships, or firms merge into one corporation, association, partnership or firm. The owner's copy of the registration receipt showing assignment to the new entity shall be submitted.

400.61(5) Registration plates may be assigned and credit allowed if an owner listed on the certificate of title and registration transfers ownership of the vehicle to a trust created by that owner. The owner's copy of the registration receipt showing assignment to the trust shall be submitted.

This rule is intended to implement Iowa Code sections 321.34 and 321.46.

761—400.62(321) Storage of registration plates, certificate of title forms and registration forms. Registration plates, certificate of title forms and registration forms which are consigned to county treasurers by the department shall be stored in a secure location. The location may be within the office of the county treasurer which is accessible only to authorized persons or in a storage area located outside the general office area assigned to the county treasurer. Any storage area located outside the general office area assigned to the county treasurer shall be of the construction that it is accessible only to authorized persons, as designated by the county treasurer or department.

This rule is intended to implement Iowa Code sections 321.5, 321.8, and 321.167.

761—400.63(321) Issuance and disposal of registration plates.

400.63(1) *Issuance in sequence.* The county treasurer shall issue registration plates in alphabetical or numerical sequence, as consigned to the county treasurer by the department.

400.63(2) *Disposal.* The county treasurer shall either destroy plates that have been surrendered to the county treasurer or return the surrendered plates to Iowa state industries for recycling.

This rule is intended to implement Iowa Code sections 321.5, 321.169 and 321.171.

761—400.64(321) County treasurer's report of motor vehicle collections and funds. The county treasurer shall file the report provided for in Iowa Code section 321.153 in duplicate on the form entitled "County Treasurer's Report of Motor Vehicle Collections and Funds." The report shall be filed in the following manner:

400.64(1) Part One of the report shall be received by the department on or before the tenth day of the month following the month for which the fees were collected. If the tenth day falls on a Saturday, Sunday or legal holiday, the report shall be received the next working day. The amount of total collections less the amount the county treasurer is entitled to retain shall be electronically transmitted to the department on or before the due date of the report.

400.64(2) Upon determining that the report is in proper order, the department shall send a receipt to the county treasurer's office for the amount remitted to the department.

400.64(3) Part Two of the report shall be retained by the county treasurer.

This rule is intended to implement Iowa Code section 321.153.

761—400.65 to **400.69** Reserved.

761—400.70(321) Removal of registration and plates by peace officer under financial liability coverage law. This rule applies to instances when a peace officer issues a citation and removes the registration receipt and registration plates of a motor vehicle registered in this state when the driver of the motor vehicle is unable to provide proof of financial liability coverage. This rule applies regardless of whether the vehicle was also impounded.

400.70(1) The peace officer shall forward the registration receipt and evidence of the violation to the county treasurer of the county in which the motor vehicle is registered. Evidence of the violation is one of the following:

a. A copy of the citation. The citation must either reference Iowa Code subparagraph 321.20B(4)*"a"*(3) or 321.20B(4)*"a"*(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded.

b. A written statement from the peace officer listing the plate number of the registration plate removed from the vehicle and the vehicle owner's name. The statement must either reference Iowa Code subparagraph 321.20B(4)*"a"*(3) or 321.20B(4)*"a"*(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded. The statement must be signed by the peace officer or an employee of the law enforcement agency.

400.70(2) The peace officer may either destroy removed plates or deliver the removed plates to the county treasurer for destruction.

This rule is intended to implement Iowa Code section 321.20B and 1998 Iowa Acts, chapter 1121, section 2.

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CHAPTER 401
SPECIAL REGISTRATION PLATES

761—401.1(321) Definition. "Special registration plates" means those registration plates issued under Iowa Code section 321.34 other than regular or sample plates. Special registration plates shall be issued in accordance with Iowa Code section 321.34, this chapter of rules, and other applicable provisions of law.

761—401.2(321) Application, issuance and renewal.

401.2(1) *Original application.*

a. Except for collegiate plates, application for letter-number designated special registration plates that do not have eligibility requirements shall be made directly to the county treasurer's office; no application form is required for these plates.

b. Collegiate plates, personalized plates, and special registration plates that have eligibility requirements must be requested using an application form prescribed by the department. Unless otherwise specified, completed application forms for these plates shall be submitted to the department at the following address: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines. Application forms may be obtained from the office of vehicle services or from any county treasurer's office.

c. The issuance fee, if any, shall be submitted with the application.

401.2(2) *Issuance.*

a. Special registration plates shall be issued only to a person who is an owner or lessee of the vehicle and is entitled to the special registration plates.

b. Special registration plates shall not be issued unless the vehicle is currently registered and the registration plates previously issued are surrendered to the county treasurer. Special registration plates are void if they are not assigned to a vehicle within 90 days after the date the department orders them.

c. Special registration plates may be issued to the owner of a multipurpose vehicle or motor home if the owner is otherwise entitled thereto.

d. Special registration plates may be issued for leased vehicles pursuant to Iowa Code section 321.34. The lessee must provide a copy of the lease agreement when applying for the special plates.

401.2(3) *Renewal.* Special registration plates are renewed at the office of the county treasurer of the county of residence of the applicant. The renewal fee, if any, is termed a "validation" fee. The validation fee shall be paid when the regular annual registration fee is due and is in addition to the regular annual registration fee.

761—401.3 and **401.4** Reserved.

761—401.5(321) Amateur radio call letter plates.

401.5(1) *Application.* Application for amateur radio call letter plates shall be made to the county treasurer on Form 411113. The amateur radio license issued by the Federal Communications Commission shall be shown to the county treasurer at the time of application.

401.5(2) *Issuance.* If an individual to whom amateur radio call letter plates have been issued is a joint owner of a vehicle other than the vehicle to which the plates are assigned, and the other owner also holds an amateur radio license, the other owner may apply for amateur radio call letter plates for the other vehicle. However, only one set of amateur radio call letter plates shall be issued to each amateur radio licensee.

761—401.6(321) Personalized plates.

401.6(1) *Application.* Application for personalized plates shall be submitted to the department on a form prescribed by the department. The issuance fee is $25.

401.6(2) *Characters.* The personalized plates shall consist of no less than two nor more than seven characters except that personalized plates for motorcycles and small trailers shall consist of no less than two nor more than six characters.

a. The characters "A" to "Z" and "1" to "9" may be used. Zeros shall not be used.

b. The personalized plates shall not duplicate combinations of characters reserved or issued for any other vehicle plate series under Iowa Code chapter 321.

c. No combination of characters denoting a governmental agency shall be issued.

d. No combination of characters shall be issued which is sexual in connotation; defined in dictionaries as a term of vulgarity, contempt, prejudice, hostility, insult, or racial or ethnic degradation; recognized as a swear word; considered to be offensive; or a foreign word falling into any of these categories.

401.6(3) *Renewal.* A validation fee of $5 shall be paid each year. If renewal is delinquent for more than one month:

a. A new application and $25 issuance fee are required, even if the same combination of characters is still available.

b. The department may issue the plates' combination of characters to another applicant.

401.6(4) *Reassignment.* A vehicle owner who has personalized plates assigned to a currently registered vehicle may assign the plates to another owner of a currently registered vehicle. A written request for reassignment shall be signed by both vehicle owners and submitted to the county treasurer of the assignor's county of residence. The personalized plates and a registration receipt shall be issued to the assignee by the county treasurer of the assignee's county of residence in exchange for the registration plates and registration receipt previously issued.

401.6(5) *Gift certificate.* A gift certificate for the issuance fee may be purchased from the department using the prescribed application form. A gift certificate is void 90 days after issuance.

761—401.7(321) Collegiate plates.

401.7(1) *Application.* Application for collegiate plates shall be submitted to the department on a form prescribed by the department. The applicant may request letter-number designated collegiate plates or personalized collegiate plates. The issuance fee is $50.

401.7(2) *Characters.* Personalized collegiate plates shall be issued in accordance with subrule 401.6(2) except that personalized collegiate plates are not available for motorcycles and small trailers.

401.7(3) *Renewal.* A validation fee of $5 shall be paid each year. If renewal is delinquent for more than one month:

a. A new application and $50 issuance fee are required.

b. The department may issue the combination of characters on personalized collegiate plates to another applicant.

401.7(4) *Reassignment.* A vehicle owner may request reassignment of personalized collegiate plates in accordance with subrule 401.6(4).

401.7(5) *Gift certificate.* A gift certificate for the issuance fee may be purchased from the department using the prescribed application form. A gift certificate is void 90 days after issuance.

761—401.8(321) Congressional Medal of Honor plates.

401.8(1) Application for Congressional Medal of Honor plates shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the medal of honor.

401.8(2) Congressional Medal of Honor plates are limited to five characters. Personalized plates are not available.

761—401.9(321) Firefighter plates.

401.9(1) Application for firefighter plates shall be submitted to the department on a form prescribed by the department. The chief of the paid or volunteer fire department shall sign the application form, certifying that the applicant is a current or former member of the fire department. If the chief cannot certify that the applicant is a former member, a person who has knowledge of the applicant's membership shall sign the application certifying that fact.

401.9(2) Firefighter plates are limited to five characters. Personalized plates are not available.

761—401.10(321) Emergency medical services plates.

401.10(1) Application for emergency medical services (EMS) plates shall be submitted to the Iowa department of public health on a form prescribed by the department of transportation. The department of public health shall determine whether the applicant is a current member of a paid or volunteer emergency medical services agency and, if so, certify this fact on the application form.

401.10(2) A vehicle owner whose membership in a paid or volunteer emergency medical services agency is terminated shall within 30 days after termination surrender the EMS plates to the county treasurer in exchange for regular registration plates.

401.10(3) EMS plates are limited to five characters. Personalized plates are not available.

761—401.11(321) Natural resources plates—letter-number designated.

401.11(1) *Application.* Application for letter-number designated natural resources plates shall be submitted to the county treasurer. The issuance fee is a $35 special natural resources fee.

401.11(2) *Characters.* Letter-number designated natural resources plates are limited to five characters.

401.11(3) *Renewal.* The yearly validation fee is a $10 special natural resources fee. If renewal is delinquent for more than one month, a new application and $35 issuance fee are required.

401.11(4) *Reassignment.* A vehicle owner may request reassignment of letter-number designated natural resources plates in accordance with subrule 401.6(4).

401.11(5) *Gift certificate.* A gift certificate for the issuance fee may be purchased from the county treasurer. A gift certificate is void 90 days after issuance.

401.11(6) *Distribution of fees.* Special natural resources fees are paid to the Iowa resources enhancement and protection (REAP) fund.

761—401.12(321) Natural resources plates—personalized.

401.12(1) *Application.* Application for personalized natural resources plates shall be submitted to the department on a form prescribed by the department. The issuance fee consists of a $35 special natural resources fee and a $45 personalized plate fee.

401.12(2) *Characters.* Personalized natural resources plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs *"a"* to *"d."*

401.12(3) *Renewal.* The yearly validation fee for personalized natural resources plates consists of a $10 special natural resources fee and $5 personalized plate fee. If renewal is delinquent for more than one month:

a. A new application and $80 issuance fee are required.

b. The department may issue the plates' combination of characters to another applicant.

401.12(4) *Reassignment.* A vehicle owner may request reassignment of personalized natural resources plates in accordance with subrule 401.6(4).

401.12(5) *Gift certificate.* A gift certificate for the issuance fee may be purchased from the department using the prescribed application form. A gift certificate is void 90 days after issuance.

761—401.13 and **401.14** Reserved.

761—401.15(321) Processed emblem application and approval process. Following is the application and approval process for special plate requests under Iowa Code subsection 321.34(13).

401.15(1) Application Form 411146 shall be used to submit a request to the department to recommend a new special registration plate with a processed emblem.

401.15(2) The application shall contain:

a. The applicant's name, address, and telephone number.

b. The name of the processed emblem.

c. A clear and concise explanation of the purpose of the special plate and all eligibility requirements.

d. The total number of the special plates the applicant anticipates being purchased.

401.15(3) The application shall be accompanied by:

a. A color copy of the processed emblem.

(1) The processed emblem shall be limited to 3" × 3½" on the registration plate, but the emblem submitted may be of a larger size.

(2) The processed emblem shall not have any sexual connotation, nor shall it be vulgar, prejudiced, hostile, insulting, or racially or ethnically degrading.

b. A certification by the person who has legal rights to the emblem allowing use of the emblem. This certification shall also include a statement holding the department harmless for using the processed emblem on a registration plate.

401.15(4) The office of vehicle services may consult with other organizations, law enforcement authorities, and the general public concerning the processed emblem.

401.15(5) Within 60 days after receiving the application, the office of vehicle services shall advise the applicant of the department's approval or denial of the application. The department reserves the right to approve or disapprove any processed emblem.

401.15(6) If the department approves the application, the applicant shall be advised that 500 paid special plate applications must be submitted to the department before the new plate will be manufactured and issued. If 500 paid applications are not submitted within one year after the date the department approved the plate, the department shall cancel its approval.

401.15(7) If the special plate is approved and at a later date it is determined that a false application was submitted, the department shall revoke the special plates. No refunds shall be paid.

761—401.16(321) Special plates with processed emblems—general.

401.16(1) *Fees.* Following are the fees for special plates with processed emblems:

	Letter-Number		Personalized	
Type	Issuance	Validation	Issuance	Validation
Persons With Disabilities	$0	$0	$25	$5
Legion of Merit	$0	$0	N/A	N/A
Ex-POW	$0	$0	N/A	N/A
National Guard	$25	$5	$50	$5
Pearl Harbor	$25	$5	$50	$5
Purple Heart	$25	$5	$50	$5
U.S. Armed Forces Retired	$25	$5	$50	$5

Silver or Bronze Star	$25	$5	$50	$5
Iowa Heritage	$35	$10	$60	$15
Education	$35	$10	$60	$15
Love Our Kids	$35	$10	$60	$15
Motorcycle Rider Education	$35	$10	$60	$15
State Agency-Sponsored	$35	$10	$60	$15
Veteran	$35	$10	$60	$15

401.16(2) *Application.* Special plates with processed emblems may be ordered as follows:

a. Application for letter-number designated plates shall be submitted to the county treasurer when the plates have no eligibility requirements.

b. Application for personalized plates or letter-number designated plates with eligibility requirements shall be submitted to the department on a form prescribed by the department.

401.16(3) *Characters.* Special plates with processed emblems are limited to five characters. Personalized special plates with processed emblems shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs *"a"* to *"d."*

401.16(4) *Renewal.* If renewal of either letter-number designated or personalized special plates with processed emblems is delinquent for more than one month:

a. A new application and issuance fee are required.

b. The department may issue the combination of characters on personalized processed emblem plates to another applicant.

401.16(5) *Reassignment.* A vehicle owner may request reassignment of either letter-number designated or personalized special plates with processed emblems in accordance with subrule 401.6(4). However, plates that have eligibility requirements may not be reassigned.

401.16(6) *Gift certificate.* A gift certificate for special plates with processed emblems may be purchased as follows:

a. A gift certificate for letter-number designated plates with no eligibility requirements may be purchased from the county treasurer.

b. A gift certificate for personalized plates or letter-number designated plates with eligibility requirements may be purchased using the prescribed application form.

c. A gift certificate is void 90 days after issuance.

761—401.17(321) State agency-sponsored processed emblem plates.

401.17(1) *Application and approval process for a new plate.* A state agency recommending a new special registration plate with a processed emblem shall submit its request to the department on a form prescribed by the department. The application and approval process is set out in rule 761—401.15(321). The application shall include clear and concise eligibility requirements for plate applicants.

401.17(2) *Plate application.* Once new state agency-sponsored processed emblem plates have been approved, manufactured and issued, the plates may be ordered as described below.

a. When the plates have no eligibility requirements:

(1) Application for letter-number designated plates shall be submitted to the county treasurer.

(2) Application for personalized plates shall be submitted to the department on a form prescribed by the department.

b. When the plates have eligibility requirements, application for either letter-number designated or personalized plates shall be submitted to the sponsoring state agency for approval on a form prescribed by the department. The sponsoring state agency shall forward approved applications to the department.

401.17(3) *Characters.* State agency-sponsored processed emblem plates are limited to five characters. Personalized state agency-sponsored processed emblem plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs *"a"* to *"d."*

401.17(4) *Renewal.* If renewal of either letter-number designated or personalized state agency-sponsored processed emblem plates is delinquent for more than one month:

a. A new application and issuance fee are required.

b. The department may issue the combination of characters on personalized plates to another applicant.

401.17(5) *Reassignment.* A vehicle owner may request reassignment of either letter-number designated or personalized state agency-sponsored processed emblem plates in accordance with subrule 401.6(4). However, plates that have eligibility requirements may not be reassigned.

401.17(6) *Gift certificate.*

a. When state agency-sponsored processed emblem plates have no eligibility requirements:

(1) A gift certificate for the issuance fee for letter-number designated plates may be purchased from the county treasurer.

(2) A gift certificate for the issuance fee for personalized plates may be purchased by completing a form prescribed by the department and submitting the form to the department.

b. When state agency-sponsored processed emblem plates have eligibility requirements, a request to purchase a gift certificate for either letter-number designated or personalized plates shall be submitted to the sponsoring state agency.

c. A gift certificate is void 90 days after issuance.

761—401.18 Reserved.

761—401.19(321) Legion of Merit plates. Application for special plates with a Legion of Merit processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the Legion of Merit. Personalized plates with a Legion of Merit processed emblem are not available.

761—401.20(321) Persons with disabilities plates.

401.20(1) *Application.* Application for special plates with a persons with disabilities processed emblem shall be submitted to the department on a form prescribed by the department.

a. The application shall include a signed statement written on the physician's, chiropractor's, physician assistant's or advanced registered nurse practitioner's letterhead. The statement shall certify that the owner or the owner's child is a person with a disability, as defined in Iowa Code section 321L.1, and that the disability is permanent.

b. If the person with a disability is a child, the parent or guardian shall complete the proof of residency certification on the application or complete and submit a separate proof of residency Form 411120, certifying that the child resides with the owner.

401.20(2) *Definition.*

"Child" includes, but is not limited to, stepchild, foster child, or legally adopted child who is younger than 18 years of age, or a dependent person 18 years of age or older who is unable to maintain the person's self.

401.20(3) *Renewal.* The owner shall, at renewal time, provide a self-certification stating that the owner or the owner's child is still a person with a disability and, if the person with a disability is the owner's child, that the child still resides with the owner.

761—401.21(321) Ex-prisoner of war plates.

401.21(1) Application for special plates with an ex-prisoner of war processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was a prisoner of war. If the document is not available, a person who has knowledge that the applicant was a prisoner of war shall sign a statement to that effect on the application form.

401.21(2) The surviving spouse of a person who was issued ex-prisoner of war plates may continue to use or apply for the plates. If the surviving spouse remarries, the surviving spouse shall surrender the plates to the county treasurer in exchange for regular registration plates within 30 days after the date on the marriage certificate.

401.21(3) Personalized plates with an ex-prisoner of war processed emblem are not available.

761—401.22(321) National guard plates. Application for special plates with a national guard processed emblem shall be submitted to the department on a form prescribed by the department. The unit commander of the applicant shall sign the application form confirming that the applicant is a member of the Iowa national guard.

761—401.23(321) Pearl Harbor plates. Application for special plates with a Pearl Harbor processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was stationed at Pearl Harbor, Hawaii, as a member of the armed forces on December 7, 1941.

761—401.24(321) Purple Heart, Silver Star and Bronze Star plates. Application for special plates with a Purple Heart, Silver Star, or Bronze Star processed emblem shall be submitted to the department on a form prescribed by the department. To verify receipt of the medal, the applicant shall attach a copy of one of the following:

1. The official military order confirming the medal.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

761—401.25(321) U.S. armed forces retired plates. Application for special plates with a United States armed forces retired processed emblem shall be submitted to the department on a form prescribed by the department. To verify retirement from the United States armed forces after service of 20 years or longer, or to verify service for a minimum of 10 years and receipt of an honorable discharge from service due to a medical disqualification, the applicant shall attach a copy of one of the following:

1. The official military order confirming retirement from the armed forces.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

761—401.26 Reserved.

761—401.27(321) Iowa heritage plates. Application for letter-number designated plates with an Iowa heritage processed emblem shall be submitted to the county treasurer. Application for personalized plates with an Iowa heritage processed emblem shall be submitted to the department on a form prescribed by the department.

761—401.28(321) Education plates. Application for letter-number designated special plates with an education processed emblem shall be submitted to the county treasurer. Application for personalized plates with an education processed emblem shall be submitted to the department on a form prescribed by the department.

761—401.29(321) Love our kids plates. Application for letter-number designated plates with a love our kids processed emblem shall be submitted to the county treasurer. Application for personalized plates with a love our kids processed emblem shall be submitted to the department on a form prescribed by the department.

761—401.30(321) Motorcycle rider education plates. Application for letter-number designated plates with a motorcycle rider education processed emblem shall be submitted to the county treasurer. Application for personalized plates with a motorcycle rider education processed emblem shall be submitted to the department on a form prescribed by the department.

761—401.31(321) Veteran plates. Application for special plates with a veteran processed emblem shall be submitted to the commission of veterans affairs on a form prescribed by the department of transportation. The commission of veterans affairs shall determine whether the applicant is a veteran and, if so, certify this fact on the application form.

761—401.32 to **401.34** Reserved.

761—401.35(321) Additional information.

401.35(1) *Surrender of special registration plates assigned to a vehicle.*

a. When ownership of a vehicle is transferred or assigned to another person, the owner must surrender the special registration plates to the county treasurer or assign the plates to another vehicle owned or leased by the person to whom issued.

b. When the lease for a vehicle is terminated, the lessee must surrender the special registration plates to the county treasurer or assign the plates to another vehicle owned or leased by the person to whom issued. Regular registration plates shall be reissued at no charge. Fees for issuing Congressional Medal of Honor plates shall be prorated for the remainder of the registration year.

401.35(2) *Revocation of special registration plates.* Special registration plates shall be revoked if they have been issued in conflict with the statutes or rules governing their issuance. Revoked plates shall be surrendered to the department within 30 days of the date of revocation.

401.35(3) *Refund of fees.* No refund of fees for special registration plates shall be allowed unless the special plates were issued in conflict with the statutes or rules governing their issuance.

These rules are intended to implement Iowa Code sections 321.34, 321.166 and 321L.1 and 1999 Iowa Acts, House File 200, House File 737, section 8, and Senate File 462, section 15.

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CHAPTER 425
MOTOR VEHICLE AND TRAVEL TRAILER DEALERS, MANUFACTURERS, DISTRIBUTORS AND WHOLESALERS

[Prior to 7/17/96, see 761—Chapters 420 and 422]

761—425.1(322) Introduction.

425.1(1) This chapter applies to the licensing of motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers. Also included in this chapter are the criteria for the issuance and use of dealer plates.

425.1(2) The office of vehicle services administers this chapter.

a. The mailing address is: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

b. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines.

761—425.2 Reserved.

761—425.3(322) Definitions. The following definitions, in addition to those found in Iowa Code sections 322.2 and 322C.2, apply to this chapter of rules:

"Car lot" means an extension lot for the sale of motor vehicles that is located within the same city or township as the motor vehicle dealer's principal place of business but is not adjacent. Parcels of property are adjacent if the parcels are separated only by an alley, street or highway that is not a controlled access facility. For the purpose of licensing motor vehicle dealers, "extension lot" has the same meaning as "car lot."

"Certificate of title" means a document issued by the appropriate official which contains a statement of the owner's title, the name and address of the owner, a description of the vehicle, a statement of all security interests, and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms "title certificate," "title only" and "title" shall be synonymous with the term "certificate of title."

"Consumer use" means use of a motor vehicle or travel trailer for business or pleasure, not for sale at retail, by a person who has obtained a certificate of title and has registered the vehicle under Iowa Code chapter 321.

"Dealer," unless otherwise specified, means a person who is licensed to engage in this state in the business of selling motor vehicles or travel trailers at retail under Iowa Code chapter 322 or 322C.

"Designated location" means a building actually occupied where the public and the department may contact the owner or operator during regular business hours. In lieu of a building, a travel trailer dealer may use a mobile home as an office if taxes are current or a travel trailer as an office if registration fees are current.

"Engage in this state in the business" or similar wording means doing any of the following acts for the purpose of selling motor vehicles or travel trailers at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, or to act as an agent for the purpose of doing any of these acts. A person selling at retail more than six motor vehicles or six travel trailers during a 12-month period may be presumed to be engaged in the business. See rule 425.20(322) for provisions regarding fleet sales and retail auction sales.

"Manufacturer's certificate of origin" means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. The terms "manufacturer's statement," "importer's statement or certificate," "MSO" and "MCO" shall be synonymous with the term "manufacturer's certificate of origin." See rule 761—400.1(321) for more information.

"Registered dealer" means a dealer licensed under Iowa Code chapter 322, 322B or 322C who possesses a current dealer certificate under Iowa Code section 321.59.

"Regular business hours" means to be consistently open to the public on a weekly basis at hours reported to the office of vehicle services. Except as provided in Iowa Code section 322.36, regular business hours for a motor vehicle or travel trailer dealer or used vehicle wholesaler shall include a minimum of 32 posted hours between Monday and Friday, inclusive.

"Salesperson" means a person employed by a motor vehicle or travel trailer dealer or used vehicle wholesaler for the purpose of buying or selling vehicles.

"Travel trailer lot" means an extension lot for the sale of travel trailers that is located within the same county as the travel trailer dealer's principal place of business but is not adjacent. Parcels of property are adjacent if the parcels are separated only by an alley, street or highway that is not a controlled access facility. For the purpose of licensing travel trailer dealers, "extension lot" has the same meaning as "travel trailer lot."

"Vehicle," unless otherwise specified, means a motor vehicle or travel trailer.

"Wholesaler" means a person who sells vehicles to dealers and not at retail.

This rule is intended to implement Iowa Code chapters 322 and 322C.

761—425.4 to **425.9** Reserved.

761—425.10(322) Application for dealer's license.

425.10(1) *Applications forms.* To apply for a license as a motor vehicle or travel trailer dealer, the applicant shall complete Form 417008, "Application for Dealer's License," and Form 417009, "Fees for Dealer License Application," and submit them to the office of vehicle services.

425.10(2) *Surety bond.*

a. The applicant shall obtain a surety bond in the following amounts and file the original with the office of vehicle services:

(1) For a motor vehicle dealer's license, $50,000.

(2) For a travel trailer dealer's license, $25,000. However, an applicant for a travel trailer dealer's license is not required to file a bond if the person is licensed as a motor vehicle dealer under the same name and at the same principal place of business.

b. The surety bond shall provide for notice to the office of vehicle services at least 30 days before cancellation.

c. The office of vehicle services shall notify the bonding company of any conviction of the dealer for a violation of dealer laws.

d. If the bond is canceled, the office of vehicle services shall notify the dealer by certified mail that the dealer's license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

425.10(3) *Franchise.*

a. An applicant who intends to sell new motor vehicles or travel trailers shall submit to the office of vehicle services a copy of a signed franchise agreement with the manufacturer or distributor of each make the applicant intends to sell.

425.26(7) *Variance.* The department may grant a variance from the requirements of these rules and grant a special limited permit for the display only of motor homes or travel trailers at a convention sponsored by an established national association, if the department determines that granting the permit would not encourage evasion of these rules and that the public interest so demands. The department may impose alternative permit requirements.

425.26(8) *Display without permit.* A dealer who does not have a permit may display vehicles at fairs, vehicle shows and vehicle exhibitions.

This rule is intended to implement Iowa Code section 321.124 and subsections 322.5(2) and 322C.3(9).

761—425.27 and **425.28** Reserved.

761—425.29(322) Classic car permit. A classic car permit allows a motor vehicle dealer to display and sell classic cars at a specified county fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer's principal place of business. "Classic car" is defined in Iowa Code subsection 322.5(3).

425.29(1) The permit period is the duration of the event, not to exceed five days. The permit is valid on Sundays. Only one permit may be issued to each motor vehicle dealer for an event. No more than three permits may be issued to a motor vehicle dealer in any one calendar year.

425.29(2) Application for a classic car permit shall be made on Form 411045. The application shall include dealer's name, address and license number and the following information about the county fair, vehicle show or vehicle exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

425.29(3) The motor vehicle dealer shall display the permit in a prominent place at the location of the county fair, vehicle show or vehicle exhibition.

This rule is intended to implement Iowa Code subsection 322.5(3).

761—425.30(322) Motor truck display permit. Application for a permit under Iowa Code subsection 322.5(4) shall be made on Form 411176. The application shall include information or documentation showing that the nonresident motor vehicle dealer is eligible for issuance of a permit and that the event meets the statutory conditions for permit issuance.

This rule is intended to implement Iowa Code subsection 322.5(4).

761—425.31(322) Firefighting and rescue show permit.

425.31(1) Application for a firefighting and rescue show permit shall be made on Form 411220. The application shall include the name, address and license number of the applicant, the type of vehicles being displayed, and the following information about the vehicle show or exhibition: name, location, sponsor(s), and duration, including the opening and closing dates.

425.31(2) The permit is not valid on Sundays. Only one permit shall be issued to each licensee for an event.

425.31(3) The permit holder shall display the permit in a prominent place at the location of the vehicle show or exhibition.

This rule is intended to implement Iowa Code section 322.5 as amended by 1999 Iowa Acts, Senate File 203, section 23.

761—425.32 to **425.39** Reserved.

761—425.40(322) Salespersons of dealers and used vehicle wholesalers.

425.40(1) Every motor vehicle and travel trailer dealer and used vehicle wholesaler shall:

a. Keep a current written record of all salespersons acting in its behalf. The record shall be open to inspection by any peace officer or any employee of the department.

b. Maintain a current record of authorized persons allowed to sign all documents required under Iowa Code chapter 321 for vehicle sales.

425.40(2) No person shall either directly or indirectly claim to represent a dealer or used vehicle wholesaler unless the person is listed as a salesperson by that dealer or wholesaler.

This rule is intended to implement Iowa Code sections 322.3, 322.13, and 322C.4.

761—425.41 to **425.49** Reserved.

761—425.50(322) Manufacturers, distributors, and wholesalers. This rule applies to the licensing of manufacturers, distributors, and wholesalers of new motor vehicles and travel trailers. The licensing of used vehicle wholesalers is addressed in rule 425.52(322).

425.50(1) *Application for license.* To apply for a license, the applicant shall complete Form 417029, "Manufacturer, Distributor, Wholesaler Application for License," and submit it to the office of vehicle services, accompanied by a list of the applicant's franchised dealers in Iowa and a sample copy of a completed manufacturer's certificate of origin that is issued by the firm. A distributor or wholesaler shall also provide a copy of written authorization from the manufacturer to act as its distributor or wholesaler.

425.50(2) *Licensing requirements.*

a. Rescinded IAB 11/3/99, effective 12/8/99.

b. New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code paragraph 321.1(39)*"d."*

c. A licensee shall ensure that any new retail outlet is properly licensed as a dealer before any vehicles are delivered to the outlet.

d. A licensee shall notify the office of vehicle services in writing at least ten days prior to any:

(1) Change in name, location or method of doing business, as shown on the license.

(2) Issuance of a franchise to a dealer in this state to sell new vehicles at retail.

(3) Rescinded IAB 11/3/99, effective 12/8/99.

(4) Change in the trade name of a travel trailer manufactured for delivery in this state.

e. A licensee shall notify the office of vehicle services in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.

761—425.51(322) Factory or distributor representatives. Rescinded IAB 11/3/99, effective 12/8/99.

761—425.52(322) Used vehicle wholesalers.

425.52(1) *Application for license.* To apply for a license as a used vehicle wholesaler, the applicant shall complete Form 417004, "Used Vehicle Distributor/Wholesaler Application for License," and submit it to the office of vehicle services. The applicant shall certify on the application that the applicant's designated location complies with all applicable zoning provisions or is a legal nonconforming use. If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

425.52(2) *Licensing requirements.* The licensee shall:

a. Maintain regular business hours and telephone service at a designated location. The location shall include separate and adequate office space for keeping records of vehicles sold and offered for sale. Before a license is issued, an investigator from the department shall physically inspect the location to verify compliance with this rule.

b. Represent and advertise the business under the name which appears on the license.

c. Confine the sale of vehicles to licensed dealers.

d. Notify the department in writing at least ten days before any change in name, location, hours or method of doing business, as shown on the license.

425.52(3) *Renewal.* The license must be renewed annually.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.

761—425.53(322) Wholesaler's financial liability coverage. A new or used motor vehicle wholesaler shall certify on the license application that it has the required financial liability coverage in the limits set forth in Iowa Code section 322.27A. It is the wholesaler's responsibility to ensure that the required financial liability coverage is continuous with no lapse in coverage as long as the wholesaler maintains a valid wholesaler's license.

This rule is intended to implement Iowa Code section 322.27A.

761—425.54 to **425.59** Reserved.

761—425.60(322) Right of inspection.

425.60(1) Peace officers have the authority to inspect vehicles or component parts of vehicles, business records, and manufacturers' certificates of origin, certificates of title and other evidence of ownership for all vehicles offered for sale.

425.60(2) The department has the right at any time to verify compliance of a person licensed under Iowa Code chapter 322 or 322C or issued a certificate under Iowa Code section 321.59 with all statutory and regulatory requirements.

This rule is intended to implement Iowa Code sections 321.62, 321.95, 322.13, and 322C.1.

761—425.61 Reserved.

761—425.62(322) Denial, suspension or revocation.

425.62(1) The department may deny an application or suspend or revoke a certificate or license if the applicant, certificate holder or licensee fails to comply with the applicable provisions of this chapter of rules, Iowa Code sections 321.57 to 321.63 or Iowa Code chapter 322 or 322C.

425.62(2) The department may deny a dealer's application for a fair, show or exhibition permit for a period not to exceed six months if the dealer fails to comply with the applicable provisions of rule 425.26(322) or Iowa Code subsection 322.5(2) or 322C.3(9).

425.62(3) The department may deny a motor vehicle dealer's application for a demonstration permit for a period not to exceed six months if the dealer fails to comply with rule 425.72(322).

425.62(4) A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13.

This rule is intended to implement Iowa Code chapter 17A and sections 321.57 to 321.63, 322.6, 322.9, 322.31, and 322C.6.

761—425.63 to **425.69** Reserved.

761—425.70(321) Dealer plates.

425.70(1) *Definition.* The definitions of "dealer" and "vehicle" in Iowa Code section 321.1 apply to this rule.

425.70(2) *Persons who may be issued dealer plates.* Dealer plates as provided in Iowa Code sections 321.57 to 321.63 may be issued to:

a. Licensed motor vehicle dealers.

b. Licensed mobile home dealers. The plates shall display the word "trailer."

c. Licensed travel trailer dealers. The plates shall display the word "trailer."

d. A person engaged in the business of buying, selling or exchanging trailer-type vehicles subject to registration under Iowa Code chapter 321, other than travel trailers, and who has an established place of business for such purpose in this state. The plates shall display the word "trailer."

e. Insurers selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired as a result of a damage settlement or recovered stolen vehicles acquired as a result of a loss settlement. The plates shall display the words "limited use."

f. Persons selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired or repossessed by them in exercise of powers or rights granted by lien or title-retention instruments or contracts given as security for loans or purchase money obligations, and who are not required to be licensed dealers. The plates shall display the words "limited use."

g. Persons engaged in the business of selling special equipment body units which have been or will be installed on motor vehicle chassis not owned by them, solely for the purpose of delivering, testing or demonstrating the special equipment body and the motor vehicle. The plates shall display the words "limited use."

h. A licensed wholesaler who is also licensed as a motor vehicle dealer as specified in paragraph 425.70(3)*"e."*

425.70(3) *Use of dealer plates.*

a. Dealer plates shall not be displayed on vehicles that are rented, leased or loaned. However, a dealer plate may be displayed on a motor vehicle, other than a truck or truck tractor, loaned to a customer of a licensed motor vehicle dealer while the customer's motor vehicle is being serviced or repaired by the dealer.

b. Motor vehicles used by dealers, manufacturers or distributors to transport other vehicles shall be registered, except when being transported from the place of manufacturing, assembling or distribution to a dealer's place of business.

c. Saddle-mounted vehicles being transported shall display dealer plates.

d. Trailer dealer plates may be displayed on a trailer carrying a load, provided the truck or truck tractor towing the trailer is properly registered under Iowa Code section 321.122, except as provided in rule 425.72(321).

e. Dealer plates may be used by a dealer licensed as a wholesaler for a new motor vehicle model when operating a new motor vehicle of that model if the motor vehicle is owned by the wholesaler and is operated solely for the purpose of demonstration, show or exhibition.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

761—425.71 Reserved.

761—425.72(321) Demonstration permits.

425.72(1) Demonstration permits may be issued to motor vehicle dealers to permit the use of dealer plates for the purpose of demonstrating the load capabilities of motor trucks and truck tractors. The fee for a permit is $10.

425.72(2) The dealer shall complete the permit form. The information to be filled out includes, but is not limited to, the following:

a. Date of issuance by the dealer, date of expiration, and the specific dates for which the permit is valid. The expiration date shall be five days or less from the date of issuance.

b. Dealer's name, address and license number.

c. Name(s) of the prospective buyer(s) and all prospective drivers.

d. Route of the demonstration trip. The points of origin and destination shall be the dealership. The permit is not valid for a route outside Iowa.

e. The make, year and vehicle identification number of the motor vehicle being demonstrated.

425.72(3) The permit is a three-part form. The original copy of the permit shall at all times be carried in the motor vehicle to which it refers and shall be shown to any peace officer upon request. The dealer shall mail or deliver the second copy to the office of vehicle services within 48 hours after issuance. The dealer shall retain the third copy for at least one year from the date of issuance.

425.72(4) Only one demonstration permit per motor vehicle shall be issued for a prospective buyer.

425.72(5) The demonstration permit is valid only for a movement that does not exceed the legal length, width, height and weight restrictions. The permit is not valid for an overdimensional or overweight movement.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

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CHAPTERS 426 to 429
Reserved

◊Two ARCs

CHAPTER 16
IOWA EDUCATIONAL SAVINGS PLAN TRUST

781—16.1(12D) Purpose. The purpose of these rules is to provide for the administration and operation of the Iowa educational savings plan trust.

781—16.2(12D) Definitions. In addition to the terms defined in Iowa Code section 12D.1, the following terms apply to this chapter:

"Academic period" means one semester or one quarter or such other equivalent period as may be defined by the qualified institution of higher education.

"Account" means the account in the program fund established and maintained under the trust for a beneficiary.

"Account balance" means the fair market value of an account as of an accounting date selected by the program administrator, which shall be not more than 60 days prior to the date on which the event occurs which gives rise to the determination of account balance.

"College savings Iowa" is the name and logo registered under Iowa law to represent the Iowa educational savings plan trust. It is synonymous with Iowa educational savings plan trust.

"Payments" means the money paid by the participant to the trust under the participation agreement.

"Penalty fee" means the fee charged by the trust on cancellation of a participation agreement.

"Program administrator" means the treasurer of state.

"Qualified higher education costs" means tuition, fees, and the costs of books, supplies and equipment required for the enrollment or attendance of the beneficiary at a qualified institution of higher education. Room and board shall be treated as qualified higher education costs for a beneficiary, subject to maximum annual dollar amounts determined by the program administrator, if they are incurred during an academic period during which the beneficiary is enrolled or accepted for enrollment in a degree, certificate or other program that leads to a recognized educational credential (such as a bachelor's degree or associate's degree) awarded by a qualified institution of higher education. In addition, the beneficiary must be enrolled at least half time.

"Qualified institution of higher education" means an institution described in Section 481 of the federal Higher Education Act of 1965, which is eligible to participate in the United States Department of Education's student aid programs. State universities in Iowa and other states qualify, as do community colleges and private accredited four-year and two-year colleges. Some vocational and technical schools qualify as well.

781—16.3(12D) Forms and materials. The following material shall be used to administer the Iowa educational savings plan trust.

"College savings Iowa participation agreement" means the form that the participant submits to the program administrator of the trust to identify the participant, beneficiary, and other information as may be requested by the program administrator. It shall be signed and dated by the participant to verify that the participant agrees to the terms and conditions of the program.

"Prospectus" means the document provided by the program administrator to describe the investments selected by the program administrator and to explain the nature of risk inherent in the investments.

781—16.4(12D) Notices or requests. The following form shall be used to administer the Iowa educational savings plan trust.

"Cancel, Amend, or Use CSI Account Form" means the form that a participant submits to the program administrator to suspend benefits under a participation agreement.

"Cancel, Amend, or Use CSI Account Form" means the form that a participant submits to the program administrator to terminate a participation agreement.

"Cancel, Amend, or Use CSI Account Form" means the form that a participant submits to the program administrator to transfer ownership rights of a college savings Iowa account to another person pursuant to Iowa Code section 12D.6(6).

"Cancel, Amend, or Use CSI Account Form" means the form that a participant submits to the program administrator to notify the administrator of the date benefits are to begin and level of benefits to be paid.

"Cancel, Amend, or Use CSI Account Form" means the form that a participant submits to the program administrator of the trust to request the substitution of a beneficiary.

781—16.5(12D) Participant eligibility. Iowa Code section 12D.3 provides that the trust may enter into participation agreements with participants to effectuate the purposes, objectives and provisions of the trust. This rule establishes the eligibility criteria for a participant.

16.5(1) A participant must be at least 18 years old and a resident of the United States.

16.5(2) A participant shall execute a participation agreement with the program administrator that specifies the terms and conditions under which the participant shall participate in the trust.

16.5(3) A participant shall, on signing a participation agreement, provide the program administrator with the participant's social security number.

781—16.6(12D) Beneficiary eligibility. Iowa Code section 12D.3(2) provides that a beneficiary of a participation agreement may be designated from date of birth up to, but not including, the beneficiary's eighteenth birthday. This rule establishes the eligibility criteria for a beneficiary.

16.6(1) A beneficiary may be a resident of any state, who, on the day the participation agreement is executed, is under 18 years of age.

16.6(2) A participant shall, on signing a participation agreement, agree to provide the program administrator upon request the beneficiary's birth certificate or other official documents which verify the beneficiary's age.

16.6(3) A participant shall, on signing a participation agreement, provide the program administrator a valid social security number for the beneficiary.

781—16.7(12D) Payments and payment schedules. Iowa Code section 12D.3(1) states that participation agreements may require participants to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary, not to exceed $2000 per beneficiary per year, adjusted annually to reflect increases in the consumer price index. This rule provides for implementation of this provision.

16.7(1) The program administrator will provide each participant a quarterly statement. Participants are allowed to pay installments monthly or at other intervals during the calendar year provided that each installment payment is made with a payment coupon provided to the Participant and further, provided that each installment is at least $25. Installment payments of less than $25 may be returned to the participant. Payments received from a person who has not entered into a participation agreement shall be returned or held until a participation agreement is submitted and approved.

16.7(2) The program administrator shall actuarially determine an account balance limit applicable to all accounts of beneficiaries with the same expected year of enrollment. No additional payments may be made on behalf of a beneficiary if the account balances of all accounts held for the beneficiary exceed the applicable account balance limit.

16.7(3) Beginning in the spring of 2000 and each spring thereafter, the program administrator shall determine the maximum amount that a participant may contribute on behalf of a beneficiary for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum shall be communicated to participants in college savings Iowa and the public in any reasonable manner determined by the program administrator.

781—16.8(12D) Substitution or change of beneficiary. Iowa Code section 12D.3(5)*"a"* provides that beneficiaries may be changed subject to the rules and regulations of the treasurer of state. This rule establishes the criteria for substituting one beneficiary for another.

16.8(1) At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—16.6(12D) and be a member of the family of the beneficiary being substituted as defined in subrule 16.8(3).

16.8(2) In the event a beneficiary admitted to an institution of higher education decides to permanently discontinue the beneficiary's higher education and an account balance remains in college savings Iowa, the participant must, in order to avoid the imposition of the penalty and reporting to tax authorities, complete a new participation agreement for another eligible beneficiary who is a member of the prior beneficiary's family and direct that the account balance of the first beneficiary's account be "rolled over" to the new beneficiary's account.

16.8(3) For purposes of determining who is a member of the family, a legally adopted child of an individual shall be treated as the child of such individual by blood. The terms "brother" and "sister" include a brother or sister by half blood. "Member of the family" means an individual who is related to the designated beneficiary described as follows:

a. Son or daughter, or a descendant of either;
b. Stepson or stepdaughter;
c. A brother, sister, stepbrother, or stepsister;
d. The father or mother, or an ancestor of either;
e. A stepfather or stepmother;
f. A son or daughter of a brother or sister;
g. A brother or sister of the father or mother;
h. A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; or
i. The spouse of the designated beneficiary or the spouse of any individual described in paragraphs *"a"* through *"h"* of this subrule.

16.8(4) A participant may request that a beneficiary be substituted by submitting to the program administrator the form entitled Cancel, Amend, or Use CSI Account Form. The request shall accompany evidence, as specified by the program administrator, that the proposed substitute beneficiary is a member of the family of the beneficiary.

781—16.9(12D) Change of participant or account owner. The participant is the initial owner of the account established under college savings Iowa and, as such, has the exclusive right to cancel the participation agreement or change the designated beneficiary.

16.9(1) A participant may transfer the participant's current ownership rights in an account to another eligible individual or to a minor beneficiary. To do so, the participant shall file the form entitled Cancel, Amend, or Use CSI Account Form with the program administrator.

16.9(2) A participant may also designate on the participation agreement a successor that shall succeed to the ownership of the account in the event of the death of the participant. A participant may change the designated successor by filing a new Cancel, Amend, or Use CSI Account Form with the program administrator.

16.9(3) In the event a participant or other account owner dies and has not designated a successor to the account, the following criteria will be used.

a. The designated beneficiary, if 18 years of age or older at the time of the participant's death, shall become the owner of the college savings Iowa account as well as remaining the beneficiary.

b. If the designated beneficiary is under the age of 18, account ownership will be transferred to the beneficiary's surviving parent or parents or other legal guardian.

16.9(4) The participant may name a successor to the account even though the successor may already have established or plans to establish a college savings Iowa account.

781—16.10(12D) Payment of benefits and qualified distributions. Iowa Code section 12D.3(3) provides that a participant's account balance shall be refunded to the participant, less endowment fund earnings, and less a refund penalty levied by the trust against account balance earnings, if any, in the event an account balance remains in the account for a 30-day period following the beneficiary's thirtieth birthday. This rule establishes the procedures for the payment of benefits.

16.10(1) The participant must initiate distributions for qualified costs. The participant must file the form entitled Cancel, Amend, or Use CSI Account Form with the program administrator. The form should be filed at least two months before the beneficiary's first day of class in the institution. The form will allow the participant to select the maximum to pay each period of enrollment. This amount will be used until the benefits are exhausted or until otherwise directed by the participant, whichever occurs first.

16.10(2) Upon submission of the Cancel, Amend, or Use CSI Account Form, the participant shall specify the level of benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's qualified higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic period by notifying the program administrator in writing.

16.10(3) Benefits will be paid in one of two ways once the Cancel, Amend, or Use CSI Account Form is filed with the program administrator.

a. Benefits will be paid directly to the institution of higher education when an invoice from the institution is provided to the program administrator. Benefits will then be paid in accordance with the Cancel, Amend, or Use CSI Account Form filed by the participant to the extent the amount invoiced by the institution is for qualified expenses.

b. Upon receipt of complete and legible documentation regarding the purpose, date, and amount of the payment, the program administrator will reimburse the participant or beneficiary. Again, the amount of benefits that will be paid must be in accordance with the Cancel, Amend, or Use CSI Account Form and to the extent the reimbursement is for qualified expenses. Failure on the part of the participant or beneficiary to provide documentation requested by the program administrator to verify the purpose, date, and amount of payment will result in the denial of the request for reimbursement.

16.10(4) Each distribution of benefits will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings make up the participant's account.

16.10(5) If, following the submission of a Cancel, Amend, or Use CSI Account Form, the beneficiary interrupts the beneficiary's attendance at an institution of higher education, the participant must submit a form entitled Cancel, Amend, or Use CSI Account Form.

Distribution of benefits shall begin after receipt by the program administrator of the form entitled Cancel, Amend, or Use CSI Account Form and shall continue throughout the beneficiary's period of enrollment at an institution of higher education or until the account balance has been exhausted, whichever occurs first.

16.10(6) If the beneficiary graduates from an institution of higher education and a balance remains in the beneficiary's account, the program administrator shall refund to the participant the balance of the payments and the earnings from the investments in the program fund remaining in the account unless directed by the participant to transfer the funds to another eligible beneficiary.

16.10(7) Funds that are refunded to a participant pursuant to this rule shall be reported to the appropriate taxing authorities for the tax year in which such refund is made.

16.10(8) An amount equal to the applicable penalty on the distribution shall be retained by the program administrator in the event the distribution is used for purposes other than qualified higher educational costs.

16.10(9) For federal income tax purposes, that portion of a qualifying distribution that constitutes earnings must be included in the beneficiary's taxable income in the year in which it is distributed.

781—16.11(12D) Nonqualified distributions and penalties. Any account balance not used for the qualified higher education costs of a designated beneficiary or eligible substitute beneficiary, and not refunded to the account owner for reasons related to the death or disability of the beneficiary, or due to the beneficiary's receiving a scholarship, shall be refunded to the participant.

The participant shall receive the account balance less a penalty fee equal to 10 percent of the net earnings credited to the account. Also, any undistributed endowment fund earnings credited or earmarked to the account revert back to the endowment fund. For federal income tax purposes, that portion of a nonqualified distribution that constitutes earnings must be included in the participant's taxable income in the year in which it is distributed.

A participant may, however, transfer any remaining balance in one account to an existing or new account for another designated beneficiary by completing a new participation agreement with the program administrator. If the new beneficiary is a member of the family of the former beneficiary, no penalty fee will be imposed.

781—16.12(12D) Earnings in endowment fund. Iowa Code section 12D.4(2) provides that each beneficiary for whom funds are saved under a participation agreement shall receive an interest in a portion of the investment income of the endowment fund of the trust. This rule provides for implementation of this provision.

16.12(1) Earnings from the endowment fund that are not transferred to the administrative fund shall be earmarked for use by the beneficiary of each participation agreement.

16.12(2) Annually, a pro-rata amount of endowment fund earnings shall be earmarked to each participant account. The pro-rata amount shall be based on the average daily balance of the account held on behalf of a beneficiary in the program fund compared to the average daily balance of the entire program fund during the year.

16.12(3) The earmarking of the endowment fund earnings for use by a beneficiary shall not constitute ownership of such interest on the part of any beneficiary or participant. Upon cancellation of a participation agreement for any reason, endowment fund earnings earmarked to an account shall revert back to the endowment fund.

16.12(4) Provided that donations have been made to the endowment fund, the annual statement provided to each participant shall disclose both the annual and cumulative amounts of endowment interest that have been earmarked for use by a beneficiary under a participation agreement.

16.12(5) When payment of benefits for the beneficiary begins under a participation agreement, earnings from the endowment fund that have been earmarked for use by the beneficiary shall be made available for higher education costs under the following procedure.

Endowment fund earnings, if any, shall be paid in the following manner. Once the Cancel, Amend, or Use CSI Account Form is submitted to the program administrator, the total amount earmarked for the account, adjusted annually to allow for contributions when the beneficiary is in attendance, shall be distributed in equal installments over the remaining estimated number of enrollment periods that are customarily required by the institution of higher education to graduate in the beneficiary's course of study.

781—16.13(12D) Cancellation and payment of refunds. Iowa Code section 12D.5 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for canceling a participation agreement and providing a refund.

16.13(1) A participant may at any time cancel a participation agreement, without cause, by submitting to the program administrator the form entitled Cancel, Amend, or Use CSI Account Form.

16.13(2) If the participation agreement is canceled, the participant is entitled to a refund. The refund shall be mailed or otherwise sent to the participant within 60 days after receipt by the program administrator of the form entitled Cancel, Amend, or Use CSI Account Form. The amount of the refund shall be determined according to the following criteria.

The participant shall receive the account balance less a penalty fee equal to 10 percent of the net earnings credited to the account and less any endowment fund earnings earmarked to the account. The penalty fee shall be placed in the administrative fund. Any endowment fund earnings earmarked to the account shall revert back to the endowment fund.

16.13(3) If a participation agreement is canceled as a result of the death of the beneficiary or disability of the beneficiary, the participant shall receive the account balance with no imposition of the penalty fee.

a. Before a cancellation and refund due to the death of a beneficiary is made, a participant must provide the trust a copy of the beneficiary's death certificate or other proof of death acceptable under state law.

b. Before a cancellation and refund due to the disability of a beneficiary is made, a participant must provide to the program administrator written certification from a qualified and licensed physician that the beneficiary is disabled and, as a result of such disability, cannot reasonably attend school.

16.13(4) To the extent that a participation agreement is canceled as a result of the beneficiary's being awarded a scholarship, as defined in Section 529 of the Internal Revenue Code, the participant shall receive the account balance, up to the amount of the scholarship, with no imposition of the penalty fee. To the extent that the refund exceeds the amount of the scholarship, the penalty fee shall be imposed on such excess.

Before a refund is made due to the beneficiary's receiving a scholarship that can be used at a qualified institution of higher education, a participant must provide the program administrator written documentation that verifies and describes the scholarship award.

16.13(5) Funds that are refunded to a participant pursuant to this rule shall be reported to the appropriate taxing authorities for the tax year in which such refund is made.

These rules are intended to implement Iowa Code sections 12D.1, 12D.2, 12D.4, and 12D.6 to 12D.11 and Iowa Code sections 12D.3 and 12D.5 as amended by 1999 Iowa Acts, Senate File 457.

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* Rules 645—chs 6–17 apply to all professional licensure boards

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COUNTIES (cont'd)
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